

Chapter 4

Residential child welfare in Ireland, 1965-2008: an outline of policy, legislation and practice: a paper prepared for the Commission to Inquire into Child Abuse¹

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Introduction

4.01 This paper aims to provide a review of the evolution of policy, legislation and practice in relation to child welfare, with a particular emphasis on residential childcare from the mid-1960s to the present. It does not claim to be exhaustive; rather it attempts to delineate a number of the key shifts in the organisation of child welfare in Ireland that have led to the current configuration of services.² Furthermore, the paper does not fully embed the trajectory of change in child welfare services within the broader social, economic, cultural and political environment that shaped Ireland during this period. The changing role and status of religious Congregations is clearly of importance³, as are changing perceptions of the status and rights of children and the changing structure of the family.⁴ Similarly, the economic environment was significant in determining the level of funding available for child welfare, as was the political will for prioritising child welfare.⁵ Shifting forms of governance at national and local level have also shaped child welfare policies

¹ In drafting this paper, I received considerable assistance from the Commission to Inquire into Child Abuse, in particular Ms Feena Robinson and the Commissioners themselves, and for this I am most grateful. Mr Alan Savage facilitated my access to relevant files in the Department of Health and Children and his courtesy and unfailing assistance was much appreciated. The paper has benefited from productive conversations over a long number of years with Dr Helen Buckley, Dr Shane Butler and Professor Robbie Gilligan. In particular, I would like to thank Jessica Breen and Nicola Carr for their unfailing assistance and contribution to this paper.

² For example, the paper does not deal with adoption policy during this period, although it may be argued that the legalisation of adoption in 1952 contributed, in part, to the decline in the numbers of children placed in residential care. For further details on adoption policy in Ireland, see Shanahan, S (2005) 'The Changing Meaning of Family: Individual Rights and Irish Adoption Policy, 1949-99'. *Journal of Family History*, 30, 1, 86-108 and Maguire, M (2002) 'Foreign Adoptions and the Evolution of Irish Adoption Policy, 1945-1952'. *Journal of Social History*, 36, 2, 387-404.

³ See Fuller, L (2002) *Irish Catholicism since 1950: The Undoing of a Culture*. Dublin: Gill and Macmillan and Donnelly, JS (2002) 'The Troubled Contemporary Irish Catholic Church' in Bradshaw, B and Keogh, D (eds) *Christianity in Ireland: Revisiting the Story*. Dublin: The Columba Press.

⁴ See for example, Curtin, C and Varley, A (1984) 'Children and Childhood in Rural Ireland: A Consideration of the Ethnographic Literature' in Curtin, C, Kelly, M and O'Dowd, L (eds) *Culture and Ideology in Ireland*. Galway: Galway University Press; Kennedy, F (2001) *Cottage to Crèche: Family Change in Ireland*. Dublin: Institute of Public Administration; Walsh, T (2005) 'Constructions of Childhood in Ireland in the Twentieth Century: A View from the Primary School Curriculum 1900-1999'. *Child Care in Practice*, 11, 2, 253-69; and Earner-Byrne, L (2007) *Mother and Child: Maternity and Child Welfare in Dublin, 1922-60*. Manchester: Manchester University Press.

⁵ See for example, Cousins, M (1999) 'The Introduction of Children's Allowances in Ireland 1939-1944'. *Irish Economic and Social History*, 26, 35-53; McCashin, A (2004) *Social Security in Ireland*. Dublin: Gill and Macmillan and Fahey, T, Russell, H and Whelan, CT (eds) (2007) *Best of Times? The Social Impact of the Celtic Tiger*. Dublin: Institute of Public Administration.

over this period.⁶ These broader issues are well-documented elsewhere⁷ and it is therefore the intention of this paper to focus in a singular way on the specifics of residential childcare. Neither does the paper attempt to provide an interpretation of the shifts in the function, organisation and delivery of residential care in Ireland. Rather, by utilising the archival records of the Government Departments centrally concerned with this area of public policy, the Departments of Health and Education, supplemented by a secondary literature, the paper hopes to outline the intent and shifting concerns of policy makers, policy activists and service providers during the period under review, particular the crucial period between 1965 and 1975.

4.02 The paper suggests that the key debates in relation to the organisation, structure and delivery of child welfare services, in particular residential childcare services took place between approximately the mid-1960s and the mid-1970s, culminating in the Government decision of 11th October 1974 to 'allocate to the Minister for Health the main responsibility, including that of co-ordination in relation to child care'. Although the intent of Government may have been clear, the absence of clear guidance on what 'main responsibility' entailed was to cause considerable administrative and Ministerial difficulties over the next 30 years.⁸ In relation to residential child welfare services, the publication of the *Report of the Committee of Enquiry into Reformatory and Industrial Schools' Systems* (Kennedy Report) in 1970 is an important catalyst in these debates. The analysis of the child welfare system, particularly residential childcare, provided by the Committee crystallised a view of the system that had gained significant momentum in the second half of the 1960s that significant reform of the system was required, and the report acted as a spur in its aftermath for the realisation of organisational change.

4.03 The same Government decision that allocated to the Minister for Health primary responsibility for childcare also established a *Task Force on Child Care Services* which submitted its report to the Minister for Health in late 1980. This report exposed a number of difficulties that had emerged in relation to implementing desired changes. These included the difficulty of devising new legislation, despite an acknowledgement that it was required and the scale of the organisational changes required. An evolving external environment exacerbated this, with a professional childcare and social work cadre emerging alongside a decline in the role of Catholic Religious Congregations in the delivery of childcare services. Eventually, primarily due to inter-departmental difficulties and a lack of consensus on particular aspects of child welfare policy, particularly in the area of juvenile justice, a staggered repeal of the Children Act 1908 emerged with the Child Care Act 1991, the Educational (Welfare) Act 2000 and the Children Act 2001, primarily sponsored by the Departments of Health, Education and Justice respectively. Ministerial responsibility for child welfare services was formalised in the early 1990s. With the raising of the age of criminal responsibility to 12 (with certain exceptions) in 2006 and the ending of the role of the Department of Education in the administration of residential childcare in 2007, the core recommendations of

⁶ The changing role of the Irish State is debated in Adshead, M, Kirby, P and Millar, M (eds) 2008) *Contesting the State: Lessons from the Irish Case*. Manchester: Manchester University Press.

⁷ For a representative sample, see Girvin, B (2008) 'Church, State and Society in Ireland since 1960'. *Eire-Ireland*, 43, 1&2, 74-98; Fuller, L (2005) 'Religion, Politics and Socio-Cultural Change in Twentieth-Century Ireland'. *The European Legacy*, 10, 1, 41-54; Daly, ME (2006) 'Marriage, Fertility and Women's Lives in Twentieth-Century Ireland' (c 1900-c 1970). *Women's History Review*, 15, 4, 571-85; Foster, RF (2007) "'Changed Utterly"? Transformation and Continuity in Late Twentieth – Century Ireland'. *Historical Research*, 80, 209, 425; Ferriter, D (2008) 'Women and Political Change in Ireland since 1960'. *Eire-Ireland*, 43, 1&2, 179-204 and Breathnach, C (2008) 'Ireland Church, State and Society', 1900-1975. *The History of the Family*. 13, 4. 333-9.

⁸ As McCullagh has argued in relation to the juvenile justice system 'Since the foundation of the state, there has been a remarkable agreement about the juvenile justice system. There was consensus that it was not working, there was considerable consensus over how it should be reformed, and there was a seeming consensus that nothing would or could be done about it.' McCullagh, C (2006) Juvenile Justice in Ireland: Rhetoric and Reality in O'Connor, T and Murphy, M (eds) *Social Care in Ireland: Theory, Policy and Practice*. Cork: CIT Press. p 161. In a similar vein, O'Connor observed: 'One of the puzzling enigmas of Irish Social Policy is the contrast between, on the one hand, the clear endorsement of the family as the pivotal unit in Irish Society and, on the other hand, the reluctance up to very recently to initiate legislative reform to protect the most vulnerable members of that group – children. O'Connor, P (1992) 'Child Care Policy: A Provocative Analysis and Research Agenda'. *Administration*, 40, 3, 215.

the Kennedy Report were realised. In the intervening period, a range of issues not specifically discussed by the Kennedy Report were debated and policy decisions taken, particularly in relation to child abuse and specifically abuse in institutional settings.⁹ These debates are, of course, not unique to Ireland, and in recent years considerable debate has taken place on the extent and nature of abuse in residential childcare settings in, for example, the UK¹⁰ and Canada.¹¹

4.04 This paper firstly provides an overview of the current configuration of child welfare services in Ireland. It then presents data on the shifting patterns of child welfare interventions between 1960 and the present, highlighting in particular the decline in the number of children in residential care. The paper then reviews the debates on child welfare from the mid-1960s to the publication of the *Interim Report of the Task Force on Child Care Services* in 1975, including in particular the *Report of the Committee of Enquiry into Reformatory and Industrial Schools' Systems*. Detailing the difficulties and delay in implementing the recommendations broadly agreed on then follows. The paper explores, in particular, the difficulties in firstly transferring the majority of children's homes from the Department of Education to the Department of Health; secondly, the shift from funding the homes on a capitation system to a budget system; thirdly, introducing new child welfare and juvenile justice legislation to replace the Children Act 1908 (as amended); and fourthly, the provision of secure accommodation for children. The rationale for selecting these areas is that these were core to the recommendations of the Kennedy Committee, which it is suggested, summarised the views of a range of interested parties at that time. The difficulties experienced in realising the recommendations of the Kennedy Report related not to a lack of effort by any party, but reflected that despite a broad consensus on what should be done in the area of child welfare, interested parties held opposing views on the precise mechanisms, principles and pace of change required.

Section 1: Current organisation of child welfare in Ireland

Introduction

4.05 In September 2008, there were 5,380 children in care in Ireland, of whom only 400 (or 7.4 percent) were in residential care. This is in stark contrast to the position in the late 1960s, when approximately 3,000 children were in various forms of residential care. At the end of the 1960s, all children's Residential Homes were managed by either Catholic Religious Congregations or voluntary organisations, whereas by 2008 the vast majority of homes were managed directly by the State or its agents, with the last of traditional religious providers of residential care, the Sisters

⁹ See, Brennan, C (2007) 'Facing What Cannot be Changed: The Irish Experience of Confronting Institutional Child Abuse'. *Journal of Social Welfare and Family Law*, 29, 3-4, 245-63; Ferguson, H (2007) 'Abused and Looked After Children as "Moral Dirt": Child Abuse and Institutional Care in Historical Perspective'. *Journal of Social Policy*, 36, 1, 123-39; Ferguson, H (2000) 'States of Fear, Child Abuse and Irish Society'. *Doctrine and Life*, 50, 1, 20-30 and Christie, A (2001) 'Social Work in Ireland'. *British Journal of Social Work*, 31, 1, 141-8.

¹⁰ See for example, Gallagher, B (2000) 'The Extent and Nature of Known Cases of Institutional Child Sexual Abuse'. *British Journal of Social Work*, 30, 6, 795-817; Corby, B, Doig, A and Roberts, V (2001) *Public Inquiries into Abuse of Children in Residential Care*. London: Jessica Kinglsey; Colton, M (2002) 'Factors Associated with Abuse in Residential Child Care Institutions'. *Children and Society*, 16, 1, 33-44; Colton, M, Vanstone, M and Walby, C (2002) 'Victimization, Care and Justice: Reflections on the Experiences of Victims/Survivors Involved in Large-scale Historical Investigations of Child Sexual Abuse in Residential Institutions'. *British Journal of Social Work*, 32, 5, 541-51; Stein, M (2006) Missing Years of Abuse in Children's Homes. *Child and Family Social Work*, 11, 1, 11-21; Shaw, T (2007) Historical Abuse Systemic Review: *Residential Schools and Children's Homes in Scotland 1950-1995*. Edinburgh: Scottish Government; Sen, R, Kendrick, A, Milligan, I and Hawthorn, M (2008) 'Lessons Learnt? Abuse in Residential Child Care in Scotland'. *Child and Family Social Work*, 13, 4, 411-22. For a critical account of the claims of historic abuse in children's homes, see Smith, M (2008) 'Historical Abuse in Residential Child Care: An Alternative View'. *Practice: Social Work in Action*, 20, 1, 29-41.

¹¹ See Bessner, R (1998) *Institutional Child Abuse in Canada*. Ottawa: Law Commission of Canada; Law Commission of Canada (2000) *Restoring Dignity: Responding to Child Abuse in Canadian Institutions*. Ottawa: Law Commission of Canada; Hall, M (2000) 'The Liability of Public Authorities for the Abuse of Children in Institutional Care: Common Law Developments in Canada and The United Kingdom'. *International Journal of Law, Policy and the Family*, 14, 3, 281-301.

of Mercy ceasing their direct involvement in 2003.¹² On 1st March 2007 administrative and legal responsibility for the Children Detention Schools,¹³ with the exception of St Joseph's in Clonmel¹⁴, were transferred from the Department of Education and Science to the Irish Youth Justice Service¹⁵, an executive office of the *Department of Justice, Equality and Law Reform*. This transfer thus ended the involvement of the Department of Education in the administration of residential childcare, a role they commenced in June 1924.¹⁶ The changes arose from the youth justice reforms approved by Government in December 2005 following a review carried out by the *Department of Justice, Equality and Law Reform* and given statutory effect under the Criminal Justice Act 2006.¹⁷ The rationale for transferring responsibility for the administration of the Children Detention Schools from the Department of Education and Science was:

the Department has a limited role in the provision of residential care. The Department itself is of the opinion that the administration of detention schools would appear to be more appropriate to a body with experience and expertise in childcare, residential care and security issues.¹⁸

4.06 This decision concluded a debate, initiated some 40 years previously, over which Government Department should have responsibility for the administration of residential childcare in Ireland.¹⁹

¹² It is estimated that over 43,000 children were placed in residential homes managed by the Sisters of Mercy between 1846 and 1997. See, Clarke, M (1998) *Lives in Care: Issues for Policy and Practice in Irish Children's Homes*. Dublin: Mercy Congregation and the Children's Research Centre, TCD. pp 123-4.

¹³ These were: Trinity House School, Lusk, County Dublin; Oberstown Boys Centre, Lusk, County Dublin; Oberstown Girls Centre, Lusk, County Dublin; and Finglas Child and Adolescent Centre, Finglas West, Dublin 11.

¹⁴ The children detention school in Clonmel became premises provided and maintained by the Health Service Executive under the Child Care Act 1991. Established in 2005, the Health Service Executive replaced a complex structure of regional health boards, the Eastern Regional Health Authority and a number of other different agencies and organisations.

¹⁵ According to the Report, 'The primary aim of the proposed Youth Justice Service is to bring together the services for all young offenders under one governance and management structure. The Youth Justice Service should therefore assume responsibility for the operation of the children detention schools. Existing staff, financial resources and infrastructure for these schools would transfer to the new Youth Justice Service. The Department of Education and Science should continue to play an essential role in the provision of appropriate educational supports.' Government of Ireland (2006) *Report on the Youth Justice Review*. Dublin: Stationery Office. p 40. *The Irish Youth Justice Service* (IYJS) was established in December 2005 and the main responsibilities of IYJS are to: develop a unified youth justice policy; devise and develop a national strategy to deliver this policy and service; link this strategy where appropriate with other child related strategies; manage and develop children detention facilities; manage the implementation of provisions of the Children Act 2001 which relate to community sanctions, restorative justice conferencing and diversion; Co-ordinate service delivery at both national and local level; establish and support consultation and liaison structures with key stakeholders including at local level to oversee the delivery of this service and response; and develop and promote information sources for the youth justice sector to inform further strategies, policies and programmes.

¹⁶ Section 1(V) of the Ministers and Secretaries Act 1924 set out that 'The Department of Education which shall comprise the administration and business generally of public services in connection with Education, including primary, secondary and university education, vocational and technical training, endowed schools, *reformatories, and industrial schools*, and all powers, duties and functions connected with the same, and shall include in particular the business, powers, duties and functions of the branches and officers of the public services specified in the Fourth Part of the Schedule to this Act, and of which Department the head shall be, and shall be styled, an t-Aire Oideachais or (in English) the Minister for Education.'

¹⁷ In addition, the IYJS will assume operational responsibility for the detention of children aged 16 and 17. These children are currently detained within the Irish Prison Service in St Patrick's Institution. When Part 9 of the Children Act 2001 is fully commenced, 16- and 17-year-old offenders will be detained in a children detention centre(s), operational responsibility for which should reside with the Irish Youth Justice Service.

¹⁸ Government of Ireland (2006) *Report on the Youth Justice Review*. Dublin: Stationery Office. p 40.

¹⁹ It should be noted that this was proposed as an interim measure as the Review highlighted that the most appropriate body was one which had responsibility for the care of young people and argued that 'this would reflect the practice in other international jurisdictions which have placed youth justice in structures which also have responsibility for the delivery of broad child-related services. However, no existing social service structure seems appropriate for the incorporation of a youth care and justice service at this time. The capacity of care and social services would have to be expanded to cope with the introduction of these additional services and the organisational structures would need revision to an extent not practical in the short term. Therefore, as an interim measure, it is proposed that a Youth Justice Service, which would take responsibility for offending children only, be established under the aegis of the Department of Justice, Equality and Law Reform. Government of Ireland (2006) *Report on the Youth Justice Review*. Dublin: Stationery Office. p 39.

By 1984, the majority of Residential Homes had been transferred to the Department of Health, with the Department of Education retaining responsibility for the administration of a small number of Reformatory and Industrial Schools, collectively referred to for administrative purposes as Special Schools since the early 1970s. Initially, the Department of Health wished to take responsibility for these schools, but this was resisted by the Department of Education as it was felt that as the educational facilities were provided on site, they were the appropriate Government Department to administer them. By the mid-1980s, the Department of Education was agreeable to transferring the Schools to the Department of Health, but by now, Health was not willing to accept them. By the late 1980s, the Department of Education had firmly concluded that they were not the appropriate Department to manage these schools, and recommended that the Department of Justice take responsibility for their management. It was not until the mid-2000s that the issue was finally resolved and the Department of Education finally severed their role in administering the schools. Thus, from once being the Government Department with primary responsibility for residential care for both offending and non-offending children for most of the 20th century, the Department of Education and Science now has responsibility only for the educational input in the schools. Working with the Office of the Minister for Children and Youth Affairs (which was established in 2005), the objective of the Irish Youth Justice Service is to ensure co-ordination between the various agencies that provide services in the youth justice arena (e.g. probation services, the Gardaí, the courts etc.) in the context of the Children Act 2001 and in addition to running the children detention schools as noted above. The establishment of both the Office of the Minister for Children and Youth Affairs and the Irish Youth Justice Service were in response to long-standing criticisms that a fundamental flaw in the Irish child welfare system was the absence of a lead Department, and a lack of co-ordination between the disparate elements that made up the child welfare system.²⁰

Co-ordination of childcare services

4.07 The aforementioned Office of the Minister for Children and Youth Affairs (OMCYA) is part of the Department of Health and Children. The role of the OMCYA, which was set up by the Government in December 2005, is to implement the *National Children's Strategy*²¹ and bring greater coherence to policy-making for children. The OMCYA units that are part of the Department of Health and

²⁰ These criticisms predate the foundation of the State. For example, in 1899, it was argued 'In Ireland we are at once met by the fact that State interference with children is carried out by different authorities who are not bound to consult each other. The Inspector of Reformatories and Industrial Schools does not deal with children in workhouses. The Poor-Law Inspector is not concerned with those in Industrial Schools. The Pauper Children's Act sanctions another interloper who is to inspect Local Government Board schools. The Prison authorities play the part of awkward foster parents to children who drift into gaols. School Attendance Committees also have a finger in the pie. And various boards of guardians can, to a large extent, experiment independently, according to their understanding, or want of it, with childhood in its helpless stages.....it is a matter of chance under which regime a child may fall, according as he first meets a relieving officer, a policeman, or a philanthropist connected with some school.' (Daly, ED (1899) 'The Children and the State'. *The New Ireland Review*, July, pp 262-3). Millin, a decade later argued that 'What we want in Ireland is a Department for Children, which will in no way be connected with the workhouse, nor bear a name which will cast a stigma on the children. The management of that Department should be largely, if not exclusively, in the hands of women. There should be full power to board out any child in any part of Ireland; and no child should be sent to an industrial school, unless sanctioned by the Department, after boarding-out has been tried, and has proved a failure in each particular case. (Millin, SS (1909) 'The Duty of the State towards the Pauper Children of Ireland'. *Journal of the Statistical and Social Inquiry Society of Ireland*, Vol xii, pp 260-1.) After independence, the issue was debated in the *Report of the Commission on the Relief of the Poor*, which rejected the establishment of a state department dealing entirely with children, arguing that 'we are not convinced that the interests of the children would be better served by a single 'mixed' authority exercising a number of unrelated duties than by the several departments amongst which these duties are at present distributed'. Report of the *Commission on the Relief of the Sick and Destitute Poor, including the Insane Poor*. (1928) Dublin: Stationery Office, p 74.

²¹ *The National Children's Strategy, Our Children — Their Lives*, was published in November 2000. The three national goals of the strategy are: (1) Children will have a voice in matters which affect them and their views will be given due weight in accordance with their age and maturity; (2) Children's lives will be better understood; their lives will benefit from evaluation, research and information on their needs, rights and the effectiveness of services; and (3) Children will receive quality supports and services to promote all aspects of their development. On the background to the Strategy, see Pinkerton, J (2001) 'Ireland's National Children's Strategy – An Inside Outsider's View'. *Children and Society*, 15, 2, 118-21.

Children include: Minister's Office Staff and Advisor, the Child Welfare and Protection Policy Unit, the Childcare Directorate (formerly part of the Department of Justice, Equality and Law Reform) and the National Children and Young People's Strategy Unit (formerly the National Children's Office²²). The Minister of State, who has special responsibility for children, is officially styled Minister of State at the Department of Health and Children, at the Department of Justice, Equality and Law Reform and at the Department of Education and Science (with special responsibility for Children), and is a junior ministerial post in the Departments of Health and Children, Education and Science and Justice, Equality and Law Reform of the Government of Ireland. The Minister works together with the various senior Ministers in these departments and has special responsibility for children's affairs. The Minister of State does not hold cabinet rank, but does, however, attend cabinet meetings. The position, in its current form, was created on 20th December 1994. The current incumbent is Barry Andrews, TD, who took up the post in May 2008.²³

4.08 In October 2008, it was announced that the Children Acts Advisory Board would also come under the OMCYA. The Children Acts Advisory Board was established under the Child Care (Amendment) Act 2007 on 23rd July 2007, which changed the name, and some functions of the former Special Residential Services Board.²⁴ The Children Acts Advisory Board has a role conducting or commissioning research, promoting enhanced interagency co-operation; promoting, organising or taking part in, seminars and conferences; publishing guidelines on the qualifications, criteria for appointment, training and role of any guardian ad litem appointed for children in proceedings under the Act of 1991; preparing and publishing criteria for admission to and discharge from special care units, in respect of children subject to special care and interim special care orders in consultation with the Health Service Executive; giving its views on any proposal of the Health Service Executive to apply for a special care order; and preparing reports on certain court proceedings. The Child Care (Amendment) Act 2007 broadened the remit of the Board to become an enhanced advisory and enabling body whose functions include providing advice to the Ministers for Health and Children and Justice, Equality and Law Reform on policy issues relating to the co-ordinated delivery of services to at risk children/young people, specifically under the Child Care Act 1991 and the Children Act 2001.

Legislative framework

4.09 The Child Care Act 1991²⁵ (as amended) and the Children Act 2001²⁶ (as amended) have replaced the Children Act 1908 and the Health Acts 1953 and 1957 as the primary statutory framework for the care and control of children in Ireland.²⁷ The Child Care Bill was enacted into law on 10th July

²² *The National Children's Office* (NCO) was established in 2001 to lead and oversee the implementation of the National Children's Strategy. The NCO was given the lead responsibility for Goal 1 (children's participation) and Goal 2 (research). In regard to Goal 3 (improving supports and services), the NCO had a particular responsibility for progressing key policy issues identified as priorities by the Cabinet Committee on Children and which require cross-departmental/interagency action.

²³ Austin Currie first held the post between 2nd December 1994 and 26th June 1997. He was followed by Frank Fahey (8th July 1997 – 1st February 2000); Mary Hanafin (1st February 2000–6th June 2002); Brian Lenihan (19th June 2002 – 14th June 2007); Brendan Smith (20th June 2007 – 7th May, 2008). Chris Flood held a co-ordinating post between Health and Education between 1991 and 1994.

²⁴ The *Special Residential Services Board* was established in 2001, having had an interim board from April 2000, and put on a statutory basis in November 2003 pursuant to Part 11 of the Children Act 2001. Under this Act the functions of the Board included the provision of policy advice to the Ministers with responsibility for Health and Children and Education and Science on the remand and detention of children in detention schools and special care units. The Board also had a remit to both co-ordinate and advise the courts on the appropriate placement of children in children detention schools.

²⁵ The final sections of the Child Care Act 1991 were enacted on 18th December 1996.

²⁶ All sections of the Act, not already enacted, were enacted on 23rd July 2007 (SI No 524 of 2007 Children Act 2001 (Commencement) (No 3) Order 2007).

²⁷ In addition, the United Nations Convention on the Rights of the Child was ratified by Ireland in September 1992 and came into force on 21st October, 1992. For further details, see Kilkelly, U (2008) *Children's Rights In Ireland: Law, Policy and Practice*. Tottel Publishing.

1991, as the Child Care Act 1991²⁸, its purpose being to 'up-date the law in relation to the care of children who have been assaulted, ill-treated, neglected or sexually abused or who are at risk'.²⁹ The main provisions of the Act are: the placing of a statutory duty on health boards to promote the welfare of children who are not receiving adequate care and protection; to strengthen the powers of the Health Boards to provide childcare and family support services; the improvement of the procedures to facilitate immediate intervention by health boards and the Gardaí where children are in danger; the revision of provisions to enable the courts to place children who have been assaulted, ill-treated, neglected or sexually abused or who are at risk, in the care of or under the supervision of regional health boards; the introduction of arrangements for the supervision and inspection of pre-school services; and the revision of provisions in relation to the registration and inspection of residential centres for children.³⁰ Also of note is section 24 of the Non-Fatal Offences Against the Person Act 1997 which provided that: 'The rule of law under which teachers are immune from criminal liability in respect of physical chastisement of pupils is hereby abolished.'³¹

4.10 The Children Act 2001, which was signed into law by the President on 8th July 2001, not only repeals the Children Act 1908, it also introduces significant new sections to the Child Care Act 1991.³² Described by one author as 'fundamental revolution in the law relating to juvenile justice'³³, the Children Act 2001 focuses on preventing criminal behaviour, diversion from the criminal justice

²⁸ The Act superseded the Child (Care and Protection) Bill 1985. The second stage of the Bill was passed in the Dáil on 23rd January 1987 but had not progressed further by the time of the dissolution of the Dáil in January 1987. For further details on the Act, see Ferguson, H and Kenny, P (1995) *On Behalf of the Child: Child Welfare, Child Protection and the Child Care Act, 1991*. Dublin: A&A Farmar; Gilligan, R (1996) 'Irish Child Care Services in the 1990s: The Child Care Act 1991 and Other Developments' in Hill, M and Aldgate, J (eds) *Child Welfare Services: Developments in Law, Policy, Practice and Research*. London, Jessica Kingsley, pp 56-74 and Ward, P (1997) *The Child Care Act, 1991*. Dublin: Roundhall.

²⁹ A number of studies have attempted to review and evaluate the effectiveness of the Child Care Act 1991 in achieving the objectives set out in the Act. A non-exhaustive list of research on aspects of residential care includes: Gilligan, R (1996) 'Children Adrift in Care?-Can the Child Care Act 1991 Rescue the 50 percent who are in Care Five Years and More?'. *Irish Social Worker*, 14, 1, 17-19; Stein, M, Pinkerton, J and Kelleher, P (2000) 'Young People Leaving Care in England, Northern Ireland and Ireland'. *European Journal of Social Work*, 3, 3, 235-46; Buckely, H (2002) 'Issues in Residential care' in Buckely, H (ed) *Child Protection and Welfare – Innovations and Interventions*. Dublin: Institute of Public Administration; Gilligan, R (2007) 'Adversity, Resilience and Educational Progress of Young People in Public Care'. *Emotional and Behavioural Difficulties*, 12, 2, 135-45; Mayock, P and O'Sullivan, E (2007) *Lives in Crisis: Homeless Young People in Dublin*. Dublin: Liffey Press.

³⁰ See SI 259 of 1995 Child Care (Placement of Children in Residential Care) Regulations 1995 and SI No 397 of 1996 Child Care (Standards in Children's Residential Centres) Regulations 1996. In addition, a *Guide to Good Practice in Children's Residential Centres* was published by the Department of Health. The Department of Health published *National Standards for Children's Residential Centres* in 2001 and the Department of Education and Science published *Standards and Criteria for Children Detention Schools* in 2002. In 2006, the Health Service Executive published detailed guidance on promoting best practice on leaving care and aftercare. Health Service Executive (2006) *Model for the Delivery of Leaving Care and Aftercare Services in HSE North West Dublin, North Central Dublin and North Dublin*. Dublin: HSE.

³¹ Corporal punishment was effectively prohibited from February 1982, when the Department of Education issued new regulations which outlined that '1. Teachers should have a lively regard for the improvement and general welfare of their pupils, treat them with kindness combined with firmness and should aim at governing them through their affections and reason and not by harshness and severity. Ridicule, sarcasm or remarks likely to undermine a pupil's self-confidence should not be used in any circumstances. 2. The use of corporal punishment is forbidden. 3. Any teacher who contravenes sections (1) or (2) of this rule will be regarded as guilty of conduct unbecoming a teacher and will be subject to severe disciplinary action.' For further information on corporal punishment in Ireland, see Maguire, MJ and Ó Cinnéide, S (2005) "'A Good Beating Never Hurt Anyone': The Punishment and Abuse of Children in Twentieth Century Ireland". *Journal of Social History*, 38, 3, 635-52.

³² For further details on the provisions of the Act, see McDermot, PA and Robinson, T (2003) *Children Act, 2001*. Dublin: Thomson / RoundHall, Kilkelly, U (2006) 'Reform of Youth Justice in Ireland: The "New" Children Act 2001. Part 1'. *Irish Criminal Law Journal*, 16, 4, 2-7 and Kilkelly, U (2007) 'Reform of Youth Justice in Ireland: The "New" Children Act 2001. Part 2'. *Irish Criminal Law Journal*, 17, 1, 2-8.

³³ Shannon, G (2005) *Child Law*. Dublin: Thomson/Round Hall. p vii. For a comprehensive overview of juvenile justice in Ireland, see Walsh, D (2005) *Juvenile Justice*. Dublin: Round Hall and Bowe, J (2005) *Literature Review and System Review*. Dublin: Irish Association for the Study of Delinquency and for a comparative history, Caul, B (1984) *A Comparative Study of the Juvenile Justice Systems of Northern Ireland and the Republic of Ireland*. Unpublished PhD thesis. Trinity College, Dublin.

system and introduces principles of restorative justice.³⁴ Crucially, and in contrast to the situation that prevailed for much of 20th century, the use of detention for a child is to be a last resort; the Act *requires* that all avenues be explored before it is used.³⁵ The main principles of the Children Act are: any child who accepts responsibility for his/her offending behaviour should be diverted from criminal proceedings, where appropriate; children have rights and freedoms before the law equal to those enjoyed by adults and a right to be heard and to participate in any proceedings affecting them; it is desirable to allow the education etc. of children to proceed without interruption; it is desirable to preserve and strengthen the relationship between children and their parents/family members; it is desirable to foster the ability of families to develop their own means of dealing with offending by their children; it is desirable to allow children to reside in their own homes; any penalty imposed on a child should cause as little interference as possible with the child's legitimate activities, should promote the development of the child and should take the least restrictive form, as appropriate;³⁶ detention should be imposed as a last resort and may only be imposed if it is the only suitable way of dealing with the child; due regard to the interests of the victim; a child's age and level of maturity may be taken into consideration as mitigating factors in determining a penalty; and a child's privacy should be protected in any proceedings against him/her. On 16th October 2006, under the Children Act 2001, the age of criminal responsibility was effectively raised from 7 to 12 years. Under the new provisions, no child under the age of 12 years can be charged with an offence.³⁷ Before the Children Act 2001 was fully implemented, it was,

³⁴ On this shift, see Seymour, M (2006) 'Transition and Reform: Juvenile Justice in the Republic of Ireland' in Junger-Tas, J and Decker, SH (eds) *International Handbook of Juvenile Justice*. Springer, pp 117-44 and O'Dwyer, K (2001) *Restorative Justice Initiatives in the Garda Síochána: Evaluation of the Pilot Project*. Templemore: Garda Research Unit.

³⁵ In a comparative context, this shift is somewhat at odds with a general drift towards more punitive policies for young offenders. See for example, Muncie, J (2008) 'The "Punitive Turn" in Juvenile Justice: Cultures of Control and Rights Compliance in Western Europe and the USA'. *Youth Justice*, 8, 2, 107-21 and Muncie, J (2006) 'Repenalisation and Rights: Explorations in Comparative Youth Criminology'. *The Howard Journal*, 45, 1, 42-70.

³⁶ There are 10 community sanctions available to the courts under the Act: They are: community service order: a child of 16 or 17 years of age agrees to complete unpaid work for a set total number of hours; day centre order: a child is to go to a centre at set times and, as part of the order, to take part in a programme of activities; *probation order*: this places a child under the supervision of the Probation Service for a period during which time the child must meet certain conditions which are set by the court; *training or activities order*: a child has to take part in and complete a programme of training or similar activity. The programme should help the child learn positive social values; *intensive supervision order*: a child is placed under the supervision of a named probation officer and has to attend a programme of education, training or treatment as part of their time under supervision; *residential supervision order*: this is where a child is to live in a suitable hostel. The hostel is to be close to where they normally live, attend school or go to work; *a suitable person (care and supervision) order*: with the agreement of the child's parents or guardian, the child is placed in the care of a suitable adult; *a mentor (family support) order*: a person is assigned to help, advise and support the child and his/her family in trying to stop the child from committing further offences; *restriction of movement order*: this requires a child to stay away from certain places and to be at a specific address between 7pm and 6am each day; a dual order: this combines a Restriction of Movement Order with either supervision by a probation officer or attendance at a day centre. The growing involvement with the Probation Service with young offenders was reflected in the creation of Young Person's Probation (YPP), which is a division of the Probation Service. The YPP works with approximately 600 young offenders nationally. As part of their role in working to reduce offending, the YPP has responsibility for the implementation of certain provisions under the Children Act 2001.

³⁷ An exception is made for 10- and 11-year-olds charged with very serious offences, such as unlawful killing, a rape offence or aggravated sexual assault. In addition, the Director of Public Prosecutions must give consent for any child under the age of 14 years to be charged. Although the Act in general prohibits children less than 12 years of age from being charged and convicted of a criminal offence, they do not enjoy total immunity from action being taken against them. Section 53 of the Act as amended by section 130 of the Criminal Justice Act 2006 places an onus on the Gardaí to take a child under 12 years of age to his/her parents or guardian, where they have reasonable grounds for believing that the child has committed an offence with which the child cannot be charged due to the child's age. Where this is not possible the Gardaí will arrange for the child to be taken into the custody of the Health Service Executive (HSE) for the area in which the child normally resides. It is possible that children under 12 years of age who commit criminal offences will be dealt with by the HSE and not the criminal justice system.

substantially amended via the Criminal Justice Act, 2006. Among the areas where change has taken place is the age of criminal responsibility, the Diversion Programme, arrangements for the detention of children and the introduction of a new regime to deal with anti-social behaviour.³⁸

4.11 The Children Act 2001 also amended the Child Care Act 1991 by allowing for establishment of special care facilities for children who required secure accommodation. This amendment was necessitated by a series of actions that sought clarification on the implementation of section 5 of the Child Care Act 1991. The key issue was by what criteria the provision in the Act stipulating that health boards ‘take such steps as are reasonable’ be evaluated and what constituted ‘suitable accommodation’ for homeless children?³⁹ The first substantial challenge to the use of bed and breakfast accommodation for homeless children came in 1994. In the case of *PS v The Eastern Health Board*⁴⁰, it was argued that the Eastern Health Board (EHB) had failed to provide for the welfare of the applicant under section 3 of the Act and to make available suitable accommodation for him under section 5 of the Act. The applicant, who was 14 years of age at the time, had a history of multiple care placements from a young age and had been discharged from a Residential Home and spent 35 consecutive nights sleeping rough before the EHB had agreed to intervene and provide him with accommodation. By the time the case reached the High Court, the applicant had been placed in a health board premises along with another child and a number of security staff. The EHB made the point that, under the Child Care Act 1991, they had no powers of civil detention and, if the applicant would not co-operate, they were limited in the service they could provide.

4.12 In a series of further High Court actions, the courts identified a gap in Irish childcare legislation in that health boards were adjudged not to have powers of civil detainment. The judgments resulting from these actions led to the establishment of a small number of high support and special care units for children by the Department of Health, in conjunction with the health boards.⁴¹ However, the number of children before the High Court continued to grow and, in July 1998, Justice Kelly issued an order to force the Minister for Health to provide sufficient accommodation for the children appearing before him in order to vindicate their constitutional rights. In his conclusion, Mr Justice Kelly stated:

It is no exaggeration to characterise what has gone on a scandal. I have had evidence of inter-departmental wrangles over demarcation lines going on for months, seemingly endless delays in drafting and redrafting legislation, policy that appears to be made only to be reversed and a waste of public resources on. For example, going through an entire planning process for the Portrane development only for the Minister to change his mind, thereby necessitating the whole process being gone through again. The addressing of the rights of the young people that I have to deal with appears to be bogged down in a

³⁸ Kilkelly, U (2007) ‘Reform of Youth Justice in Ireland: The “New” Children Act 2001. Part 1’. *Irish Criminal Law Journal*, 17, 1, 2. The provisos in relation to age of criminal responsibility are discussed above. In relation to the diversion programme, the primary change is to expand to remit of the scheme to children aged 10 and 11, i.e. below the age of criminal responsibility, for those deemed to be involved in anti-social behaviour. The changes in the arrangements for the detention children relate to the transfer of administrative responsibility from the Department of Education and Science to the Department of Justice, Equality and Law Reform. The issue that generated most adverse publicity was the introduction of new provisions for children deemed to be involved in anti-social behaviour. For further details, see Garrett, PM (2007) ‘Learning from the “Trojan Horse”? The Arrival of ‘Anti-Social Behaviour Orders’ in Ireland’. *European Journal of Social Work*, 10, 4, 497-511 and Hamilton, C and Seymour, M (2006) ‘ASBOs and Behaviour Orders: Institutionalised Intolerance of Youth?’ *Youth Studies Ireland*, 1, 1, 61-75.

³⁹ For further details, see, Ward, P (1995) ‘Homeless Children and the Child Care Act, 1991’. *Irish Law Times*, 13, 19-21 and Whyte, G (2002) *Social Inclusion and the Legal System: Public Interest Law in Ireland*. Dublin: Institute of Public Administration.

⁴⁰ *PS v Eastern Health Board* (unreported, 27th July 1994), High Court, Geoghegan J.

⁴¹ For further information, see Kenny, B (2000) *Responding to the Needs of Troubled Children: A Critique of High Support and Secure Care Provision in Ireland*. Dublin: Barnardo’s and Social Information Systems (2003) *Definition and Usage of High Support in Ireland*. Dublin: Special Residential Services Board.

bureaucratic and administrative quagmire. I have come to the conclusion that the response of the Minister to date falls far short of what this Court was reasonably entitled to expect concerning the provision of appropriate facilities for young people with difficulties of the type with which I am dealing.⁴²

4.13 The Children Act 2001 inserted a new section into the Child Care Act 1991 (section 23) imposing on the health boards a duty to seek a special care order in the District Court where the behaviour of the child or young person was such that it imposed a real and substantial risk to his or her health, safety, development and welfare and where it was necessary in the interests of the child that such a course of action be adopted. By 2005, three special care units were established with an approved bed capacity of 30, in addition to 13 high support units with an approved bed capacity of 93.⁴³ In 2007, 34 children were placed in special care units, down from 55 in 2004.⁴⁴

4.14 In 2000, the Education (Welfare) Act was passed by the House of the Oireachtas. This Act replaced the School Attendance Acts 1926 to 1967.⁴⁵ It raised the minimum school leaving age from 15 to 16, or the completion of three years of post-primary education, whichever is the later. The Act established a National Educational Welfare Board, the objective of which is to develop, co-ordinate and implement school attendance policy so as to ensure that every child in the State attends a recognised school or otherwise receives an appropriate education; appoints education welfare officers to work in close co-operation with schools, teachers, parents and community/voluntary bodies with a view to encouraging regular school attendance and developing strategies to reduce absenteeism and early school leaving; maintain a register of children receiving education outside the recognised school structure and assess the adequacy of such education on an ongoing basis. Reform of this area of child welfare had been long sought, with both the Kennedy Report, and in the same year, the *Commission on the Garda Síochána* (generally known as the Conroy report), highlighting the inadequacy of the system for regulating school attendance. The Report argued that the Gardaí had been called on to do many duties that had no connection with their primary duties as policemen. Included in a menu of extraneous duties was the enforcement of the School Attendance Acts and recommendation 1188 argued that steps should be taken to relieve the Garda Síochána from the obligation to carry out, most, if not all, of the extraneous duties imposed upon them.⁴⁶ This view simply gave voice to a long-established trend where from the early 1950s onwards, the Gardaí had scaled down their involvement in the implementation of the School Attendance Acts and the only areas where school attendance officers had a significant presence were in the cities of Dublin, Cork, Limerick and Waterford where school attendance committees were in operation. The Kennedy Report had argued that:

Persistent absence from school may be one of the early warning signs of the existence of families and children in difficulties. Such difficulties may be physical, psychiatric or psychological. Early identification of and treatment of the causes will, therefore, be necessary if the break-up of the family is to be avoided. Other possible causes are many and varied. Illness, inadequate parents, unemployment of the father and the mother working, indifference of the parents to education may all lead to absence of one or more children from school. The child may be experiencing difficulties at school, may have

⁴² *DB (a minor suing by his mother and next friend SB) v The Minister for Justice, The Minister for Health, The Minister for Education, Ireland and The Attorney General and the Eastern Health Board* (unreported, 29th July 1998).

⁴³ The key distinction between high support units and special care units is that a child can be detained in a special care unit but not in a high support unit, but there has been confusion as to the precise purpose and functions of high support units. See Social Information Systems (2003) *Definition and Usage of High Support in Ireland*. Dublin: Special Residential Services Board.

⁴⁴ See Carr for further details on the mechanisms by which children enter such units. Carr, N (2008) 'Exceptions to the Rule? The Role of the High Court in Secure Care in Ireland'. *Irish Journal of Family Law*, 11, 4, 84-91.

⁴⁵ For further details, see Fahey, T (1992) 'State, Family and Compulsory Schooling in Ireland'. *Economic and Social Review*, 23, 4, 369-95 and Department of Education (1994) *School Attendance/Truancy Report*. Dublin: Department of Education.

⁴⁶ Commission on the Garda Síochána (1970) *Remuneration and Conditions of Service*. Dublin: Government Publications Office. p 201.

physical disabilities such as hearing or sight defects. Backwardness may make it difficult for him to keep up with his class, unsuitable home conditions may make it impossible to prepare homework with consequence reluctance to attend school.⁴⁷

4.15 Thus, rather than viewing non-attendance at school through the prism of deviance or criminality and the resulting mode of intervention, punishment: non-attendance at school was viewed as symptomatic of a more deep-rooted maladjustment in the child's life and requiring professional intervention in the shape of social workers, psychiatrists and psychologists. Thus, the Gardaí, irrespective of their reluctance to remain involved with school attendance duties because of operational restraints, had no role in this new understanding of the causes of non-attendance at school and modes of intervention in solving the problem. The Kennedy report also stated that 'It is obvious that the present School attendance system needs to be re-examined and a more efficient system evolved',⁴⁸ a statement that was to be echoed in numerous subsequent reports that generally looked at the issue of school attendance in passing.

4.16 For those working in the area of child welfare, particularly, social workers and care workers, the Health and Social Care Professionals Act 2005 provides for a system of statutory registration for 12 health and social care professions,⁴⁹ to ensure that health and social care professionals providing services are properly qualified, competent and fit to practice. This is the first time such professionals are regulated under statute. The Act also provides for the establishment of a fitness to practice structure to deal with complaints and other disciplinary matters.

Inspecting children in care

4.17 The *Social Services Inspectorate* (SSI) was set up on an administrative basis in 1999 to inspect social services in Ireland. The inspectorate emerged from the recommendations of the *Report on the Inquiry into Madonna House*, which reported in May 1996 and recommended that an Inspectorate of Social Services be established on a statutory basis, which would have responsibility for 'quality assurance and audit of childcare practice in all areas of personal social services, including the children's residential sector.'⁵⁰ From 1999 to 2007 the work of the SSI focused on children in care, primarily on inspection of residential care. In 2004 a pilot inspection of foster care services was conducted and this was followed in 2006 with inspections of two private foster care agencies. The SSI conducted inspections of statutory residential childcare services (i.e. services managed by the Health Service Executive (HSE), formerly the health boards), under statutory powers contained in section 69 of the Child Care Act 1991. SSI inspectors are authorised to enter any premises maintained by the HSE under the Act and examine the state and management of the premises and the treatment of children there and examine such records and interview such members of staff as they see fit. The Department of Health and Children administered it until May 2007, when it was established on a statutory basis as the Office of the Chief Inspector of Social Services within the Health Information and Quality Authority (HIQA).⁵¹

4.18 In addition, the Ombudsman for Children's Office was established in 2004, following the Ombudsman for Children Act 2002, which commenced in its entirety on 25th April 2004. The Ombudsman for Children can investigate an action by a public body, a school or a voluntary

⁴⁷ Committee of Enquiry into Reformatory and Industrial Schools' Systems. (1970) *Report*. Dublin: Stationery Office. p 82.

⁴⁸ *Ibid.* p 82.

⁴⁹ They are: clinical biochemists, medical scientists, psychologists, chiropodists/podiatrists, dieticians, orthoptists, physiotherapists, radiographers, speech and language therapists, occupational therapists, social care workers and social workers.

⁵⁰ Department of Health (1996) *Report on the Inquiry into the Operation of Madonna House*. Dublin: Stationery Office. p xi.

⁵¹ See, O'Brien, L (2008) 'Protection through Inspection: An Exploration of the Effectiveness of Irish Inspection Services in Relation to Promoting a Child's Right to Make a Complaint in Residential Care'. *Scottish Journal of Residential Child Care*, 7, 1, 14-20.

hospital where it appears that the action has or may have adversely affected a child, and the action was or may have been taken without proper authority, taken on irrelevant grounds, the result of negligence or carelessness, based on erroneous or incomplete information, improperly discriminatory, based on an undesirable administrative practice, or otherwise contrary to fair or sound administration. The Ombudsman for Children can investigate an action on her own initiative or where a complaint has been made to her. A complaint can be made by a child or by an adult on behalf of a child.⁵²

Child protection guidelines in Ireland

- 4.19** The development of guidelines on the reporting, investigation and management of child abuse cases in Ireland began at a meeting in the Department of Health in May 1975, the purpose of which was to discuss the problem of ‘non accidental injury to children’ that had been brought to the attention of the Department by medical consultants from Crumlin and Harcourt St Hospitals. It was agreed at the meeting that
- (1) there was a significant problem of non-accidental injury to children in Ireland;
 - (2) that the position should be examined and procedures suggested for dealing with such cases and for ensuring the co-operation of parties dealing with such cases; and
 - (3) that a central register of such cases should be examined.
- 4.20** Following the meeting, a committee was established to address the above issues, comprised principally of medical doctors, a superintendent public health nurse, a senior ISPCC officer, a medical social worker and two civil servants. A sub-group was subsequently formed to draw up a detailed memorandum on the matters considered by the Committee. Emerging from this, and assisted by information obtained from British authorities, the first report of the Department of Health Committee on Non-Accidental Injury was published in March 1976, providing a basis for all subsequent child abuse guidelines issued by central government.⁵³
- 4.21** The focus of the Department of Health report was essentially clinical, emphasising the need for early identification of ‘battered’ children. It provided an ‘index of suspicion’ to assist the identification of child abuse, which was almost entirely based on physical symptoms of injury, with a proportionately marginal emphasis on ‘nutritional deprivation, neglect and emotional deprivation and trauma’.⁵⁴ It defined the case conference as an essential part of the ‘team effort’ required for the investigation and management of suspected non-accidental injury (NAI). Overall responsibility for calling the conference was assigned to the Director of Community Care (a medical doctor) though the delegation of this function ‘to a senior member of his medical staff’ was permitted. The list of suggested attendees demonstrated a clear expectation of significant involvement by hospital staff in the management of the case.
- 4.22** The report also recommended the establishment and maintenance of what it described as a ‘central registry’ of cases ‘to act as a reference for personnel concerned to ascertain whether a child was already widely known to different medical practitioners, hospitals or social workers as a case of suspected or diagnosed non-accidental injury. The placement of the register in a paediatric department, health board or the ISPCC was mooted, with the suggestion that, in Dublin, it should be administered by a senior medical officer in the child health section of the EHB to facilitate medical involvement and medical confidentiality. While it was also suggested that ‘every effort

⁵² See, Martin, F (2006) ‘Key Roles of the Ombudsman for Children in Ireland: Promotion of Rights and Investigation of Grievances’. *Dublin University Law Journal*, 26, 56-82.

⁵³ Department of Health (1976) *Report of the Committee on Non Accidental Injury to Children*. Dublin: Stationery Office. In early 1977, a group of social workers published a discussion document on child abuse in Ireland: see. Dear, L, Hand, D, Harding, M, McCarthy, I and Smyth, P (1977) *Suffer the Children: A Discussion Document on Child Abuse in Ireland*. Dublin: North Dublin Social Workers.

⁵⁴ *Ibid.* p 10.

should be made to provide adequate community care services to the families involved', and awareness-raising amongst community agencies was recommended the report and its recommendations were primarily intended for medical staff. Responsibility for overall coordination of services was to belong to the Department of Health, while it was recommended that the health boards establish area committees, which would comprise of appropriate health board staff and hospital representatives.

4.23 Although the responses of some professional bodies e.g. the Irish Association of Social Workers and the Eastern Health Board Senior Social Workers Group, were critical of the 1976 report's over-concentration on the detection of physical signs of child maltreatment, and its neglect of the emotional, psychological and social dimensions of child abuse, the template laid down in this report formed the basis of the guidance documents that followed it over the next decade. Guidelines up to 1987 were based on a conceptualisation of child abuse as 'non accidental injury', which could be addressed by a sound system of reporting, with medical and legal interventions. A *Memorandum on Non-Accidental Injury to Children* was published in 1977, based largely on the 1976 report.⁵⁵ The Memorandum acknowledged that its focus was mainly on physical abuse; stating that 'in cases of injury arising from emotional deprivation or neglect, the evidence of such injury might not always be as clear cut' and that procedures for intervention in such cases would have to be considered separately. The nature of the earlier recommended 'central register' had been changed, reflecting some disagreement about its purpose and function, which had been specified in written responses to the 1976 report. It was now recommended that a 'list' be kept by the Director of Community Care 'to help assess the extent of the problem' and to provide information to other professionals on whether a child had previously suffered a NAI. It was suggested that the list be reviewed regularly with details 'expunged' when suspicions proved to be unfounded.

4.24 The memorandum laid quite strong emphasis on the requirement for staff training in the various medical and community based services for children and families to improve 'knowledge, awareness and vigilance'. It also acknowledged that there may be legal deficiencies requiring reform and therefore recommended review to identify desirable legal changes and innovations. It also drew attention to the necessity for An Garda Síochána to be notified if a possible breach of criminal law was indicated.

4.25 Denis Greene, in one of the first published commentaries on legal aspects of non-accidental injury to children, observed that:

while I have acted for the Eastern Health Board and its statutory predecessors for many years, it has really only been in the past decade that I have been called upon to deal with cases involving children at risk. They have increased in number steadily over that period. I cannot say whether this indicates a real increase in absolute terms or whether the frequency of occurrence is not greater than in past years but more cases are being discovered because of the larger number of social workers now working in the community. Possibly both factors are involved.⁵⁶

4.26 In 1980, the Department of Health published the first complete set of Irish child protection guidelines, entitled *Guidelines on the Identification and Management of Non-Accidental Injury to Children*.⁵⁷ A list of potential clinical indicators of child abuse was again provided, and the necessity for the co-operation of non-health board professionals was emphasised. As the title implies, the focus was still heavily on physical abuse of children, with 'nutritional deprivation' and 'signs of general neglect' merely cited as part of the 'index of suspicion' of NAI. The roles of the

⁵⁵ Department of Health (1977) *Memorandum on Non-Accidental Injury to Children*, Dublin: Department of Health.

⁵⁶ Greene, D (1979) 'Legal Aspects of Non-accidental Injury to Children'. *Administration*, 27, 4, p 460.

⁵⁷ Department of Health (1980) *Guidelines on the Identification and Management of Non-Accidental Injury to Children*. Dublin: Department of Health.

Directors of Community Care were more clearly defined as responsible for the management of child abuse in their areas, representing a slight shift to the community from the hospital or clinical setting reflected in the earlier documents. Recommended procedures for the investigation of reports, and the 'monitoring and co-ordination' of child abuse cases were outlined, the case conference retained a central position and the maintenance of a 'list' of suspected and actual cases of non-accidental injury was again recommended. The rights to involvement of parents in case conferences or decision making were not mentioned. Another set of guidelines with the same title was published in 1983 with basically the same contents with slightly more detailed guidance on the transfer of information and the role of the health boards in circulating the guidelines. Despite the fact that there was some awareness amongst child protection services at that time of child sexual abuse, it was not mentioned in the guidance.⁵⁸

4.27 A more radical change was evident in the next set of guidelines, issued in 1987. A name change to *Child Abuse Guidelines* signified a broadening out of the concept of child abuse from NAI to encompass sexual as well as physical abuse.⁵⁹ The Irish Council for Civil Liberties sponsored report into child sexual abuse in Ireland in 1988 argued that:

Discovery of child sexual abuse as a major problem is recent in Ireland, as it is internationally, and has developed rapidly. In 1983, the Irish Association of Social Workers hosted a pioneering workshop on child sexual abuse, from which a working party and the Incest Crisis Service developed. By 1985, the Rape Crisis Centres were identifying survivors of child sexual abuse as a major client group.⁶⁰

4.28 In recent years historians have explored the degree to which knowledge of the sexual abuse of children was known in Ireland before the 1980s, in most cases examining the work of the Carrigan Committee. In June 1930, the Government appointed a committee 'to consider whether the following Statutes require amendment and, if so, in what respect, namely the Criminal Law Amendment Act, 1880, and the Criminal Law Amendment Act, 1885 as modified by later Statutes, and to consider whether any new legislation is feasible to deal in a suitable manner with the problem of Juvenile Prostitution (that is prostitution under the age of 21).⁶¹ The Committee was chaired by William Carrigan, KC Perhaps the most significant submission received by the Committee was from the Garda Commissioner at the time, Eoin O'Duffy. O'Duffy reported on what he viewed as general immorality of the country:

an alarming aspect is the number of cases with interference with girls under 15, and even under 13 and under 11, which come before the courts. There are in most cases heard of accidentally by the Garda, and are very rarely the result of a direct complaint. It is generally agreed that reported cases do not exceed 15 percent of those actually happening.⁶²

4.29 O'Duffy recommended that the Criminal Justice Amendment Act 1885 required revision. Noting that there were 31 prosecutions for defilement of girls under 16 in Dublin City between 1924 and 1929, and that 'offences on children between the ages of 9 and 16 are, unfortunately, increasing

⁵⁸ Buckley, H (1996) 'Child Abuse Guidelines in Ireland: For whose Protection?' in H Ferguson and T McNamara (eds) *Protecting Irish Children: Investigation, Protection and Welfare*. Dublin: Institute of Public Administration, pp 37-56.

⁵⁹ For further information on the incorporation of child sexual abuse in child abuse guidelines, see Cooney, T and Torode, R (1988) *Report of the Child Sexual Abuse Working Party*. Dublin: Irish Council for Civil Liberties and McKeown, K and Gilligan, R (1991) 'Child Sexual Abuse in the Eastern Health Board Region of Ireland in 1988: An Analysis of 512 Confirmed Cases'. *Economic and Social Review*, 22, 2, 101-34.

⁶⁰ Irish Council for Civil Liberties (1988) *Report of the Child Sexual Abuse Working Party*. Dublin: ICCL. p 12.

⁶¹ Similar Committees of Enquiry had been established in England/Wales and Scotland in 1925 and 1926 respectively to examine similar concerns, see Smart, C (2000) 'Reconsidering the Recent History of Child Sexual Abuse, 1910-1960'. *Journal of Social Policy*, 29, 1, 55-72. A similar reconsideration of the extent of knowledge of child sexual abuse is also evident in the UK. See for example, Jackson, LA (2000) *Child Sexual Abuse in Victorian England*. London: Routledge and Davidson, R (2001) "'This Pernicious Delusion": Law, Medicine, and Child Sexual Abuse in Early-Twentieth-Century Scotland'. *Journal of the History of Sexuality*, 10, 1, 62-77.

⁶² NA H247/41a. p 2.

in the country' and 'cases have occurred recently in which children between 4 and 5 have been interfered with',⁶³ the age at which such defilements should be classed as a felony should be raised from 13 to 16. In addition, any attempt to commit this offence should be classed as a felony. He also added that for any offences against girls under the age of 13, he strongly advised the 'cat' be used and 'not just a few strokes, but the most severe application the medical advisor will permit, having regard only to the physical condition and health of the offender'.⁶⁴ The Committee reported in August 1931, and made 21 recommendations, broadly endorsing the recommendations made by O'Duffy and others, including raising the age of consent to 18 and extending the time period for commencing a prosecution.⁶⁵

4.30 The other notable change in the Guidelines was the emphasis on inter-agency cooperation, and the clear identification of the roles of various professionals, such as the community care social worker, public health nurse, the child psychiatrist and 'others' including teachers, day care staff and residential staff. The role of the Director of Community Care in investigation and management was given a strengthened position in comparison to the dominant role of hospital staff in previous guidance. However, the emphasis was still on assaultive abuse and neither neglect nor emotional abuse was given any specific or separate consideration. Physical abuse and sexual abuse were described in terms of signs and symptoms rather than definitions, thus excluding contextual factors such as intention of the alleged perpetrator, the age differential or relationship between themselves and the victim, or the environment in which abuse occurred.

4.31 Over the following decade, a series of events changed the public perception of child abuse irrevocably, both in terms of increasing awareness and higher expectations of a range of professionals in the child protection network. What became known as the Kilkenny Incest case⁶⁶, the 'X' case⁶⁷, the Kelly Fitzgerald⁶⁸, the West of Ireland Farmer⁶⁹ case, and the Fr Brendan Smith⁷⁰

⁶³ NA H247/41a. p 5.

⁶⁴ NA H247/41a. p 2.

⁶⁵ For further details see, Keogh, D (1994) *Twentieth-Century Ireland: Nation and State*. Dublin: Gill and Macmillan, pp 71-3; Finnane, M (2001) 'The Carrigan Committee of 1930-31 and the "moral condition of the Saorstát"'. *Irish Historical Studies*, xxxii (128): 519-36; Kennedy, F (2000) 'The Suppression of the Carrigan Report – A Historical Perspective on Child Abuse'. *Studies*, 86 (356), 354-63; Luddy, M (2007) *Prostitution and Irish Society, 1800-1940*. Cambridge: Cambridge University Press. pp 227-37; Maguire, MJ (2007) 'The Carrigan Committee and Child Sexual Abuse in twentieth-century Ireland'. *New Hibernia Review*, 11, 2, 79-100; McAvoy, S (1999) 'The Regulation of Sexuality in the Irish Free State, 1929-1935' in Jones, G and Malcolm, E (eds). *Medicine, Disease and the State in Ireland, 1650-1940*. Cork: Cork University Press. pp 253-66; Smith, JM (2004) 'The Politics of Sexual Knowledge: The Origins of Ireland's Containment Culture and "The Carrigan Report"' (1931), *Journal of the History of Sexuality*, 13, 2, 208-33. Crowley, U and Kitchin, R (2008) 'Producing "decent girls": Governmentality and the Moral Geographies of Sexual Conduct in Ireland (1922-1937)'. *Gender, Place and Culture*, 15, 4, 355-72.

⁶⁶ South Eastern Health Board (1993) *Kilkenny Incest Investigation – Report presented to Mr Brendan Howlin T.D. Minister to Health by South Eastern Health Board, May 1993*. Dublin: Stationery Office. This investigation concerned the sexual and physical abuse of a young woman by her father over many years. The notoriety surrounding the case arose out of media reports of the father's trial and sentencing for incest. It became known that the health and social services had had over 100 contacts with the family in the 13 years prior to the prosecution, during which time the abuse had continued. The television coverage of the case included an interview with the young woman, known by the pseudonym of 'Mary', in which she criticised the social worker involved. In the wake of further widespread condemnation of the child care services, the Minister for Health announced a public inquiry, the first of its kind in Ireland. The inquiry team, under the chairpersonship of a judge, Catherine McGuinness, reported after three months. The report identified a number of deficiencies in both the child protection system, and in the professional activities of the various practitioners involved, particularly in relation to poor inter-agency cooperation and weaknesses in management. For Ferguson in his analysis of the investigation argued that 'The case has heightened public awareness, made child abuse into a political issue and increased expectations that such cases "won't happen again". There is, of course, no guarantee that a "Kilkenny"-type case will not happen again. But if, or when, it does it is doubtful that an inquiry will be as reluctant to criticise individual professionals and the relevant government departments.' See, Ferguson, H (1993-4) *Child Abuse Inquiries and the Report of the Kilkenny Incest Investigation: A Critical Analysis*. Administration, Vol 41, No 4, p 406.

⁶⁷ See Holden, W (1994) *Unlawful Carnal Knowledge: The True Story of the Irish 'X' Case*. London: Harper Collins and Smyth, A (1993) 'The "X" Case: Women and Abortion in the Republic of Ireland, 1992'. *Feminist Legal Studies*, 1, 2, 163-77.

⁶⁸ Keenan, O (1996) *Kelly: A Child is Dead. Interim Report of the Joint Committee on the Family*. Dublin: Government Publications Office.

case had broadened the public view of the nature and prevalence of child sexual abuse, but concern had also grown about emotional abuse and neglect. In addition, the Madonna House Inquiry⁷¹ and the television documentary 'Dear Daughter'⁷² had combined to inform the public about dimensions of institutional abuse.⁷³ One long-standing member of the Irish Association of Care Workers described the mood at the time amongst care workers as follows:

In my 17 years experience of direct work in child care, I never witnessed such disappointment and despair among my colleagues. Since the Madonna House child sexual abuse scandal broke 20 months ago, there have been a stream of further allegations and suggestions of allegations against care staff, in various care centres around the country. This has led to fear, upset and anxiety among conscientious professional child care workers.⁷⁴

4.32 There were also the beginnings of concern about the potentially intrusive character of child protection work and a growing awareness that early intervention of a more supportive and less forensic nature would provide a more effective means of assisting vulnerable families, thus lessening the potential for future harm.⁷⁵

4.33 During the same decade, the aforementioned Child Care Act 1991 had been implemented, and the services operated by the health boards in respect of children had been restructured. In addition, the Irish Catholic Bishops also produced a framework for responding to child sexual abuse by priests and religious in 1996.⁷⁶ The question of introducing mandatory reporting had been raised and dropped, and the responsibility for the management of child abuse was re-assigned from the medical directors of community care (whose posts were abolished) to the newly

⁶⁹ See, McKay, S (1998) *Sophia's Story*. Dublin: Gill and Macmillan and Sgroi, SM (1999) 'The McColgan case: Increasing Public Awareness of Professional Responsibility for Protecting Children from Physical and Sexual Abuse in the Republic of Ireland'. *Journal of Child Sexual Abuse*, 8, 1, 113-27. Sophia McColgan's father, Joseph McColgan, was convicted in 1995 of raping and abusing his children over a 20-year period which only ended in 1993. McColgan, dubbed 'the West of Ireland farmer', was sentenced to 12 years in prison.

⁷⁰ See Moore, C (1995) *Betrayal of Trust: The Father Brendan Smyth Affair and the Catholic Church*: Dublin: Marino Books. Smyth, a member of the Norbertine Order, who died of natural causes in the Curragh prison in August 1997, was sentenced to 12 years in jail having pleaded guilty to 74 charges of indecent and sexual assault committed over a period of 35 years. He had previously served three years in jail in Northern Ireland for 43 similar offences. Ferguson in a critical analysis of the popularisation of the 'Paedophile Priest' has argued that 'The intense focus on the sexuality of priests constitutes a selective response to recent disclosures of sexual abuse which not only raise issues for the church, but serious questions about men, masculinity, the family, sexuality, and organisations. In constructing the debate in terms of clerical celibacy and the "paedophile priest", attention is deflected from the fundamental issue that men from all social backgrounds commit such crimes of violence and are policed by a range of organisations that are male dominated.' Ferguson, H (1995) 'The Paedophile Priest: A Deconstruction'. *Studies*, 84, 335, 247-56.

⁷¹ *Report on the Inquiry into the Operation of Madonna House*. (1996) Dublin: Department of Health. Madonna House was opened on 20th January 1955 on the request of the Archbishop of Dublin, Dr McQuaid, and managed by the Irish Sisters of Charity. It closed in 1995.

⁷² This documentary detailed the recollections of a former pupil in St Vincent's Industrial School in Dublin during the 1950s (more commonly known as Goldenbridge). Inglis has argued that 'The story of Goldenbridge is really a story of the power of the media in Irish society and how it has become a dominant player in every social field. It demonstrates the ability of the media, particularly television, to change the language and the stories about nuns and the Church and thereby to shatter the myth which had been established. The ongoing, unquestioned, predisposition through which the nuns were perceived, known and understood was broken. The documentary reflected the demise of the Church's ability to have only good stories told about itself.' Inglis, T (1998) *Moral Monopoly: The Rise and Fall of the Catholic Church in Modern Ireland*. Dublin: UCD Press, pp 229-30.

⁷³ For an overview of aspects of the consequences of institutional sexual abuse in an Irish context, see O'Riordan, M and Arensman, E (2007) *Institutional Child Sexual Abuse and Suicidal behaviour: Outcomes of a Literature Review, Consultation Meetings and a Qualitative Study*. Dublin: National Suicide Research Foundation.

⁷⁴ Dolan, P (1995) 'Innocent but never exonerated! Guilty but never caught!' *Irish Social Worker*, 13, 1, p 11.

⁷⁵ Buckley, H, Skehill, C and O'Sullivan, E (1997) *Child Protection Practices in Ireland: A Case Study*. Dublin: Oak Tree Press; Ferguson, H and O'Reilly, M (2001) *Keeping Children Safe: Child Abuse, Child Protection and the Promotion of Welfare*, Dublin: A & A Farmar.

⁷⁶ Report of the Irish Catholic Bishops' Advisory Committee on Child Sexual Abuse by Priests and Religious (1996) *Child Sexual Abuse: Framework for a Church Response*. Dublin: Veritas.

created posts of child care manager in each community care area.⁷⁷ Additional posts of ‘community child care worker’ and ‘family support worker’ had been added to community care teams. It was in this context that *Children First: National Guidelines for the Protection & Welfare of Children* were developed by a multi-disciplinary working group appointed by the Junior Minister with responsibility for Health and Children and published by the Department of Health and Children in 1999. A protocol had been published by the Department of Health in 1995 outlining the steps to be taken by An Garda Síochána and the health board when notifying each other of suspected child sexual abuse and this was incorporated into *Children First*, along with broader definitions of child abuse which was now classified into four types: neglect, emotional abuse (including the witnessing of domestic violence), physical abuse and sexual abuse, each of which was explicitly defined within a broad context. *Children First* included a section on family support, which was recommended for early intervention into cases where harm to a child had not reached the ‘abuse’ threshold.

4.34 The guidance offered in the document went beyond identification and investigation to overall case management which included assessment, planning, intervention and review. Unlike previous guidelines, *Children First* was underpinned by a set of principles which included participation by parents/carers and children in conferences and the development of child protection plans. The ‘list’ mentioned in earlier guidelines was restructured into the Child Protection Notification System which was to be managed by a multi-disciplinary group of professionals.

4.35 Recognition was given to groups of particularly vulnerable children including those in out of home care, those with disabilities and those who were homeless. Acknowledgement of the potential for abuse by persons in the caring professions was indicated by a section on the steps to take if allegations were made against employees or volunteers within a service. *Children First* stated that it was intended to provide ‘overarching’ guidance, but that local areas and organisations providing services to children and families would be expected to produce policies and guidelines tailored to their own context. The provision of child protection training to a broad range of disciplines was identified as compulsory, and all health board staff were declared eligible to receive reports of concerns about children. *Children First* also recommends the establishment of local and regional child protection committees who would hold a monitoring role in relation to the operation of the guidelines.

4.36 While *Children First* was officially ‘launched’ in October 1999, its implementation status has remained unclear up to the present time. ‘Implementation officers’ were appointed in each health board area. A National Implementation Group (later renamed the National Implementation Advisory Group, was formed and in addition, the Health Board Executive Agency set up a Children First Resource Team which issued guidance on assessment and the operation of the Child Protection Notification System. Both these groups were disbanded in 2003, despite the fact that the guidelines had not been fully implemented on a national basis. Training officers and advice and information officers were appointed, the latter post carrying responsibility for liaising with and providing *Children First* training for community and voluntary organisations. The *Social Services Inspectorate* published a report in 2003 which reviewed the implementation process, and while it was generally positive about the advancement that had been made, it noted that progress in relation to Garda/health board cooperation, the child protection committees and planning for family support services was inadequate. Problems of staff retention were identified, as well as a lingering tendency for individual health boards to use their own discretion about how to implement the guidelines.

4.37 The publication of *Children First* was quickly followed by a succession of tailored guidance documents produced by the Irish Sports Council, the Department of Education and Science and

⁷⁷ Department of Health (1997) *Putting Children First: Promoting and Protecting the Rights of Children*. Dublin: Government Publications.

the Catholic Church, to name a few. Guidance for the voluntary and community sector was also produced and all of the former were designed to comply with the overarching principles and practices of *Children First*. Reported concerns about children increased exponentially from 243 in 1978 to 21,040 in 2006, with the highest number of reports in the ‘neglect’ category, followed by the child sexual abuse category. Reflecting the ever-widening pool of concerns about children, the HSE now reclassified concerns of a less serious nature as ‘welfare’ reports which, in 2006, accounted for over half of the reports made to the system. While the definition of ‘welfare’ is not specified in guidance, it is assumed that these reports were considered to constitute situations that warranted a non-investigative family support response. The *HSE Review of Adequacy of Child and Family Services 2006* identified factors linked to ‘welfare’ including emotional/behavioural problems in children, substance abuse, involvement in crime, disability, mental illness, domestic violence and parental inability to cope.

4.38 When the Government launched *Children First* in 1999, it made a commitment to review and evaluate the effectiveness of the guidelines within a reasonable time frame. No such review had occurred up to the publication of the Ferns Inquiry⁷⁸ in 2005, but in his response to the report, the then Minister for Children, Mr Brian Lenihan TD, undertook to conduct a review of national compliance with the guidelines. To this end, advertisements were placed in the national newspapers inviting interested parties to comment on *Children First*, meetings were held with key stakeholders and Secretary Generals of government departments and a study was commissioned to explore the views of service users. Responses to the consultation process indicated that while there were difficulties and variations in practice around the country, there was general satisfaction with the contents of *Children First* and that most of the obstacles to their implementation were concerned with local operations and infrastructures rather than the guidelines per se. Recommendations from the review suggested that revised guidelines should spell out more clearly the roles of different government departments in protecting children and promoting their welfare and require each public body to produce relevant policies and procedures. Measures to reduce re-offending were also proposed, including Garda vetting. The review noted current difficulties for members of the public and professionals in accessing the system in order to report concerns and suggested measures to alleviate this situation. Methods to quality assure practices in the different areas, early intervention and the establishment of local and regional structures to support the child protection services were also suggested.⁷⁹ The service users’ study focused more generally on the child protection system but questioned the usefulness of the use of the ‘inconclusive’ category as an outcome of investigation given the difficulties that it caused. It also recommended the adoption of a differential response to reported concerns about children.⁸⁰ The *Ombudsman for Children* also raised concern about the implementation of *Children First* in November 2008 following a number of complaints to her office, and she announced an investigation into HSE child protection practices in that regard.

Summary

4.39 The issues highlighted above, the age of criminal responsibility, the inspection of children’s homes, the shift from residential care to family based services, repealing the Children Act 1908 and the unification and co-ordination of childcare services were all core recommendations of the *Report of the Committee of Enquiry into Reformatory and Industrial Schools’ Systems* in 1970. They were of course, not the only issues that concerned the Committee, as the discussion on child protection guidelines above testifies, but they provide an indication of the slow pace of progress in achieving

⁷⁸ In March 2003 the Minister for Health and Children announced the establishment of the Inquiry into the handling of allegations of child sex abuse in the Diocese of Ferns. See Murphy, F, Buckley, H and Joyce, L (2005) *The Ferns Report: Presented to the Minister for Health and Children*. Dublin: Stationery Office and Crowe, C (2008) *The Ferns Report: Vindicating the Abused Child*. *Eire-Ireland*, 43, 1&2, 50-73.

⁷⁹ Office of the Minister for Children and Youth Affairs (2008) *National Review of Compliance with Children First: National Guidelines for the Protection & Welfare of Children*.

⁸⁰ Buckley, H, Whelan, S, Carr, N and Murphy, C (2008) *Services Users’ Perceptions of the Irish Child Protection System*. Dublin: Office of the Minister for Children and Youth Affairs.

the recommendations. It is evident that broad agreement on many of the issues highlighted in the aforementioned Report was achieved in the decade between 1965 and 1975, and it was in the implementation of change that blockages were encountered. Prior to the publication, and indeed establishment, of the *Committee to Enquire into the Reformatory and Industrial Schools System*, in addition to the well-known Tuairim Report, a number of other significant reports and commentary were circulated that, in part, anticipated and addressed concerns that were to be highlighted in the report of the Committee. Therefore, in understanding the context in which the Reformatory and Industrial School Systems report was compiled and the basis for their recommendations, a brief overview of these reports and commentaries are presented. Before doing so, however, the paper provides an overview of the data on children in care from the 1960s to present, to place the policy debates in context.

Section 2: Trends in child welfare in Ireland, 1960-2006

Introduction

4.40

In this section of the paper, a broad overview of the number of children in substitute care is firstly provided, before exploring in more detail the numbers of children in different forms of residential care.⁸¹ From the foundation of the Irish State, the numbers of children in alternative care, particularly residential care, were relatively high with upwards of 12,000 children in care in the 1950s.⁸² During the mid-1950s, the numbers in alternative care dropped rapidly and by the end of the 1960s there were just over 1,200 children boarded-out or at nurse and approximately 3,000 in various forms of residential care. The numbers began to rise again from the early 1970s. From the late 1980s, the numbers in substitute care began to rise again, with just over 5,000 children in substitute care, but what is notable is that the majority of children are now in foster care rather than residential care, as was the case until the early 1980s.⁸³ As shown in figure 1⁸⁴, the trend towards the decline in the number of children in care (defined as children in various forms of foster care and residential care) continued throughout the early to mid-1970s, but increased somewhat in the late 1970s.⁸⁵ A decline was evident again in the early 1980s, but the number of children in care has been rising steadily since the mid-1980s, with currently over 5,000 children in State care.

⁸¹ Data for this section of the are culled from two primary sources: The Annual Statistical Report of the Department of Education which are available from the 1920s and the Department of Health Surveys of Children in the Care of Health Boards which commenced in 1978.

⁸² The Department of Education in reviewing the organisation of Reformatory and Industrial Schools in 1927 compared the numbers of children in such schools in England and concluded that a key reason why so many children in Ireland were placed in Industrial Schools was that: 'whereas in Britain the Industrial School is almost entirely a school for the conviction of delinquents in Saorstát Eireann it is mainly a camouflaged Poor Law School and that it has since the beginning of the century tended more and more to this use so that now it contains a much greater number of children who normally would be in Poor Law Institutions than the latter institutions themselves. The contrast with Great Britain in this respect is very remarkable and one of the tasks of any Commission set up to enquire into the Industrial School system here would be to report as to whether it would not be more desirable that all children who have to be supported by rates or taxes because of destitution should not be dealt with in this way.'

⁸³ This trend was not unique to Ireland. For example, in the USA, the number of children in institutional care fell from 144,000 in 1933 to 43,000 in 1977. See Jones, MB (1993) 'Decline of the American Orphanage, 1941-1980'. *Social Service Review*, 67, 459-80. In England and Wales, the numbers of children in residential care declined 35,000 in the mid-1950s to 13,300 in 1991. Butler, I and Drakeford, M (2003) *Scandal, Social Policy and Social Welfare*. Bristol: Policy Press.

⁸⁴ This figure excludes other forms of care such as pre-adoptive placements, those at home under care orders, supported lodgings and other ad-hoc arrangements to facilitate the time series.

⁸⁵ This apparent increase may be a result of a change in the method for recording children in care, see below for further details.

Figure 1: Children in care, 1970-2006

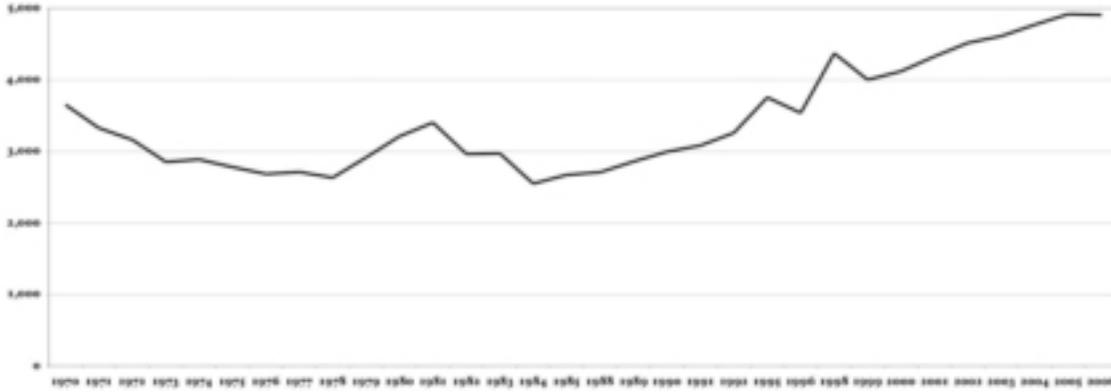
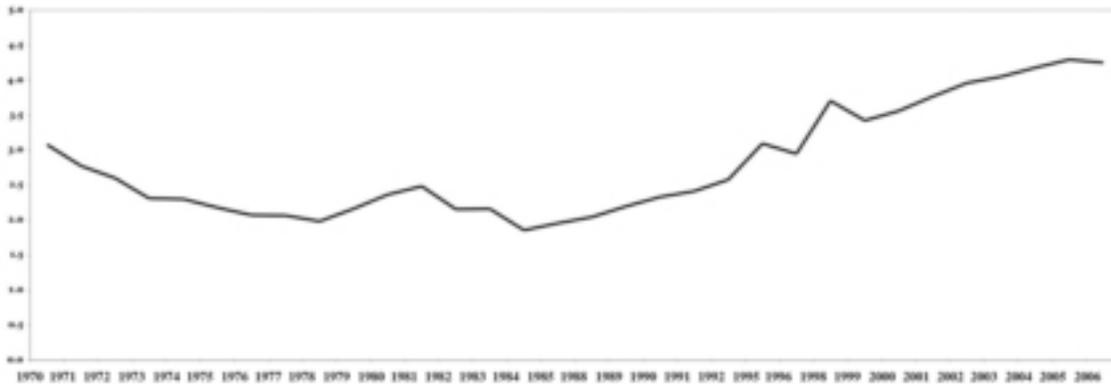


Figure 2: Children in care, 1970-2006 per 1,000 children under 18



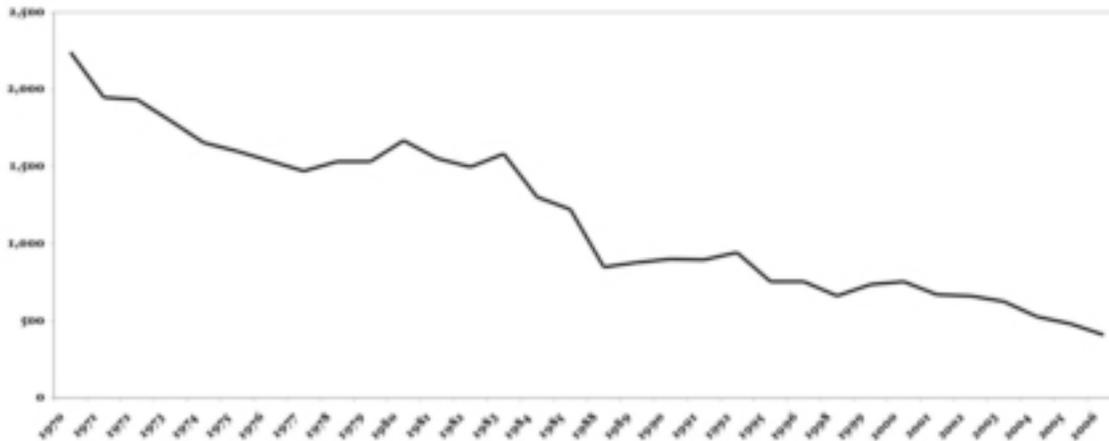
4.41 Figure 2 shows this trend per 1,000 children under 18, highlighting that the increase in children in care was not driven by broader demographic trends alone. The rate per 1,000 children increased from two to over four children in care per 1,000 children under 18 from the late 1980s to 2006.⁸⁶ Figure 3 provides a time series on the number of children in residential care in units under the operational and legislative ambit of the Department of Health and Children/Health Service Executive and the Department of Education and Science. It shows a very dramatic decline in numbers from approximately 2,200 children in 1970 to just over 400 in 2006.⁸⁷ As noted above, while the overall number of children in care grew from the mid-1980s onwards, the type of care placement shifted decisively from residential care to foster care. By 1980, as shown in figure 4, there were slightly more children in foster care than residential care; in contrast, currently 84 percent of all children in care are in foster care (including relative care).⁸⁸

⁸⁶ Although cross-national comparisons are fraught with difficulties, the rate in Ireland is lower than the rate in England which was over five children per 1,000 population in 2006, but which had declined from a rate of nearly eight in the early 1980s. See Rowlands, J and Statham, J (2009) 'Numbers of Children Looked After in England: A Historical Analysis'. *Child and Family Social Work*, 14, 1, 79-89.

⁸⁷ This figure excludes other forms of care such as pre-adoptive placements, at home under care orders, supported lodgings and other ad-hoc arrangements to facilitate the time series. The majority of these placements appear to be separated children seeking asylum.

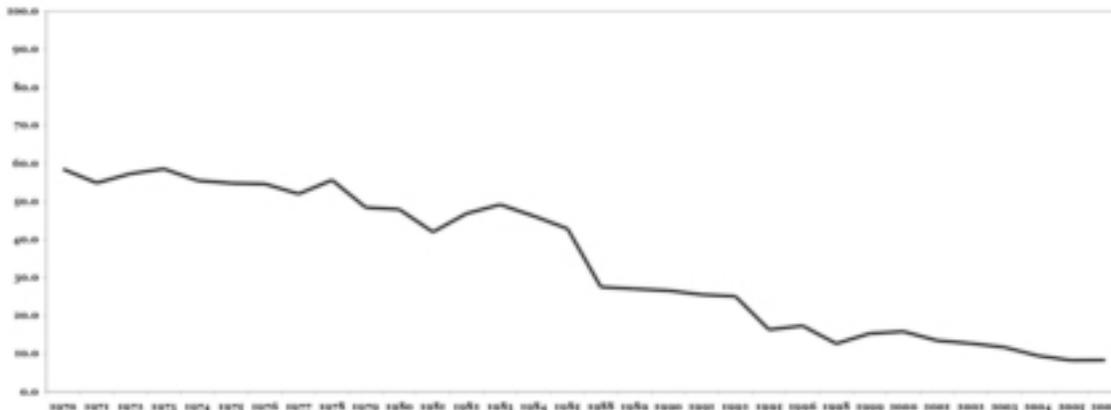
⁸⁸ These national figures conceal considerable variations by health board area. For further details on foster care in Ireland, see Gilligan, R (1990) 'Foster Care for Children in Ireland: Issues and Challenges for the 1990s'. Dublin: Department of Social Studies, Trinity College Dublin; Gilligan, R (1996) 'The Foster care Experience in Ireland: Findings from a Postal Survey'. *Child: Care, Health and Development*, 22,2, 85-98; Horgan, R (2002) 'Foster Care in Ireland'. *Irish Journal of Applied Social Studies*, 3, 1, 30-50; Daly, F and Gilligan, R (2005) *Lives in Foster Care – The Educational and Social Support Experiences of Young People Aged 13-14 years in Long Term Foster Care*. Dublin: Children's Research Centre.

Figure 3: Residential care in Ireland, 1970-2006



4.42 To put it another way, while the overall numbers of children in care have increased, the role of residential care has moved from a position of dominance in the provision of alternative childcare in Ireland to now being a residualised and specialised service.⁸⁹

Figure 4: Children in residential care as a percentage of all children in residential and foster care, 1970-2006



Industrial Schools and Residential Homes

4.43 As shown in figure 5, and outlined in greater detail later in the paper, the terminology for what were reformatory and industrial schools changed over the period in question and figure 6 plots both the closure and opening of schools over that same period. Although for administrative purposes, the terms reformatory and industrial schools were abandoned, it was not until 1st March 2007 that the relevant sections of the Children Act 2001 were enacted, formally abolishing the term Reformatory and Industrial School. Figure 6 highlights the closure of more than 20 schools between 1960 and 1970.

⁸⁹ While this section of the paper provides an overview of the number of children in the care system based on administrative data, relatively few studies have supplemented this secondary data with primary data. Notable exceptions in respect of residential care not already cited include: Craig, S, Donnellan, M, Graham, G and Warren, A (1998) *‘Learn to Listen’: The Irish Report of a European Study on Residential Child Care*. Dublin: DIT; Edmond, R (2002) *Learning from their Lessons: Study of Young People in Residential Care and their Experiences of Education*. Dublin: Children’s Research Centre; Fahey-Bates, B (1996) *Aspects of Childhood Deviancy: A Study of Young Offenders in Open Centres in the Republic of Ireland*. Unpublished PhD Thesis, Department of Education, University College Dublin.

Figure 5: Changes in titles of care institutions, 1960-2005

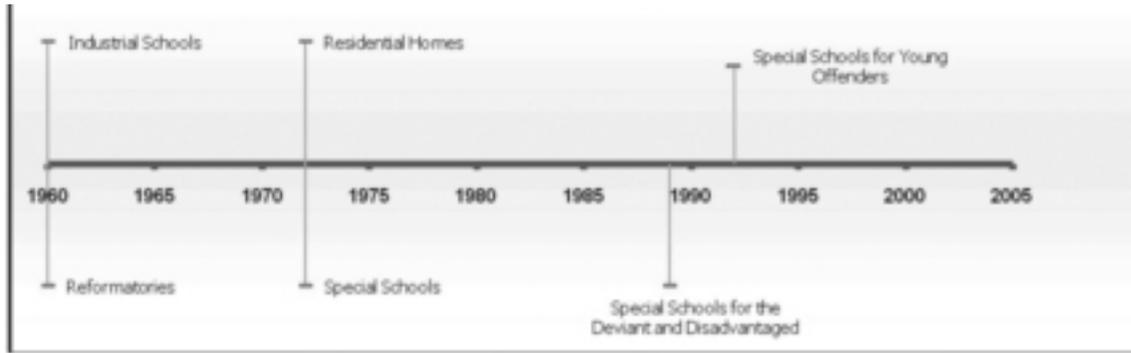
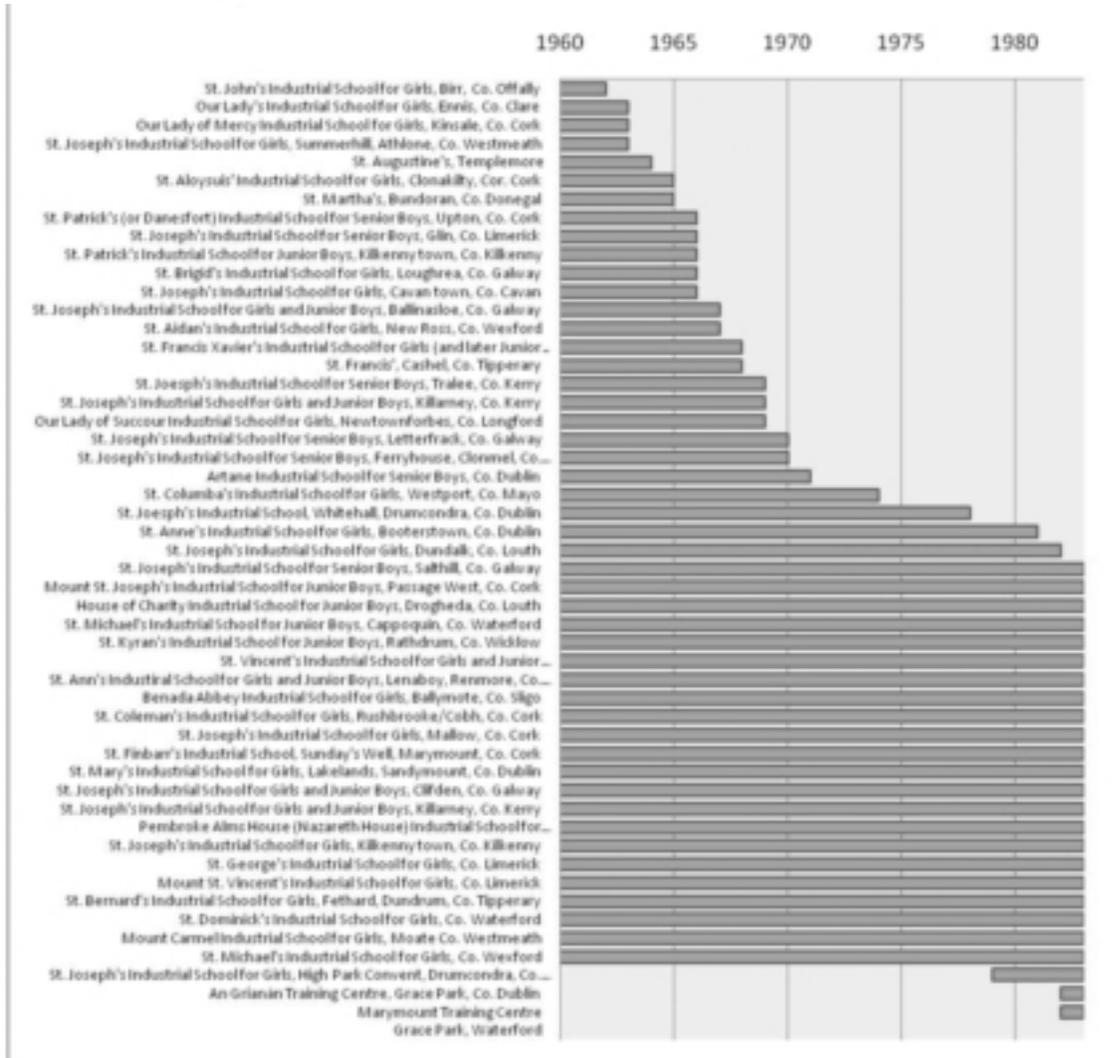


Figure 6: Industrial Schools and Residential Homes, 1960-83



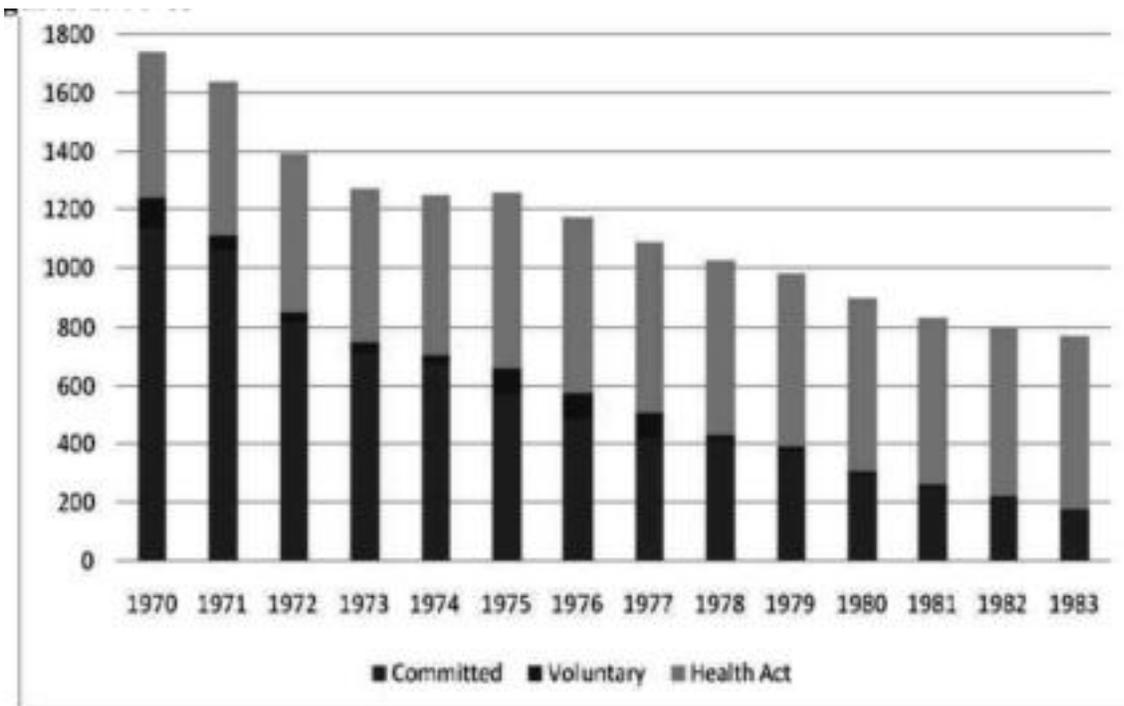
4.44 Figures 7 through 10 below represent available data on children in Industrial Schools and Residential Homes on 30th June of each year from 1970 to 1983. Responsibility for the majority of the homes listed above transferred to the Department of Health at the beginning of 1984, an issue that is dealt with at greater length later, thus the end date of 1983 for his data. Overall there has been a slight decrease in the number of children in such institutions, with girls representing a smaller proportion of their population each year as shown in figure 7 below.

Figure 7: Children in care in Industrial Schools and Residential Homes by gender, stock figures 1970-83



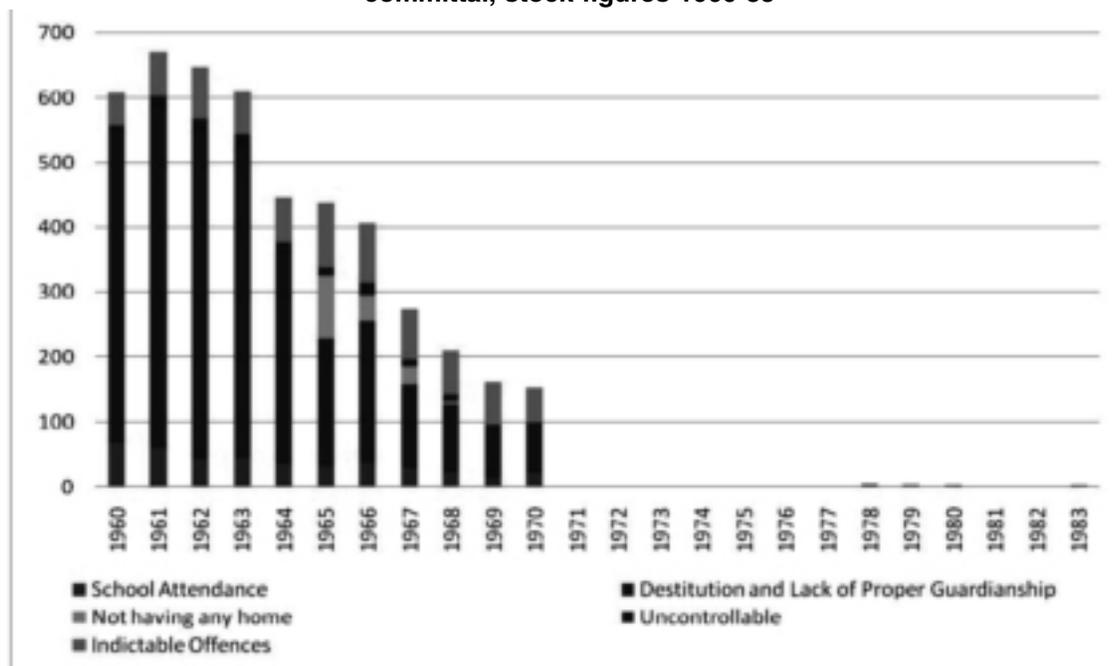
4.45 As shown in figure 8, there has been a substantial decline in the number of children committed through the courts to Industrial Schools and Residential Homes from over 1,000 in 1970 to less than 200 in 1983; this seems to explain most of the decrease in the number of children entering this type of care. The Health Acts remained a key mechanism for committing a considerable number of children.

Figure 8: Children in Industrial Schools and Residential Home by legal basis, stock figures 1970-83



4.46 Figures 9 and 10 shows the main grounds of committal and discharge modes for children incarcerated in Industrial Schools and Residential Homes from 1960 to 1983. There are significant gaps in information in both these figures due to the fact that statistics were not broken down by Industrial Schools vs Reformatories during the years 1971 to 1977 inclusive. Between 1960 and 1970 most children were committed due to destitution or a lack of proper guardianship with smaller numbers being committed due to school non-attendance or indictable offences; however, by the time the statistics are available once more in 1978, the numbers of children being committed to such institutions was in the single digits, often numbering less than five.

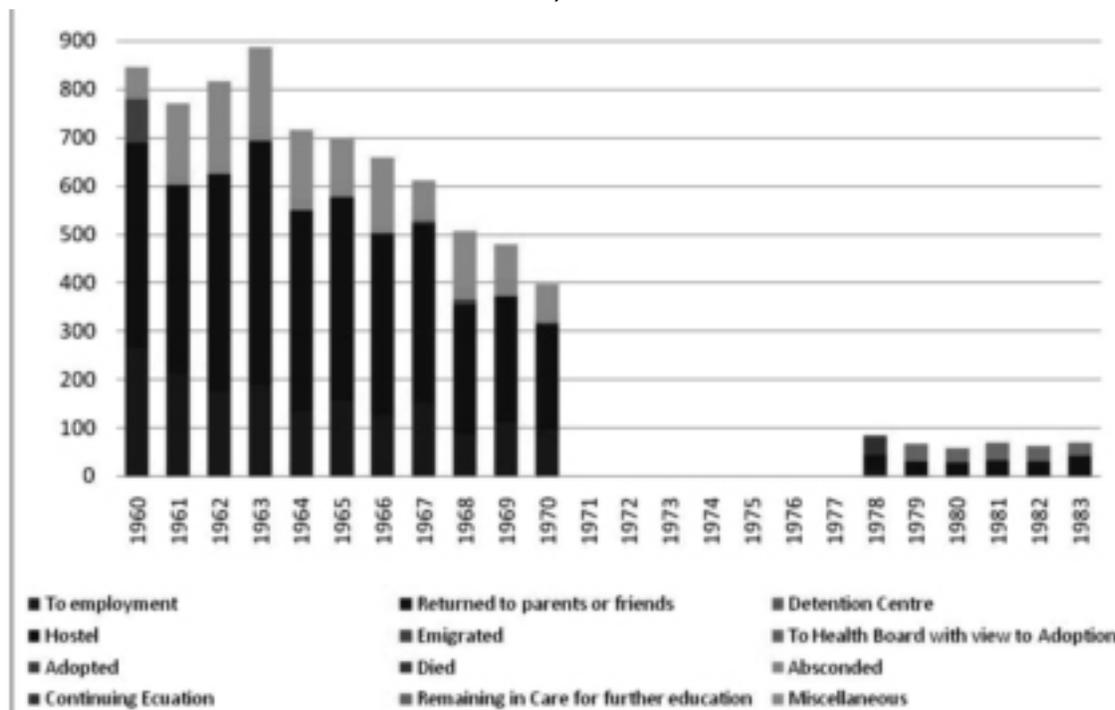
Figure 9: Children in care in Industrial Schools and Residential Homes by grounds of committal, stock figures 1960-83



4.47 Figure 10 shows that the majority of children discharged from Industrial Schools and Residential Homes were released either into employment or back into the custody of their parents.⁹⁰ However once again, a sizeable portion of data is missing and by the time statistics are available again in 1978 children were either being released to their parents or being retained in care for the purposes of further education.

⁹⁰ The category 'Returned to parents or friends' is a sum of the three categories 'Returned to Parents or Friends', 'Returned to parents or guardians for employment', and 'Returned to parents or friends for further education'.

Figure 10: Children in care in Industrial Schools and Residential Homes by discharge mode, 1960-83



Reformatories and Special Schools for young offenders

4.48 The following sections presents statistics related to the detention of children in Reformatories/Special Schools for young offenders. As can be seen from figure 11 below such schools have often had a haphazard history, opening, closing, and changing names or locations. The institutions initially designated as Special Schools were: *St Joseph's, Limerick (Reformatory School for girls)*⁹¹; *St Anne's, Kilmacud, Dublin (Reformatory School for girls)*; *St Conleth's, Daingean, County Offaly (Reformatory School for boys)*; *St Joseph's, Letterfrack, County Galway (Industrial School for boys)*⁹²; *St Joseph's, Clonmel, County Tipperary (Industrial School for boys)*; *St Laurences, Finglas, Dublin (Industrial School for boys)*.⁹³

4.49 The Daingean Reformatory School for Boys, ceased its function on 9th November 1973⁹⁴ and was replaced by Scoil Ard Mhuire, Lusk, County Dublin, which was certified as a Reformatory School on 30th January 1974.⁹⁵ On 4th October 1983 the Provincial of the Oblate Order informed the Department of Education that it was the intention of the Order to withdraw from the management of the school within 12 months. The Department made inquiries to ascertain whether any other religious Order wished or were in a position to replace the Oblates and were informed by the Education Secretariat of the Diocese of Dublin that no other religious Order was available to replace the Oblates. Scoil Ard Mhuire ceased to operate as a certified Reformatory School with effect from 31st August 1985, thus ending the involvement of the Order with the running of Reformatory Schools in Ireland, which commenced, with the certification of the Glencree Reformatory in County Wicklow, on 12th April 1859.

⁹¹ This School closed in the school year 1975-76.

⁹² This school closed in June 1974.

⁹³ Opened 14th January 1972.

⁹⁴ For further information on the Daingean Reformatory School, see McLaughlin, K (1987) *The History of Irish Reformatory Schools, 1858-1970*. Unpublished Msc in Education, School of Education, Trinity College Dublin.

⁹⁵ As Osborough has noted, this site 'was close to the very place where Walter Crofton planned to establish the first reformatory school in Ireland in the late 1850s'. Osborough, N (1974) 'The Penal System in Ireland - 2'. *Irish Times*, 3rd January p 12.

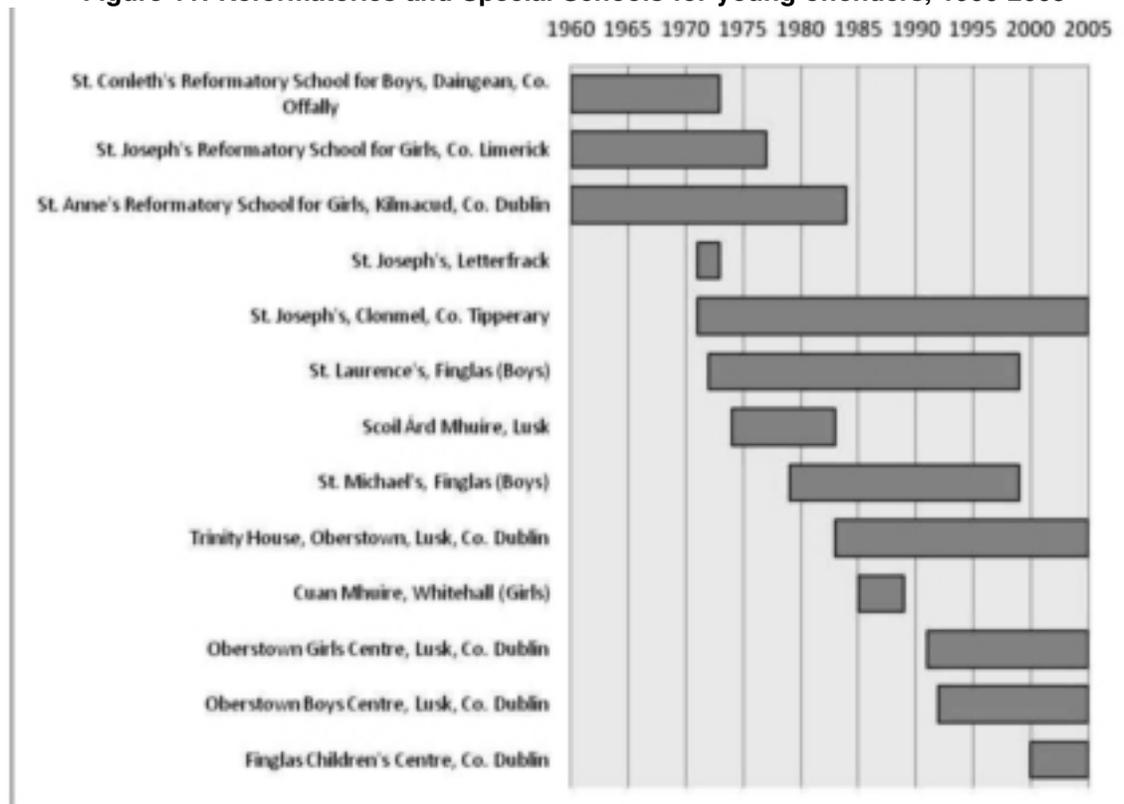
Trinity House School first opened on 14th February 1983 as a secure unit to cater for young male offenders between the ages of 12 and 16 on admission. This was the first Reformatory School to be managed directly by the Department of Education. The first four boys were transferred from Loughan House, Blacklion, County Cavan on 24th March 1983, a reformatory school managed by the Department of Justice which was certified on 4th October, 1978, and were soon followed by another nine from the same facility the following month. With the opening of Trinity House, Loughan House closed as a Reformatory and re-opened as a semi-open prison for adults. On 23rd July 1984, St Ann's Reformatory ceased to be certified at the request of the *Sisters of Our Lady of Charity of Refuge*, who ran the home since it opened in May 1944,⁹⁶ and *Cuan Mhuire, Whitehall, Dublin (Reformatory School for girls)* was opened.⁹⁷ Cuan Mhuire in turn closed in the school year 1990/91 and was replaced by *Oberstown Girls Centre, Lusk, County Dublin (Reformatory School and Remand and Assessment Unit for Females)*. In the school year 1991, a further new school was opened in Oberstown; this was *Oberstown Boys Centre, Lusk, County Dublin (Reformatory School and Place of Detention for males)*.⁹⁸ In the school year 1999-2000, St Laurence's and St Michael's were merged into the Finglas Children's Centre and is now known as the Finglas Child and Adolescent Centre.

⁹⁶ The origins of the School lay in the early 1940s, when the Archbishop of Dublin, John Charles McQuaid, wrote to the Department of Education seeking to establish a reformatory school to 'receive girls under 17 who either (1) are convicted of legal sexual offences or (2) are placed in dangerous surroundings and have marked tendencies towards sexual immorality'. The Department noted that it was possible to place girls in either category in Industrial Schools, provided they were less than 15 years of age. However, for those aged between 15 and 17, committal to a reformatory school was only possible if the girl had been convicted for soliciting keeping a brothel, procuring for a prostitute, and being a reputed prostitute and loitering in a public place for the purpose of prostitution. However, the number of girls convicted for those offences was small. Based on figures supplied by the Department of Justice, the Department of Education noted that over 80 girls were defiled annually. The Department of Education classified such girls into three categories. '(1) girls who live in surroundings which could not be considered as bad; (2) girls who live in surroundings which conduce to their downfall; and (3) girls who might be described as prostitutes.' The Department was of the view that girls in categories 2 and 3 were in need of committal to a suitable institution, but rarely were so placed. Up to the early 1940s, the primary method of dealing with young girls, either convicted of a sexual offence, or deemed to be sexually aware, was to place them in the only Girl's Reformatory, St Joseph's in Limerick, run by the Sisters of the Good Shepherd. However, in a number of cases, the manager of the school, believing that such girls were not amendable to reformation, placed them in one of the Magdalene Homes run by the same Congregation. From the early 1940s, the Good Shepherd nuns started to refuse to accept any girl believed to be tainted with sexual immorality. The main reason behind this decision was to force the Department of Education to provide them with funding for a second reformatory school, which would cater exclusively for such girls. However, when the Department of Education decided to establish such a school, it was the *Sisters of Charity of Our Lady of Refuge* who were entrusted with the management. This new school was the St Anne's Reformatory school for girls, which although established in the mid-1940s, was only legislated for in 1949, under the Children (Amendment) Act 1949.

⁹⁷ Cuan Mhuire was owned by the Irish Federation of the Sisters of Charity of our Lady of Refuge. The building was originally constructed as a group home in 1997 and ceased that function in 1982.

⁹⁸ For further information on the legal status of these schools and the categories of children that were eligible for admittance, see Ring, ME (1991) 'Custodial Treatment for Young Offenders'. *Irish Criminal Law Journal*, 1, 1, pp 59-67.

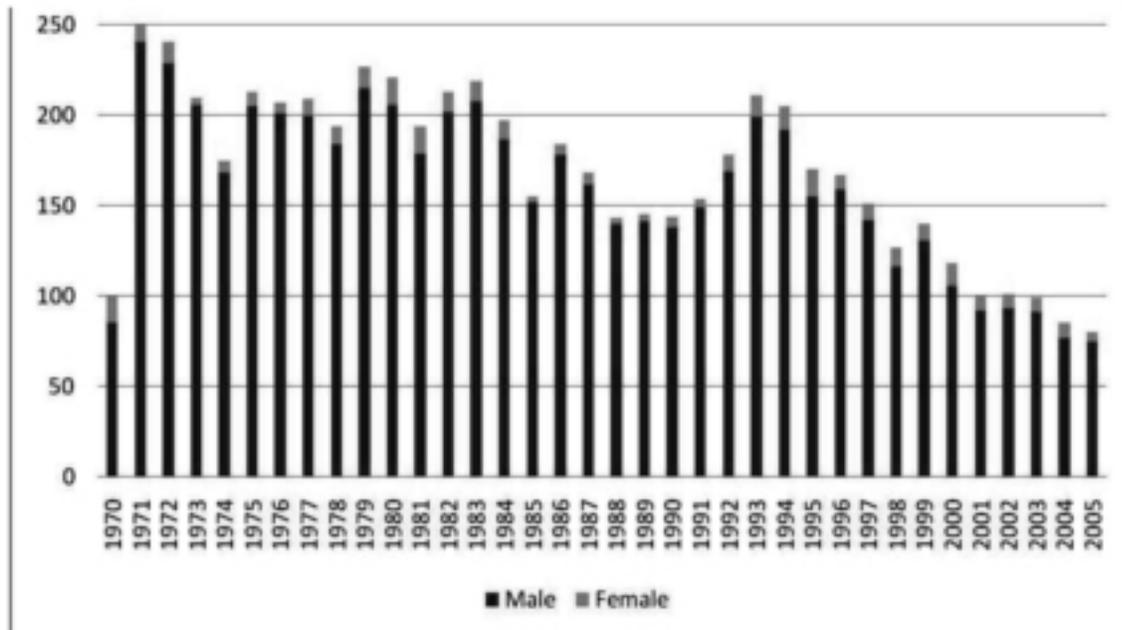
Figure 11: Reformatories and Special Schools for young offenders, 1960-2005



4.51 Over the past 35 years there has been a substantial decrease in the number of children held in Reformatories and Special Schools. Figure 12 below shows this decline from a peak of just over 250 in 1971 to less than 100 in 2005.⁹⁹ Also visible is the fact that historically, Reformatories and Special Schools, unlike Industrial Schools, confined significantly more boys than girls, a trend which has continued into the present day.

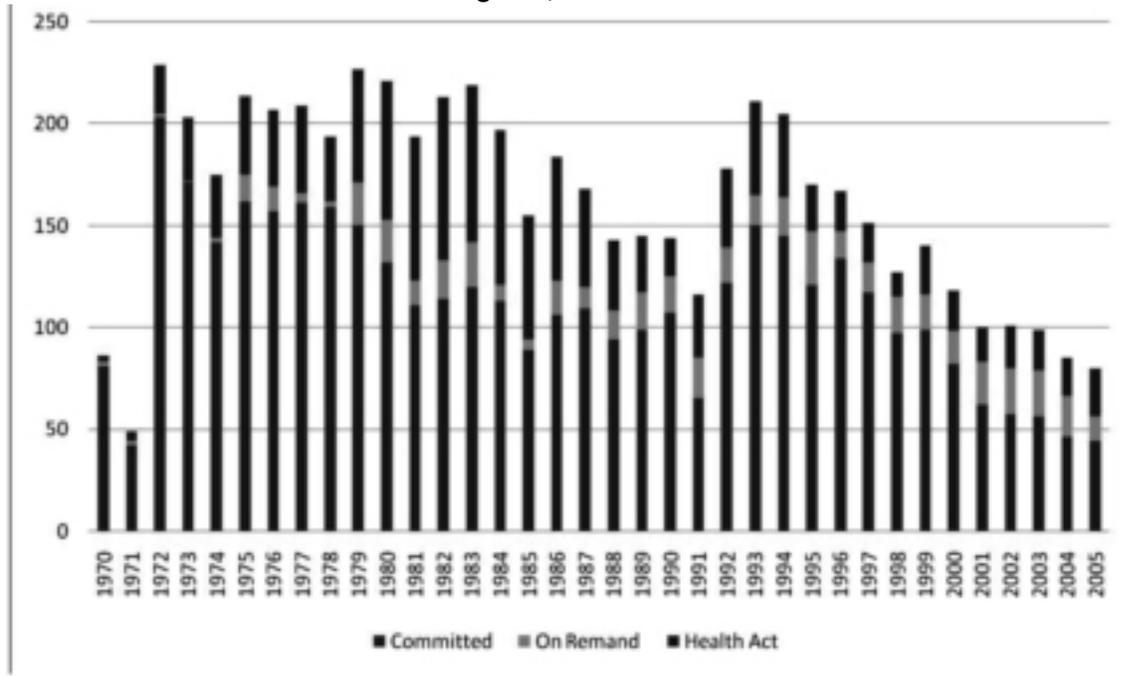
⁹⁹ In March 2008, the Government approved the development of new national children detention facilities on the Oberstown campus. The Government decision was informed by the report of the expert group on children detention schools. The development will increase the accommodation capacity in the detention school service from 77 to 167 places and will be carried out in phases. There are already three detention schools on the site and the proposed development will involve the demolition of some existing buildings on site and the retention of others but will consist mainly of newly constructed facilities. After the design of the new facilities has been completed during 2009, a tendering process will be undertaken to progress the construction element of the project, the first phase of which is estimated for completion in 2012. This will provide 80 places to accommodate 16- and 17-year-old boys in order to remove this age group from St Patrick's Institution and to facilitate the transfer of boys from the existing Oberstown boys school buildings. The second phase, which is envisaged for completion in 2014, will entail the demolition of the buildings currently housing Oberstown boy's school and the long-term unit of Oberstown girl's school, as well as several other buildings. This phase will also involve the construction of facilities for 57 young people. Some of the existing buildings, including Trinity House School, will be retained, providing a total of 167 places when both stages of the project are completed. Expert Group on Children Detention Schools (2007). *Final Report*. Dublin: Department of Justice, Equality and Law Reform.

Figure 12: Children in care in Reformatories and Special Schools, stock figures, 1970-2005



4.52 According to the *Department of Education Statistical Report for 1977-78*, previous to 1978 all statistics relating to children entering Residential Homes and Special Schools (formerly Reformatory and Industrial Schools) were only supplied for children ‘committed’ by the courts. From 1978 onwards more detailed statistics are provided on the mechanism for admission including ‘voluntary’, ‘on remand’ and various ‘Health Acts(s)’. Voluntary only appears as a category for Special Schools for two years (1977-78 and 1978-79). To aid in the interpretation of figure 13 below, statistics for children committed ‘voluntarily’ have been included along with those for children being held ‘on remand’. These totals for 1970-74 are year-end totals (with the exception of 1974 which is for 30th September 1974); from 1975 onwards they are totals at 30th June of that year. What is most obvious from the figures below is the extensive decrease in the number of children committed to Reformatories and Special Schools through the courts and through the Health Acts.

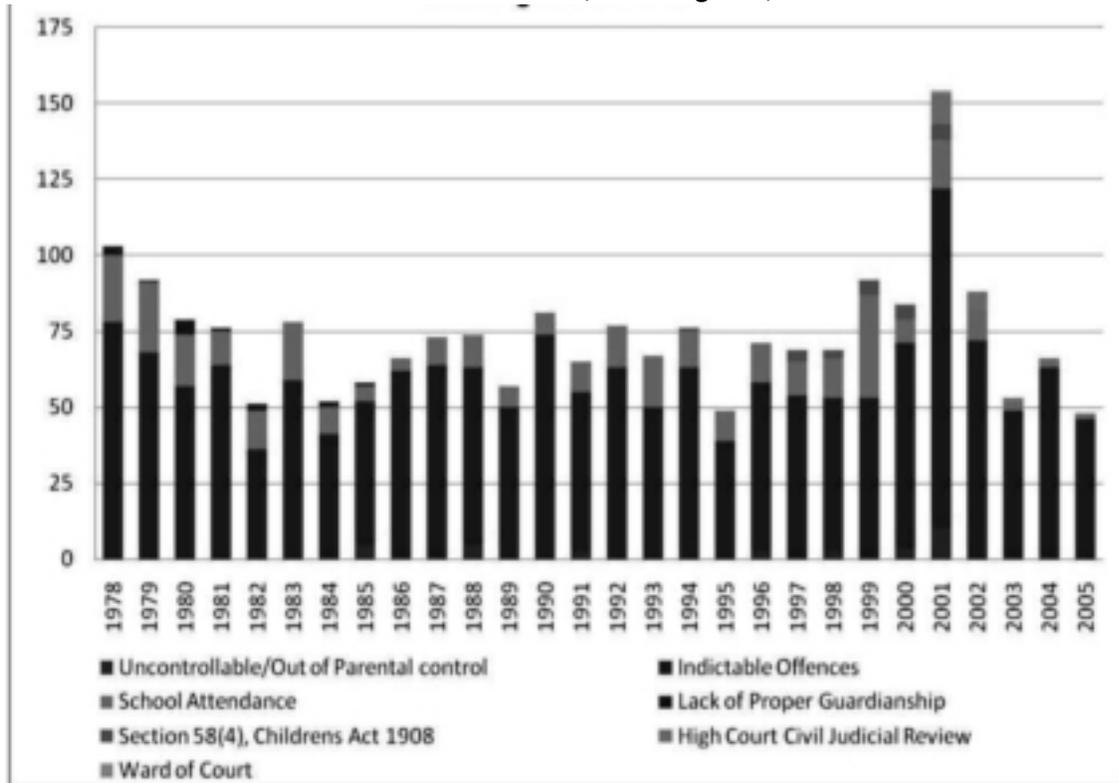
Figure 13: Children in care in Reformatories and Special Schools by legal basis, stock figures, 1970-2005



4.53 In 1978 the grounds of committal or ‘circumstances’ under which children were committed to Special Schools and Residential Homes were changed to include indictable offences, school attendance, and lack of proper guardianship. As shown in figure 14, since 1978, indictable offences has been the dominant reason for which children were committed to such institutions.¹⁰⁰

¹⁰⁰ O’Sullivan provides one of the few accounts of the understanding that children committed to an Industrial school (Letterfrack) had of the process that led to their committal. He argues that those he interviewed ‘repeatedly defined the location of their prosecution and committal as a court of law – the fact that it has held in a special building or a special room, on a different day or at a different time from the regular court sessions had no significance for them. Their interpretation had a stark reality: they had been apprehended by the police and had appeared in court; their committal had been the responsibility of the prosecuting police than of the Justice; they had been sentenced rather than committed; in short their interpretation was a reflection of the adult criminal process of the adult criminal process of apprehension, sentencing and incarceration.’ O’Sullivan, D (1977) ‘The Administrative Processing of Children in Care: Some Sociological Findings’. *Administration*, 25, 3, p 428.

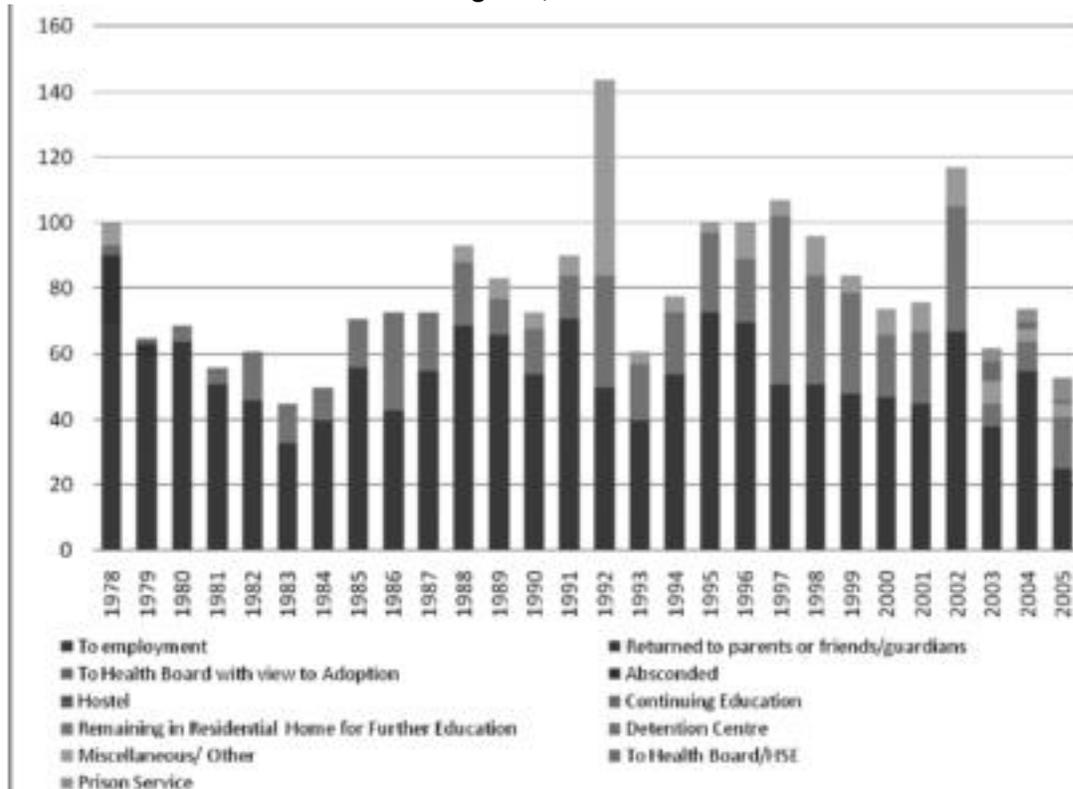
Figure 14: Children in care in Reformatories and Special Schools by circumstances under which child was committed, stock figures, 1978-2005



4.54 Similar to children incarcerated in Industrial Schools and Residential Homes, figure 15 below shows that children in reformatories and Special Schools generally have been released back into the custody of their parents or guardians¹⁰¹. However, a significant number of children have also been discharged directly to detention centres, and since 2003 a small number of children have also been sent directly to the care of the Prison Service (seven children in 2005).

¹⁰¹ The category 'Returned to parents or friends' is a sum of the three categories 'Returned to Parents or Friends', 'Returned to parents or guardians for employment', and 'Returned to parents or friends for further education'.

Figure 15: Children in care in Reformatories and Special Schools by mode of discharge, stock figures, 1978-2005



Foster and residential care

4.55 The following section is based upon the Department of Health reports from 1978 to 2005 on children in care. These reports vary from year to year in whether they record data on the number of children in care on a given day (stock), the number of children who were admitted to care during the year (flow), or a combination of these two types of data. Reports for the years 1978 to 1981 only recorded information on children either coming into care or those who were already in care; it is only from 1982 onwards that stock data is available, providing information on children in care on 31st December of the year. Data on children admitted to various types of care (foster, residential, etc.) are often not disaggregated by key variables such as gender or age in any consistent manner (or sometimes not at all). Further complicating matters is the fact that there are no available reports on children in care for the years 1986-88, 1993-95 or 1997. This is particularly regrettable given the fact that significant shifts in the provision of care for children occurred during these junctures. For example, the total number of children in state care began to rise in the early 1980s and again saw a sharp increase in the mid-1990s. A move away from the use of residential care and towards foster care also seemed to occur during these three-year interludes as well; however, the lack of *any* data during this time means that our ability to make inferences as to why such changes possibly took place is inherently limited.

4.56 Furthermore, even when a report is available the data it is not always comprehensive. For example in the 1978 Department of Health Report on children coming into care there is no information on 287 children of unmarried mothers awaiting adoption who were admitted to St Patrick's Home during the year 1978 (p 3). Nor does the report include reasons for admission for 192 children who were under supervision 'at nurse' in the Eastern Health Board.

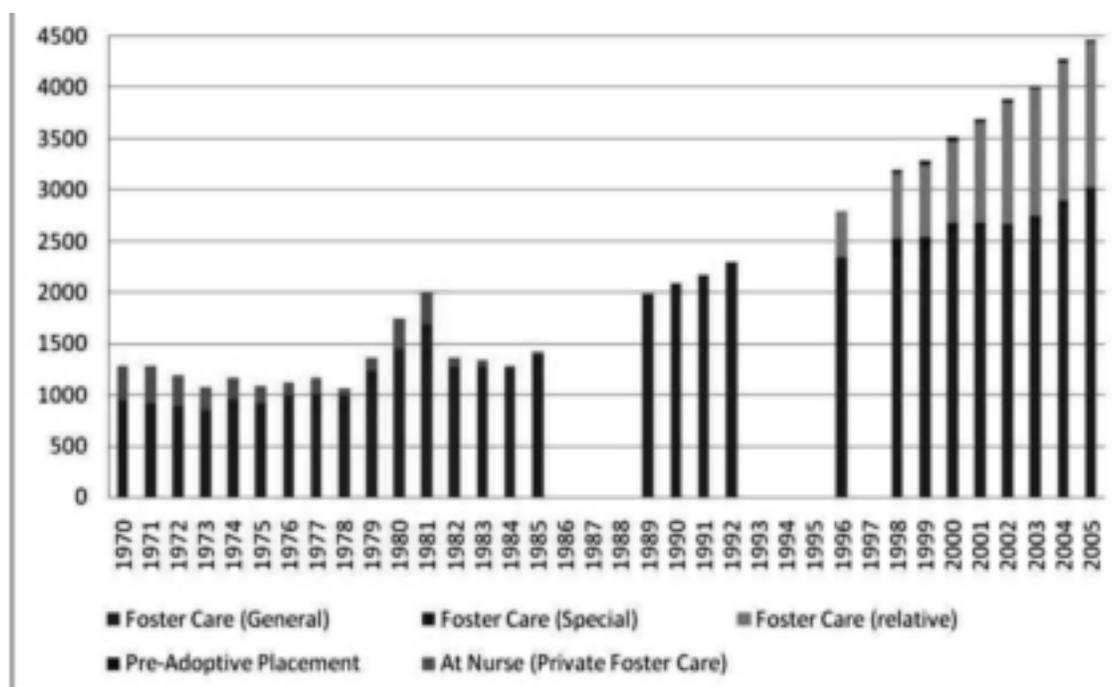
4.57 The following section attempts to overcome these limits in available data and roughly map the changes in provision of childcare in relation to factors such as type of care, gender, and reason for admission and type of care order. Where possible the most up-to-date categories used by the

Department of Health are used in order to provide a sense of continuity over time. Where this has not been possible, older and now abandoned categories have been recoded in a logically consistent fashion in order to correspond with the newer categories. Unfortunately, such recoding was not always possible and many figures consist of a range of categories used from year to year making for cumbersome interpretations of the collated data; however, it is also emblematic of the inconsistency of the recording (or non-recording as often is the case) of such data on children in alternative forms of care.

Type of foster care

4.58 As can be seen from figure 16 below, the number of children in foster care has increased in general over the past 35 years. In particular, general foster care has steadily increased over the years while private fostering (those ‘at nurse’) has been overtaken largely by fostering by a relative.¹⁰² The last 10 years has also seen the creation of a very small number of special foster care and pre-adoptive placements.

Figure 16: Number of children in foster care by type of foster care, stock figures, 1970-2005



Reason for placement in care (both foster and residential)

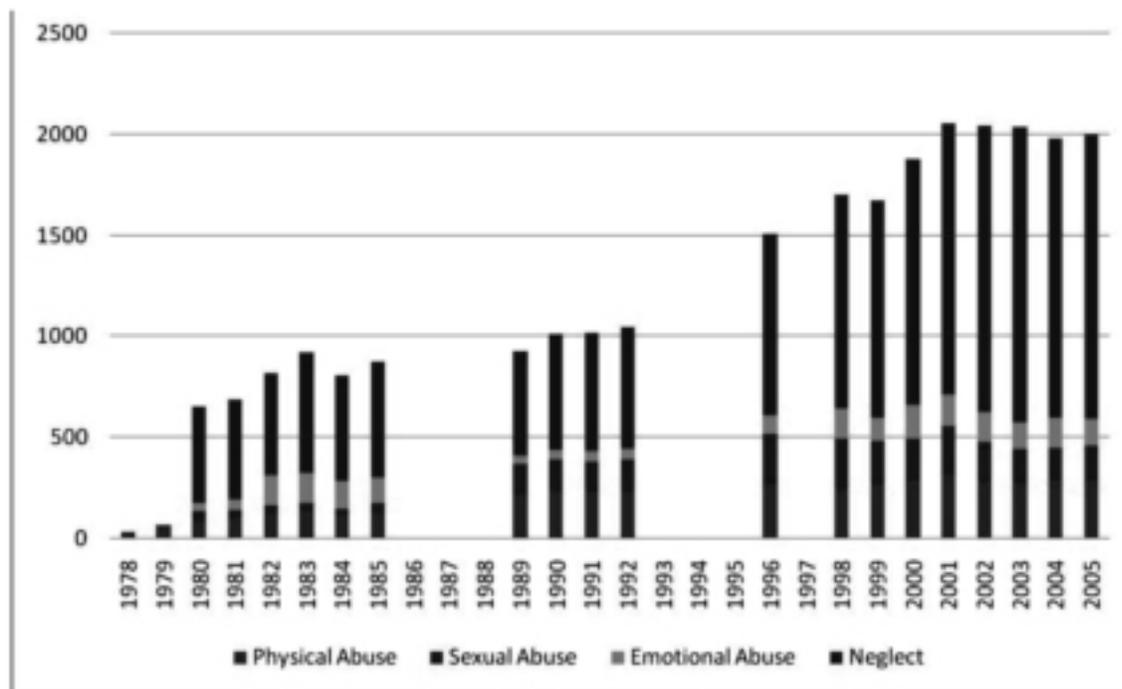
4.59 Since 2002 the Department of Health has subdivided the reasons for children being taken into care into three categories:

- (1) abuse;
- (2) child-centred problems;
- (3) family-centred problems.

¹⁰² For further details, see O'Brien, V (2002) 'Relative Care: A Different Type of Foster Care' in Kelly, G and Gilligan, R (eds) *Implications for Practice in Issues in Foster Care: Policy, Practice and Research*. London, Jessica Kingsley.

4.60 To ease interpretation, these three subgroups have been retained and where possible data from previous annual reports has been placed into these categories based upon similarity¹⁰³. Figure 17 below shows where abuse was cited as the primary reason that children were admitted to care from 1978 to 2005. By far the largest increase has been in the number of children entering care due to 'Neglect' from around 500 in 1980 to nearly 2,000 in 2005.

Figure 17: Primary reason for admission to care, stock figures for abuse, 1978-2005

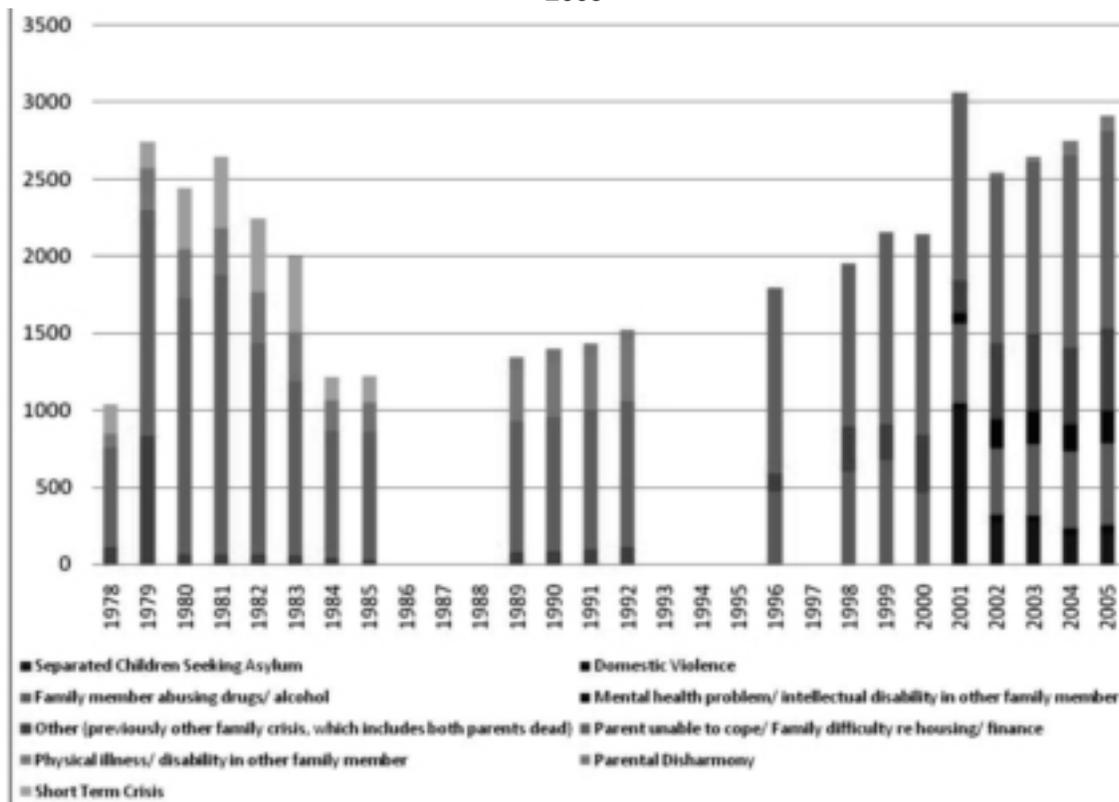


4.61 As explained earlier, the primary reason children were taken into care over the past 35 years were categorised as the parent's inability to cope or care for their children (see timeline). Again, the most recent (2005) categories are used in figure 18¹⁰⁴ below to show the 'family problem' reasons for which children were taken into care; one significant shift is the increase in the number of children taken into care in response to the 'abuse of drugs and/or alcohol' by a family member since the mid-1990s (shown in dark green).

¹⁰³ For example, physical abuse did not exist as a reason for placement in care in 1978, however, for continuity children in the category 'non-accidental injury to child' (n=34) are included in the physical abuse category. Similarly, for 1979 the physical abuse figure represents a sum of the categories 'confirmed non-accidental injury' (N=37) and 'suspected non-accidental injury' (N=30).

¹⁰⁴ For 1978, parent unable to cope represents the sum of the categories 'mother deserted, father unable to care' (82); 'unmarried mother, unable to care' (389); 'mother dead, father unable to care' (36); 'no family home' (39); and 'unsatisfactory home conditions' (100). Physical illness/ disability in other family member is based upon the category 'long-term illness of parent/guardian' (93). Short term crisis represents the category 'short-term illness of parent/guardian' (189). For 1979, this same figure is a sum of the categories 'single mother, unable to care' (925); 'parent deserted, remaining parent unable to care' (341); 'parent dead, remaining parent unable to care' (198). Physical illness/ disability in other family member is based upon the category 'long-term illness of parent/guardian' (82). Parental disharmony is 'marital breakdown' (188) and 'short term crisis' represents the 'short-term illness of parent/guardian' (177). For 1980, 'other' includes 'both parents dead' (61); parent unable to cope is a sum of 'unmarried mother unable to cope' (1207); and 'one parent family (other than unmarried mother) can't cope' (458). Parental disharmony once again represents 'marital breakdown' (320); and 'short term crisis' is based on 'sudden family crisis' (397). finally, in 1981, 'other' is 'both parents dead' (60); parental disharmony represents 'marital disharmony' (302); and short term crisis is 'sudden family crisis' (464).

Figure 18: Primary reason for admission to care, stock figures for family problms, 1978-2005

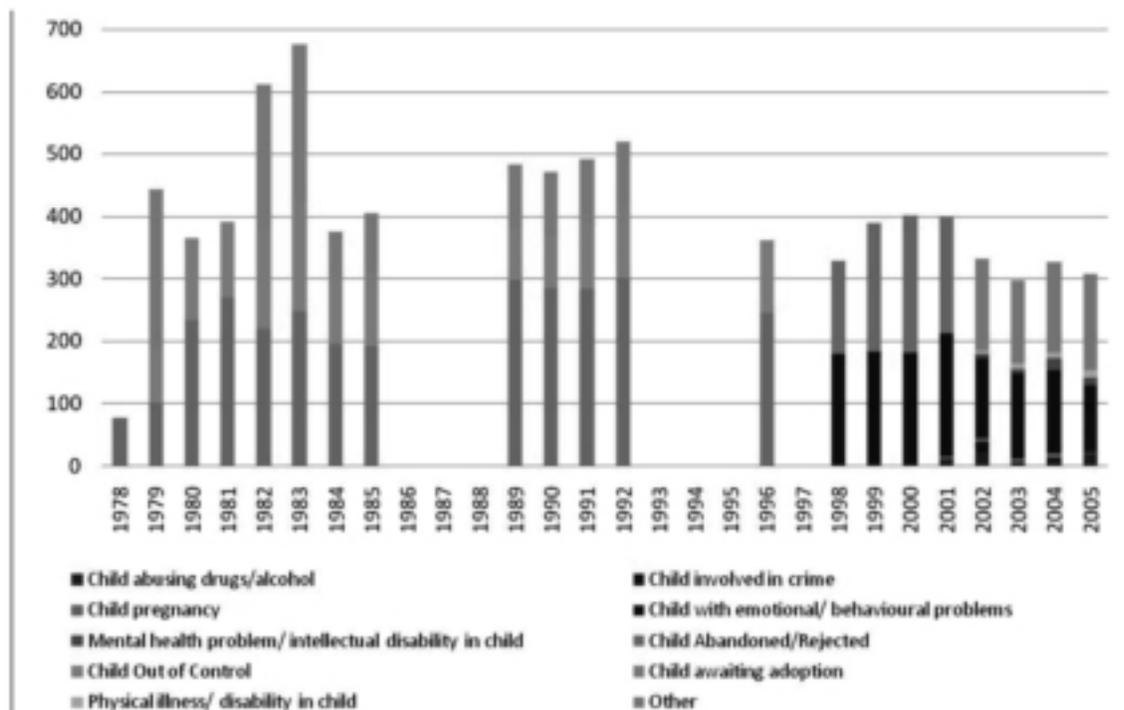


4.62 Most children taken into care for ‘child problems’ were categorised as either abandoned or rejected by their parents¹⁰⁵ or were awaiting adoption¹⁰⁶; a sizeable proportion were also recorded as being ‘out of control’.

¹⁰⁵ For 1978 the category ‘child abandoned/rejected’ is a sum of the categories ‘No parent or guardian’ (10) and ‘Abandoned or deserted’ (66).

¹⁰⁶ According to the 1979 report, all ‘children awaiting adoption’ (257) were apparently children of ‘single mothers’.

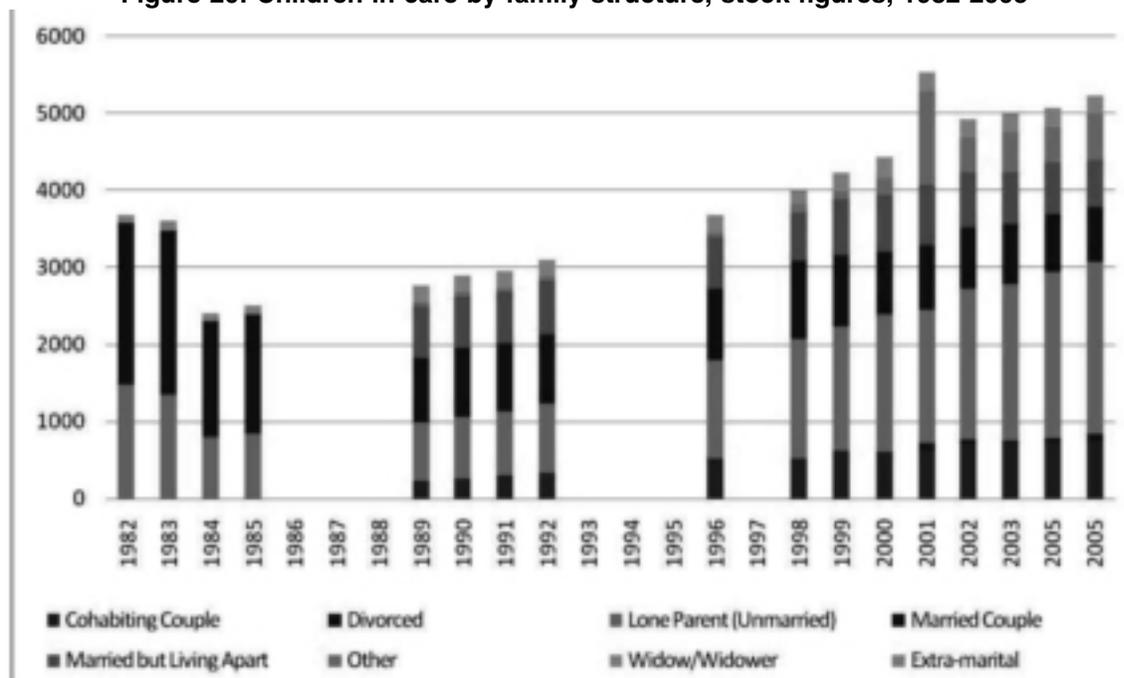
Figure 19: Children in care by primary reason for admission to care, stock figures for child problems, 1978-2005



Family background of children in care

4.63 There is no data available on family forms in the annual reports for 1978-81; however, there is evidence from the statistics on reason for admission, that children of single mothers or lone parent families in general are over-represented in the care system. For example in 1978, 389 children were reported to be taken into care due to being the child of an ‘unmarried mother, unable to care’ and in 1979, all children awaiting adoption (257) were apparently children of ‘single mothers’. Figure 20 below shows the family structures of children in care from 1982 to 2005. Lone parents consistently make up the largest category followed by married couples (either living together or apart).

Figure 20: Children in care by family structure, stock figures, 1982-2005

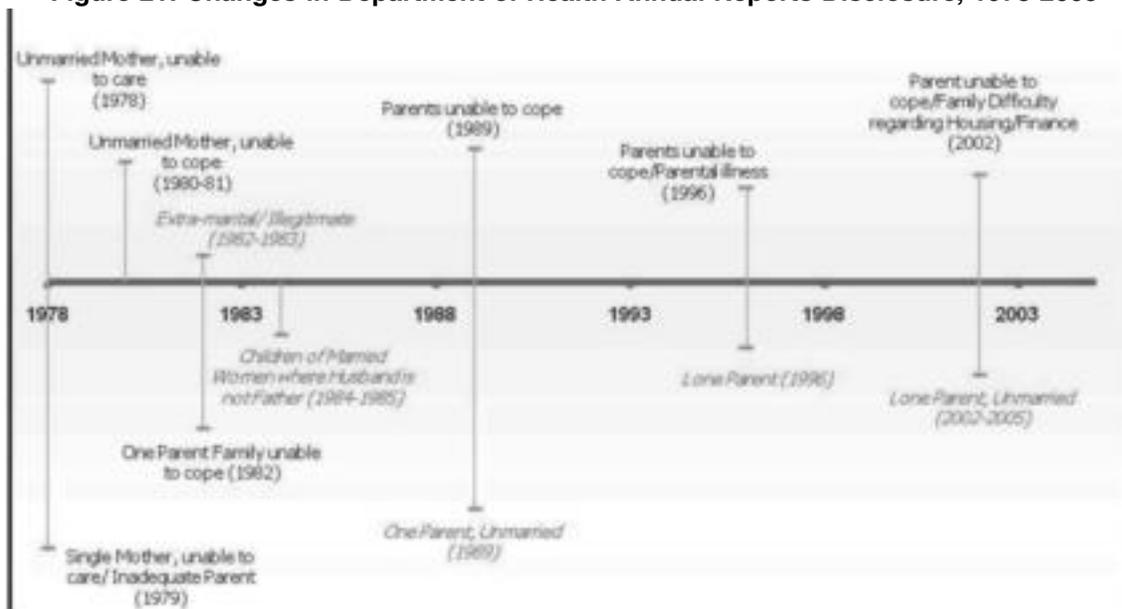


Categories and classification of children in care

4.64

Classifications and counting methods vary considerably from year to year in the annual reports published by the Department of Health on children in care. Such frequent, and for the most part, unexplained changes complicate what ought to be the rather basic task of outlining and interpreting trends in the provision of alternative care for children over time. However, the different ways in which children are categorised and their families categorised also serves to illuminate the perceived 'problem' of non-nuclear family forms; in particular, unmarried mothers and their 'illegitimate' children. The timeline shown below in figure 21 is illustrative of the many changes in categorisation used in the Department of Health reports over the period 1978 to 2005. The excessive focus on unmarried mothers can be seen by mapping the descriptions of such women over time in relation to the reason their children were taken into care (shown in black) as well as the descriptions of the child's 'status' or family background/type (shown in red).

Figure 21: Changes in Department of Health Annual Reports Disclosure, 1978-2005



4.65 For example, according to the Department of Health Report, *Children Coming Into Care 1978*, the first such national survey of children in care of the health boards, the primary reason children were taken into care or placed under supervision¹⁰⁷ for that year was that they were children of ‘unmarried mothers who were unable to care’ (p 4). This category represented around a third (33.8 percent) of all children taken into care by the State and is only followed by the ‘short-term illness of parent/guardian’ which represented 16.5 percent of all children taken into care in that year. Some other noteworthy reasons for children being taken into care that same year include:

- unsatisfactory home conditions (8.6 percent);
- parent/guardian in prison/custody (1.8 percent);
- travelling family (3.4 percent).

4.66 In 1979, once again children of single mothers are recorded as being the single largest group of young people placed in care. Correspondingly, the most common reason for children being taken into care was ‘single mother, unable to care’ (28.5 percent). However, three other primary reasons for admission were also focused on single parents, including:

- single mother, child-awaiting adoption (7.9 percent);
- parent deserted, remaining parent unable to care (10.5 percent);
- parent dead, remaining parent unable to care (6.2 percent).

4.67 Taken together, children of single parents in these four categories represent over half (53.1 percent) of all children in care of the State. In addition to the focus on single parents, two new reasons for admission listed in the 1979 report reinforce the moral judgment of parents:

- marital breakdown (5.8 percent);
- inadequate parent (12.5 percent).

4.68 The 1979 report also includes an interesting survey of ‘underlying family problems’. Such additional descriptive information is rare in Department of Health Reports and provides an insight into the reasoning behind children being taken into care; once again it highlights the emphasis

¹⁰⁷ Children recorded as under ‘supervision’ refer to cases where the Health board has been notified by parents of private fostering arrangements they have procured for their children (1978:2).

placed on the perceived 'problem' of single mothers. According to this survey, by far, the leading underlying family problem was perceived as 'parental inadequacy' (47 percent). Table 13 of the report cross tabulates the underlying family problems with the primary reason children were taken into care. Almost 20 percent of children taken into care were categorised as the children of 'single mother(s), unable to care' due to being 'inadequate parent(s)'. Despite the fact that the report presents unusually detailed information on why children were taken into care, it is nonetheless limited by tautological thinking, as the second largest group in the table are described as children of 'inadequate parent(s)' whose underlying problem is 'parental inadequacy'. Fifty seven children were reported to be living in a home with an 'unsuitable moral atmosphere'; representing 1.7 percent of the children in care.

4.69 The 1979 report also provides more detail than many of the other Department of Health Reports on Children in Care in the last 30 years in its explanation for some of the reasons children were placed in residential care. By far the two primary reasons were that the child had two or more siblings already in care or that there were no suitable foster parents available. The number of children placed in residential care for 'other' reasons was also quite substantial. These other reasons were primarily that the child was either born in an institution or was born to a 'single mother undecided about caring for child'. Interestingly, one case was recorded in which the mother was deemed to be 'disturbed' and another was recorded as having been a child 'born during honeymoon'.

4.70 The 1980-81 report continues in the reporting of 'underlying' family problems such as 'inability to cope' and 'marital disharmony'. However, a number of new family problems appear in the report including:

- drug addiction;
- promiscuous environment;
- over protective.

4.71 It is not until 1982 that background information is reported separately in specific regard to the family structure of children in care. While being the child of a 'one parent family unable to cope' was still the single largest reason for being placed in care (37 percent), the number of children placed in care for this reason actually decreased by 10 percent from the 1981 figure. The report further grouped children into three 'status' categories: 'legitimate'; 'illegitimate'; and, 'extra-marital'.¹⁰⁸ A little more than half of children in care during 1982 were recorded as legitimate (57 percent), and tended to be placed in long-term residential care (46 percent of all legitimate children). On the other hand, children who were categorised as 'illegitimate' or 'extra-marital' tended to be placed in long-term foster care (44 percent and 66 percent respectively). Interestingly, around 10 percent of all 'illegitimate' children were placed in private foster care compared to less than 1 percent of either 'legitimate' or 'extra-marital' children.

4.72 By 1984 these categories had once again changed and children were either recorded as 'children of married parents', 'children of unmarried parents' or 'children of married women where husband is not father'. Children of 'one parent families unable to cope' still represented around a third of children in care. The 1985 report continues in the use of these categories and is the last report published until 1989. In the Department of Health report on children in the care of Health Boards for 1989 the specific focus on 'unmarried mothers' is not as evident as in previous years. Instead, the more inclusive language of 'one parent unmarried' is used; according to the report, this 'means an unmarried mother or father who is not living with a partner'. Significantly, this is also the first year that the category of parents deemed 'unable to cope' (still the largest group at 31 percent) are not specifically identified as unmarried or single parents. The categories used are then

¹⁰⁸ Children recorded as 'extra-marital' in status presumably meant that either the mother or the father of the child was married, but not to one another.

consistent for the next three years until 1993 when, once again, a three-year gap in annual reporting occurs. When the next annual report was finally published again in 1996 the term 'lone parent' had come into use and 'parental illness' had been combined into the 'parents unable to cope' category of principal reasons for admission to care. Despite these changes, it remained that around a third (32.96 percent) of children were taken into care for this reason.

4.73 There is no data for 1997 but the 1998 report indicates that the percentage of children from lone parent families increased to almost 40 per cent (38.58 percent). Also, worth noting is that this is the first year that 'parent unable to cope' (26.58 percent) was not the dominant reason for children being admitted to care; 'neglect' (26.71 percent) accounted for slightly more cases (five more children and a difference of less than half a percentage point). The term lone parent has been further qualified in recent years (since 2002) to highlight the distinct group of lone parents who are unmarried as opposed to divorced or widowed. In 2005, the most recent year for which statistics are available on children in care from the Department of Health, 2,221 or almost half (43 percent) of children in care that year came from 'lone parent, unmarried' families.¹⁰⁹

Summary

4.74 From the 1920s to the early 1950s there were in excess of 8,000 children in various forms of residential care (Industrial Schools, Reformatory Schools, Approved Schools/institutions and private orphanages) and a further 4,000 children, either boarded-out (public foster care) or at nurse (private foster care). During the mid-1950s, the numbers in alternative care dropped rapidly and by the end of the 1960s, there were just over 1,200 children boarded-out or at nurse and approximately 3,000 in various forms of residential care. The trend towards the decline in the number of children in care (defined as children in various forms of foster care and residential care) continued throughout the early to mid-1970s, but increased somewhat in the late 1970s. A decline was evident again in the early 1980s, but the number of children in care has been rising steadily since the mid-1980s, with currently over 5,000 children in State care. While the overall number of children in care grew from the mid-1980s onwards, the type of care placement shifted decisively from residential care to foster care. By 1980, there were slightly more children in foster care than residential care; in contrast, currently 84 percent of all children in care in foster care (including relative care). Put simply, while the overall numbers of children in care have increased, the role of residential care has become increasingly atypical and specialised while foster care has moved to a position of dominance in the provision of alternative care for children.

4.75 Also worth noting, is that the numbers of children entering care were relatively stable during the late 1970s and 1980s, but quite suddenly grew dramatically in the mid-1990s. The reasons for this are unclear, but in part reflect the gradual implementation of the Child Care Act 1991 and the increase in the number of social workers. Certainly, a substantial increase is recorded in the number of children entering care for reasons of 'neglect', from over 600 in 1992 to over 1,400 in 2005, which reflected growing awareness of different forms of child abuse during this period. The legal basis for children in care shifted substantially in the late 1980s, with slightly more children in care on the basis of a care order than on a voluntary basis. However, by 2000, a slight majority of children in care were there on a voluntary basis, but in recent years, the numbers are almost equal. In terms of gender, almost equal numbers of males and females are in substitute care.

¹⁰⁹ This was noted early on in the collection of health board data, but the level of data was too crude to allow for any explanation. See O'Higgins and Boyle (1988) *State Care – Some Children's Alternative: An Analysis of the Data from the Returns to the Department of Health, Child Care Division, 1982*. Dublin: Economic and Social Research Institute. See also Richardson (1985) for an analysis of children in residential care in the Eastern Health Board area. Richardson (1985) *Whose Children? An Analysis of Some Aspects of Child Care Policy in Ireland*. Dublin: Family Studies Unit.

4.76 As noted in section 1, the 1990s saw the establishment of a number of ‘high support’¹¹⁰ and ‘special care residential units’.¹¹¹ In October 2005, there were 141 children’s residential centres, classified in descending order as either community based children’s residential services (93); hostels (14); high support (11); special arrangements (12); other (9) and special care unit (2).¹¹² Reasonably detailed data¹¹³ is available for 2005, which shows that of those in residential care, 57 percent are in the old Eastern Regional Health Authority (ERHA) area or, in other words, the greater Dublin region. Since the 1970s, for most years in excess of half the children in residential care were in this functional area.

4.77 Although the decline in residential care was as equally dramatic as the decline in foster care in the late 1960s – early 1970s, the numbers in residential care have continued to decline, whilst foster care has shown a dramatic increase over the past 30 years.¹¹⁴ The number of children in foster care increased from less than 1,500 in 1970 to over 4,500 by 2006. Part of the reason for the sustained increase in foster care is the decline in the number of children available for adoption.

4.78 The total number of children in Special Schools has dropped substantially over the past 35 years, from 255 in 1971 to a mere 80 in 2005. This drop has been particularly pronounced over the past decade.¹¹⁵ One of the possible reasons for the decline in the numbers in Special Schools, particularly in recent years, is the numbers of young people dealt with under the Diversion Scheme operated by An Garda Síochána, with the number of young people cautioned under the scheme rising from less than 7,000 in the early 1990s to nearly 17,000 by 2007.¹¹⁶ Whilst the number of children in residential care declined rapidly from the early 1970s, the number of young people committed on conviction to prisons and places of detention, having hit an all time low of 179 in 1963, increased each year until the early 1970s. The numbers declined and then stabilised until the late 1980s, when the numbers exceeded 800, but dropped rapidly to just fewer than 500 in 1991. The numbers then more than doubled to over 1,200 in 2001, and then once again declined to just over 800 in 2005, but increased in 2007 to 1,053.¹¹⁷ Young people now represent just over 16 percent of all committals on conviction, compared to 27 percent in the early 1970s. In terms of

¹¹⁰ These are residential care units for children whose behaviour cannot be adequately catered for in other residential care units and as a consequence, such units have extra staffing, education on site and access to specialist therapeutic services.

¹¹¹ These are secure residential care units for children aged between 12 and 17 who can be detained there under a court order for their own welfare and safety. The latest data available from the Children Act Advisory Board indicates that there are 25 places in special care units nationally (see: Social Information Systems (2008) *Review of Special Care Applications*. Dublin: CAAB.

¹¹² This figure excludes other forms of care such as pre-adoptive placements, at home under care orders, supported lodgings and other ad-hoc arrangements to facilitate the time series. The majority of these placements appear to be separated children seeking asylum.

¹¹³ The published data on children in care includes information on such crucial issues as family type, length of stay in care or reason for admission to care but does not distinguish between residential care and other forms of care.

¹¹⁴ Although the nomenclature foster care has been in use for a considerable period of time, it only gained legal currency with the publication of foster care regulations in 1995. SI No 260 of 1995. Child Care (Placement of Children in Foster Care) Regulations 1995. Until 1995, the correct term was boarded –out children. For example, starting in 1979, the term foster care rather than ‘Boarding-out’, is used by the Department of Health in compiling data on children in the care of the health boards. For further details, see Gilligan, R (1990) *Foster Care for Children in Ireland Issues and Challenges*. Dublin: Department of Social Studies and Hogan, R (2002) ‘Foster Care in Ireland’. *Irish Journal of Applied Social Studies*, 3, 1, pp 30-50.

¹¹⁵ In 1995, the Irish National Teachers Organisation in a report on youthful offending recommended that ‘ A research unit on the provision of services for young offenders should be established: to compile data from all residential homes, to profile clients more extensively, to evaluate the effectiveness of current service, to provide information to policy formulators and decision makers at Government level. The research unit should be adequately resourced in order to carry out its functions effectively. The research unit should liaise with the social science departments of universities in establishing specific research projects in the various residential homes. Annual reports on the operation of the Juvenile Justice System should be published by the Department of Justice in conjunction with the Departments of Education and Health. INTO (1995) *Youthful Offending – A Report*. Dublin: INTO. p 87.

¹¹⁶ *Annual Report of the Committee Appointed to Monitor the Effectiveness of the Diversion programme for 2007* (2008) Dublin: National Juvenile Office. p 14.

¹¹⁷ Data on the ages of those committed on conviction to prison and places of detention between 1995 and 2000 is not available.

gender, female committals have declined from a high of nearly 15 percent of all committals under 21 to just fewer than 4 percent in 2005.¹¹⁸

4.79 Patterns in the provision of care for children have changed dramatically since the foundation of the Irish State. In general there has been an overall increase in the number of children in care over the past 35 years both in raw numbers and as a proportion (per 1,000 young people under 18), indicating a real growth in the number of children in care not attributable to a mere shift in demographic patterns. Residential care, once the dominant form of substitute care for children in the State, has been eclipsed by the use of foster care.¹¹⁹ Changes in legislation combined with an increase in the number of social workers and greater awareness of the needs of children have contributed to this situation. The number of children in Special Schools for Young Offenders, in particular, has decreased substantially over the past 35 years, while the number of young people (under 21) in prisons and places of custody have increased and decreased intermittently over the same period. It is worth noting the considerable challenges to the collation and interpretation of the figures presented here. Substantial variations in nomenclature, definitions and counting rules combined with a lack of detailed statistics and the transfer of responsibility between departments make what should be a rather straightforward exercise (mapping trends in the care of children over a relatively short 35-year period) into an arduous task.¹²⁰

Section 3: 1965-1976 – residential childcare in transition

4.80 In 1965, in a report on social research in Ireland conducted by a United Nations Advisor to the Irish Committee on Social Research, included in the research needs identified the necessity for a 'survey of children in institutions with a particular view to the reason for their institutionalization' and 'research into the methods of institutional and educational treatment and its effects'.¹²¹ In the same year, a survey team appointed by the Minister for Education to examine the Irish education system reported. In an appendix to the report they made reference to the Reformatory and Industrial Schools. In relation to the post-school career of those who left the schools, the survey team noted:

it seems desirable to improve the placement service, perhaps by providing the schools with more information on employment opportunities. Efforts might also be made to improve the degree of supervision maintained during the two years after release. This is

¹¹⁸ O'Donnell, I, O'Sullivan, E and Healy, D (2005) *Crime and Punishment in Ireland 1922-2002: A Statistical Sourcebook*. Dublin: Institute of Public Administration and Irish Prison Service (2008) *Annual Report 2007*. Dublin: Irish Prison Service.

¹¹⁹ In a review of children in residential care in Europe in 1992, Ireland, along with Sweden, England, Wales and Scotland were described as making comparatively high use of foster care. Madge, N (1994) *Children and Residential Care in Europe*. London: National Children's Bureau. p 71. Hazel, in an earlier comparative study, highlighted that in Belgium, the majority of children in care were in residential care compared to the three other countries she surveyed, Sweden, England and Wales. Sweden had negligible numbers of children in residential care and for those in residential care, their stay was minimal. England and Wales operated a more balanced system with approximately 40 percent of children in need of alternative care in foster care. Hazel, N (1976) *Child Placement Policy: Some European Comparisons*. *British Journal of Social Work*, 6, 3, 315-26.

¹²⁰ In addition, as Buckley et al (2006) argue in relation to child care information in Ireland, 'caution must necessarily be applied when reviewing statistical information. For example, when statistics indicate an increase in the take up of a certain service, it is clearly the case that what is being signified is as likely to be an increase in service provision for this particular issue as it is to be an increase in the particular problem for which the service is intended. False assumptions may exist concerning the consistency of criteria for counting certain data. Likewise, the data only illustrate activities that are taking place with children and families who are in contact with services, therefore does not indicate the level of unmet need in the population and the degree to which services are reaching or are accessible to vulnerable sectors. Buckley, H, Giller, H and B Brierley, M (2006) 'The Formation of Information in Child Care: Herding Cats or Counting Sheep'. *Administration*, 54, 1, 72-87.

¹²¹ Friis, H (1965) *Development of Social Research in Ireland*. Dublin: Institute of Public Administration. This report resulted in the Economic Research Institute, established in 1959, expanding its brief to include social research and becoming known as the Economic and Social Research Institute. The Institute was subsequently to publish two significant reports on children in care. See, O'Higgins, K and Boyle, K (1988) *State Care: Some Children's Alternatives*. Dublin: Economic and Social Research Institute and O'Higgins, K (1993) *Family Problems – Substitute Care: Children in Care and their Families*. Dublin: Economic and Social Research Institute.

difficult but the provision of hostel accommodation (or of other suitable accommodation where the numbers did not warrant a hostel) would be a help in this regard.¹²²

4.81 The survey team also noted the decline in the number of children in the schools and that most schools were operating under their capacity. While noting that the under-utilisation of schools could be viewed as an economic burden, the team also put forward the view that there was:

an argument for tolerating rather more schools than the numbers would seem to warrant, on the grounds that schools of this type should be fairly small in order to maintain a personal relationship with each child. Also children should not be too far away from their parents and relatives – these schools are fairly widely scattered over the whole country. Nevertheless, it might be desirable to examine the possibility of closing some, particularly as the numbers in care have been declining fairly steadily in recent years.¹²³

4.82 1965 also saw the launch of the Fine Gael Policy document *Towards a Just Society* which inter alia proposed to:

Improve considerably the facilities in Industrial Schools and Reformatories, including the provision of adequate psychiatric care; to move wherever possible Institutions caring for young people to new, small and up-to-date buildings, and to establish small family group homes; to increase grants to the existing Institutions so as to permit them to expand and improve their facilities; to provide an adequate after-care and follow-up service for young people leaving Industrial Schools.¹²⁴

4.83 More generally, the publication in 1966 of the *White Paper on Health Services and their Further Development*¹²⁵ paved the way for a new administrative structure for the delivery of medical and health services in Ireland, including community care services, which in turn were to deliver social work services and particularly childcare services, within a system of regionalised health boards, thus replacing the existing county-based system. Although 1965 is taken as the starting point for this paper on the basis that a consensus was clearly emerging as to the desirability for shifting the focus of the child welfare system and the limitations of the existing system of residential care, a number of reports prior to this date had highlighted these issues. A non-exhaustive list includes the *Commission on Youth Unemployment*¹²⁶ (1951), the *Report of Joint Committee on Vandalism*

¹²² Department of Education (1965) *Investment in Education: Annexes and Appendices*. Dublin: Stationery Office. p 32.

¹²³ Ibid. p 33.

¹²⁴ Fine Gael (1965) *Towards a Just Society*. Dublin: Dorset Press. pp 25-6.

¹²⁵ Department of Health (1966) *The Health Services and their Further Development*. Dublin: Stationery Office.

¹²⁶ Chaired by John Charles McQuaid, the commission examined the issue of juvenile delinquency. The Commission noted that young persons found guilty of a criminal offence and committed to Industrial schools formed only a small proportion of those committed and that 'mostly they are destitute or neglected children who are sent to the Industrial Schools for their own protection.' The Commission went on to argue, 'What these children really need is a home, a want which no institution can effectively supply. Family life being the ideal life for the young, we recommend that, in cases in which it is found desirable to remove juveniles from their existing environment, consideration should be given to the possibilities of boarding out as an alternative to continued detention in the Industrial School, cases being reviewed periodically to determine suitability for boarding out. We further recommend that in connection with boarding out, opportunities for training in agricultural and non-agricultural work be considered. An essential in any boarding out scheme would be an adequate system of inspection. For those for whom it is necessary to provide institutional treatment in Reformatory or Industrial Schools we recommend that, with a view to making up for the lack of family atmosphere, these institutions be re-organised on a small unit basis and that women be included on the staff of institutions catering for boys.' Commission on Youth Unemployment (1951) *Report*. Dublin: Stationery Office. p 40.

and *Juvenile Delinquency*¹²⁷ (1958), Captain Peadar Cowan's pamphlet on Reformatory and Industrial Schools (1960)¹²⁸ and the *Inter-departmental Committee on the Treatment of Crime and Prevention of Delinquency* (1962).¹²⁹ For many commentators, it was the publication of a report by the think-tank *Tuairim* that hastened the process of change in this area.¹³⁰

Tuairim: Some of Our Children: a Report on the Residential Care of the Deprived Child in Ireland

4.84 The London branch of the organisation produced this report, published on 12th January 1966. The core recommendation of the branch was that:

the 1908 Children Act has out-lived its usefulness and that it should be superseded by an entirely new Children Act which would take into account the present needs of Irish society and contemporary theory and methods of child care and protection.

¹²⁷ Established in early 1957 at the request of the Lord Mayor of Dublin, Councillor Robert Briscoe, TD, following a meeting on 4th December 1956 organised by the Streets Committee of Dublin Corporation where groups concerned 'at the increase in vandalism and misconduct among juveniles in the City' were invited to attend. Chaired by DA Hegarty of the Civics Institute of Ireland, it included representatives from the Catholic Social Welfare Bureau, the Irish National Teachers Organisation, the Legion of Mary and the Society of St Vincent de Paul amongst others. In their report the Committee outlined 'an expert with long experience of work, expressed the opinion to us that our system of Institutions for juveniles is in certain respects not keeping with modern practices. We do not feel competent to express an authoritative judgment on this assessment, but we do consider that grounds have been put forward to suggest the need for a review of the system. We desire to make it clear, however, that any criticisms expressed refer only to the system and not to the people who have to operate it, many of whom are engaged on work requiring considerable self-sacrifice and which would only be undertaken by dedicated men and women.' The Report then went on to highlight a number of areas, which they believed required changes. They included: 'Institutions too large: Our Industrial Schools and Reformatories are Institutions in which the boys are far removed from any family atmosphere. They are thus deprived of one of the most important influences in the shaping of character – in the preparation for life and in the provision of that sense of security which psychologists attach so much importance. Other countries have endeavoured to provide for this by breaking these Institutions down into 'large family' size units. This has happened to a very limited extent in this Country. Segregation: Children are committed to Industrial Schools for widely different reasons. Some of these children are merely unfortunate and innocent of any misdemeanour, i.e. the family is destitute, the children have been grossly neglected by their parents, or they have none. On the other hand, children are sent to Industrial Schools when they may have committed a comparatively serious offence – only a small proportion are sent to reformatories. These different types of boys present different problems and there appears to be a case for segregating them into special schools after they have spent a period in a grading centre. This would also reveal the mentally defective or subnormal children who should be sent to special institutions. Short Term Schools: Under the present system, boys are generally committed for a long period, but serious consideration should be given to the establishment of properly organised short term schools (also properly segregated) where boys could be sent from three to six months as a measure of correction. In these schools the truant, the boy who has gone beyond control, or the minor delinquent, might learn his lesson and acquire a sense of discipline making it possible for him to return to his home for a normal family upbringing.'

¹²⁸ Cowen, P (1960) *Dungeons Deep: A monograph on prisons, bortstals, reformatories and industrial schools in the Republic of Ireland, and some reflections on crime and punishment and matters relating thereto*. Dublin: Marion Printing.

¹²⁹ This Committee received its warrant of appointment from the then Minister for Justice, Mr Haughey, TD. The Committee was chaired by Mr Peter Berry, Secretary of the Department of Justice and had representation from the Departments of Health, Education and Industry and Commerce. The terms of reference of the Committee were to 'inquire into the present methods for the prevention of crime and the treatment of offenders, giving attention, in particular, to the following matters: (a) juvenile delinquency (b) the probation system (c) the institutional treatment of offenders and their after-care, and to recommend such changes in the law and practice as the Committee considers desirable and practicable. It recommended for example that: 'The term industrial school should be abolished; Larger state grants should be made to industrial schools; A visiting committee should be appointed for every industrial school and in appropriate cases after-care committees should be set up as well; The industrial schools should be inspected more frequently than is at present and to enable this to be done an additional inspector should be appointed in the Industrial and Reformatory Schools Branch of the Department of Education; To ensure that adequate, proper bedding, clothing, footwear etc. is issued to the inmates of industrial schools, the scale of issue – showing minimum standards – should be prescribed by regulations; Adequate financial provision should be made for carrying out of essential maintenance and repair work and for the supply of proper recreational, ablutionary etc facilities at industrial schools; A matron / Nurse should be appointed to the staffs of all industrial schools for boys and similar institutions; Generally speaking, boys from urban centres should not be set to serve lengthy sentences in an industrial school in a rural environment.'

4.85 In addition, the report recommended that:

All child care services should be co-ordinated in a single government department which would administer a subsidiary children's department. We have considered the claims of the Department of Education, the Department of Health, the Department of Justice and the Department of Social Welfare and have concluded that the Department of Health would be the most appropriate department to undertake this work...¹³¹

4.86 The *Tuairim* Report also examined private voluntary homes for children, noting that there were 23 homes that they were aware of, 13 managed by religious Orders, catering for nearly 1,000 children. They noted that the informal system by which children were admitted to these homes had the advantage of bypassing the courts system, but that the danger existed that 'illegitimate children may be dumped and conveniently forgotten' there.¹³² In commenting on the *Tuairim* report, the Reformatory and Industrial Schools branch of the Department of Education observed: 'It seems on the whole to have been compiled objectively though marred by a cheap jibe and untrue jibe at Irish.'¹³³ The Department acknowledged that the system was in need as a complete overhaul and that:

...the majority of the faults found with the reformatory and industrial schools system are soundly based and confirmed by my experience. They highlight the necessity for a complete review and overhaul of the entire system in operation for the care of children who lack proper guardianship, including delinquents, many of whom such as families of distressed mothers and widows could be better cared for at less expense to the state

¹³⁰ London Branch Study Group (1966) *Some of Our Children: A Report on the Residential Care of the Deprived Child in Ireland*. *Tuairim* Pamphlet No 13. *Tuairim* (the word means opinion in Irish) was established in 1954 to provide an impartial discussion of ideas and policies. Describing itself as an association of people who are interested in ideas and are not afraid of discussing them and learning the other man's point of view, it published 18 pamphlets between the 1950s and early 1970s on a host of diverse topics, ranging from the Irish Fish Industry, to Ireland and the United Nations, to Irish education policy. It appears to have become defunct in the early 1970s. For further details on *Tuairim*, see Hederman, M (2008) 'The *Tuairim* Phenomenon – A Forum for Challenge in 1950s Ireland' in Thornley, I (ed) *Unquiet Spirit: Essays in Memory of David Thornley*. Dublin: Liberties Press. One of the members of the *Tuairim* branch that produced the report on residential care was Peter Tyrrell. Tyrrell, originally from East Galway, was sent to the Letterfrack Industrial School in 1924. Tyrrell, who died in 1967 having deliberately set fire to himself, had written an account of his time in Letterfrack, but his account of the School only came to light when historian Dairymaid Whelan found the manuscript in the papers of Dr Owen Sheehy Skeffington. The manuscript was published in 2006 (see Tyrrell, P (2006) 'Founded on Fear': *Letterfrack Industrial School, War and Exile*. Dublin: Irish Academic Press and Whelan, D (2006) 'Peter Tyrrell's Account of Letterfrack, war and Exile'. *Saothar – Journal of the Irish Labour History Society*, 31, 111-8). In addition to publishing the pamphlet on residential care, Mr James O'Connor, a Dublin solicitor, read a paper on juvenile delinquency to a meeting of *Tuairim* on Friday 6th March 1959 and a revised version of that paper was published in the Jesuit journal *Studies* in 1963. In that paper O'Connor argued that: 'The system of institutional treatment in Ireland has serious defects and the courts, left with no alternative, imposes it with reluctance. None of our schools are graded, and boys are committed there indiscriminately without regard to their background, medical history, antecedents or suitability for the training which they are to receive. The atmosphere is somewhat unreal, particularly in regard to lack of contact with the opposite sex and this unnatural situation frequently leads to a degree of sexual maladjustment in the inmates. The numbers in these institutions are very large and are comprised of cases, which limits, if it does not render impossible, individual attention being given to boys who may be in need of special treatment. Discipline is rigid and severe, approaching at times pure regimentation, with the result that the inmates are denied the opportunity of developing friendly and spontaneous characters; their impulses become suffocated, and when they are suddenly liberated their reactions are often violent and irresponsible'. O'Connor, J (1963) 'The Juvenile Offender', *Studies*, lii, 1, 80-81.

¹³¹ The rationale by *Tuairim* for selecting the Department of Health was: 'the Department of Health already runs a number of residential schools and Homes; it supervises boarding out of deprived children and places children in certified schools and Homes under Section 55 of the Health Act, 1953; it has a basis on which local services could be built and local health authorities employ public health nurses; the provision of substitute homes for children deprived of their natural home and the ensuring of their mental and physical health is primarily the province of a health authority; the Department of Health has considerable experience of organising and administering new services in recent years.'

¹³² London Branch Study Group (1966) *Some of Our Children: A Report on the Residential care of the Deprived Child in Ireland*. *Tuairim* Pamphlet No 13, p 33.

¹³³ The 'jibe' referred to was in relation to the absence of training courses for welfare workers and child care workers in Ireland which, it was argued that 'One of the results of this is a complete lack of understanding of the problems and needs of the deprived children. Provided he is physically healthy, well clothed, obedient and can speak Irish, officialdom is satisfied'. pp 14-15.

without splitting up the family. The low grants given to these institutions compare very unfavourably with those given in most, if not all other European countries and pressure for increased grants in recent years has come mainly from the conductors of the boys' schools as the majority of the girls schools are conducted by communities who engage in other activities the gains from which offset the losses on industrial schools. Virtually all the convent schools are will-nigh excellent, the glaring defect in the senior boys' schools being the lack of the female hand in the domestic service. In the whole system the most serious defect is the absence of official after-care machinery. Secondly the operation of the domestic services in the senior boys schools should be undertaken by nuns or female lay staff.

4.87 One of inspectors of boarded out children¹³⁴ in the Department of Health, Miss Clandillon¹³⁵, in her review of the Tuairim report, although claiming that the report reflected some 'muddled and out-moded thinking' was broadly positive stating that:

there are some sound recommendations in the Report. Everyone concerned with the welfare of deprived children would agree with the view that a new Children Act should supersede the present fragmented legislation and widen its scope.¹³⁶

4.88 *The Commission of Inquiry on Mental Illness*, published the same year as the *Tuairim* Report, recommended that 'that the whole problem of industrial schools should be examined' and regarded the 'term industrial as applied to these schools, as obsolete and objectionable'.¹³⁷ In the same year a series of articles appeared in the *Irish Times*, written by Michael Viney. He argued in the articles:

(a) That most juvenile offences in the Republic are rooted in social conditions: urban poverty and overcrowding, deprivation and inadequate family welfare; (b) that the children's courts have lost faith in an out-dated and money-starved system of institutional care; (c) that probation, as an alternative has been emasculated by lack of training, lack of staff and overwork; (d) that in the piecemeal partnership between two Government departments and a variety of religious orders and agencies, proper liaison and aftercare is virtually unknown; (e) That vital psychological and psychiatric aspects of the juvenile problem are getting only token attention.¹³⁸

¹³⁴ These posts arose from concern with the system of private fosterage or 'baby farming' for children, which resulted in the passing of the Infant Life Protection Act 1872, which allowed the officers of the Local Government to inspect homes that were fostering or 'nursing' more than one child. Children in private fosterage, or 'Nurse Children', were placed in foster homes by their own relatives – often-unmarried mothers – or by philanthropic societies or other persons who paid for them. They were not supported out of the poor rate or any public fund. In March 1902, The Lord Commissioners of His Majesty's Treasury sanctioned the employment of a lady as an inspector, and the appointment of a second lady inspector in November 1902. The duties of these inspectors were principally connected with the boarding-out and hiring out of pauper children; but they also reported upon the administration of the Infant Life Protection Act 1897. The two inspectors appointed, Mrs Dickie and Miss Kenny-Fitzgerald, were the first women to hold senior posts in the civil service in Ireland. Daly, ME (1997) *The Buffer State. The Historical Roots of the Department of the Environment*. Dublin: Institute of Public Administration, p 34. The post of Inspector of Boarded-out Children was 'confined to women because of their superior knowledge of matters relating to the health and up bringing of children'. NA S9880.

¹³⁵ Ms Fidelma Clandillon was appointed to the newly formed Department of Health as an Inspector of boarded-out children in 1948, covering all counties south of a line from Dublin to Galway. From the early 1970s her post was reorganised as Social Work Advisor in Child Care, she retired in 1980. Following the retirement of Miss Murray in 1970, she had responsibility for boarded-out children in Ireland. For further details, see McCabe, A (2003) *The Inspection of Boarded Out Children in Ireland – The Legacy of Fidelma Clandillon*. *Irish Social Worker*, 21, 1-2, pp 22-6.

¹³⁶ Department of Health and Children. RM/INA/0/489385.

¹³⁷ Commission of Inquiry on Mental Illness (1966) *Report*. Dublin: Stationery Office, p 74.

¹³⁸ Viney, M (1966) 'The Young Offenders'. *Irish Times*, 25th April. Viney wrote eight articles on aspects of the juvenile justice system in 1966. They were 'The Trouble with Larry' (27th April); 'Patterns of Crime' (28th April); 'The Caution Man' (29th April); 'What Price Probation' (2nd May); 'The Hidden Motives' (3rd May); 'The Dismal World of Daingean' (4th May); 'Children at Risk' (May 5th) and 'The Young Offenders' (6th May).

4.89 On 11th November 1966, Dr CE Lysaght submitted a report on Industrial Schools and Reformatories to the Minister for Education, Mr Donagh O'Malley. Commissioned by Mr George Colley, the previous Minister for Education. Dr Lysaght outlined that:

his personal instruction by word of mouth was not to confine myself to the purely medical and physical condition of the children but to go into and report on their environmental conditions which have a direct or indirect effect on their well-being and health, physical and mental.

4.90 In his general report, he outlined that:

the most striking feature is of course the diminishing numbers in the schools over recent years which has resulted in the closing of many schools already. Manifestly this downward trend will result in the closure of more. An unfortunate result of this downward trend is the creation of uncertainty as to the future of the schools and consequent hesitation on the part of religious orders to undertake works of improvements involving any notable expenditure.

4.91 Despite questioning the managers as to the reasons underlying the decline in numbers, Dr Lysaght claimed that he could obtain no conclusive result and that it seemed the result of a number of factors. He went on to state:

Legal adoption has been given as a cause but all agreed the numbers involved could not account for the marked fall. Another reason given and also accepted as welcome was increased earnings and consequent increased standard of living among the poorer classes. Emigration of whole families of the poorer class to Great Britain was also considered a factor. The boarding out of children by Local Authorities was also mentioned. Nobody appears in a position to indicate its extent in their area but many considered its worth had been greatly exaggerated and were critical as regards boarded out children they had received in their schools....In many schools, Managers and nuns were cynical as regards Local Authorities and said their officials would prefer to send children to any sort of home rather than to the industrial schools and in fact had taken children from industrial schools without assigning any reason and placed them in homes. ...There were also statements made that some District Judges, no matter how bad the circumstances, would not commit children to these schools and they had a wrong conception of them. On inquiry I found that in only very few instances had District Judges visited these schools. It would seem therefore their knowledge of them was obtained second-hand and is hearsay which they would not themselves accept in Court as evidence.

4.92 The other striking feature observed by Dr Lysaght was:

the marked difference between the schools for girls operated by nuns and those for senior boys under the care of brothers. The former are without exception much superior in every way and beyond explanation by way of smaller numbers. The vast majority of girls' schools are most satisfactory and in many cases can compare favourably in regard to care and comfort with not only the ordinary run of boarding schools for girls but with the most exclusive ones. The provision in these schools reflects great credit on the religious orders concerned. The same however cannot be said of the Senior Boys' Schools which are in the main rough and ready. The absence of a woman's hand was notable in many of them.

4.93 An issue raised by the Managers with Lysaght was that of keeping children for an extra year, particularly in light of proposals to raise the school leaving age. In particular he stated that the Managers favoured the proposal 'especially in the case of illegitimate children with nobody to care for them, that they were too young to send out into the world at 16'. He went to say that he favoured such an extension and that 'the army would seem a most suitable starting career for

boys without relatives or friends. I understand the army will not take recruits until 18 years; this training and way of life is not open to boys until they wait two years after leaving school, by which time the world outside has made or broken them.’ He also observed that:

a certain number of coloured children were seen in several schools. Their future especially in the case of girls presents a problem difficult of any satisfactory solution. Their prospects of marriage in this country are practically nil and their future happiness and welfare can only be assured in a country with a fair multi-racial population, since they are not well received by either ‘black or white’. The result is that these girls on leaving the schools mostly go to large city centres in Great Britain. They are at a disadvantage also in relation to adoption and, as they grow up, in regard to ‘god-parents’ and being brought on holidays. It was quite apparent that the nuns give special attention to these unfortunate children, who are frequently found hot-tempered and difficult to control. The coloured boys do not present quite the same problem. It would seem that they also got special attention and that they were popular with the other boys.

4.94 In addition to the report by Lysaght, the Department of Education received a detailed memo from the Association of Resident Managers of Reformatory and Industrial Schools on 24th January 1967. In the memo the Managers highlighted the decline in the number of children and the closure of a number of schools in the previous year. In addition, they highlighted a number of further issues, including the unsatisfactory operation of the School Attendance Act, the lack of adequate funding for aftercare and the need for additional psychologists and psychiatrists. A further issue raised was the number of ‘pupils who are retarded and should not be in these schools’.¹³⁹ The memo argued that such children place ‘a heavy burden on managers and staffs and then there is the added difficulty of finding suitable employment for those pupils at sixteen years of age. There should be a Special School for such pupils for they are a handicap to the other children and being unable to keep up with the class, their education tends to become worse.’

4.95 However, the core issue highlighted was the alleged inadequacy of the capitation grant and they concluded by stating:

all the Industrial Schools are heavily in debt and that without immediate and substantial aid they will not be able to continue to do the work for which they were established. The question of closing the schools is under serious consideration by the managers because they are unhappy about the system. The Court approach is obsolete. The managers are painfully aware of the defects that exist due to the system. They would be more than willing to remove these defects but are not in a position to do so owing to the inadequate maintenance grant. The managers know the claim the schools have on just judgment and just action. They trust that their labours will procure for them the support they desire in the work for the more helpless of the Irish people. They calculate that a maintenance grant of £8 per week is needed now, so that outstanding debts may be liquidated and the schools brought up to-date in every way. We are chiefly concerned that further development should preserve which is valuable in existing practice and that any administrative change should above all be workable.

4.96 The Managers then outlined 16 specific recommendations. They were:

1. As the term ‘Industrial School’ no longer applies to some of our institutions, since we do not admit children who infringe socially, a more appropriate name should be applied to these schools.

¹³⁹ The memo was signed by Fr William McGonagle, OMI (Chairman and Manager of the Daingean Reformatory) and Br FA O’Reilly (Hon Secretary and Manager of the Artane Industrial School) on behalf of the Association.

2. Children from broken homes, or whose parents are ill, should not have to appear before the Children's Court to be committed. If children are not committed it is impossible to obtain maintenance from County Councils.
3. As some of our children are backward when admitted classes in these schools should be small – 20 children per teacher so that individual attention could be given.
4. Supervisors and domestic staff should be paid by the health authority. Training courses for Supervisors are necessary. Personal salary for all lay members of the staff.
5. All public criticisms to be investigated and corrected by the Department.
6. Would suggest that Letterfrack should be under the jurisdiction of the Department of Justice and not under Education as at present.
7. When children are being transferred from an Industrial School to a Reformatory School at the age of 15 years or thereabouts, we think they should get an extension of time because it is impossible to do anything in 12 months or sometimes less.
8. That the rule regarding the length of time children may be away on holidays be relaxed and that the manager of each school be allowed to determine the number of days the children may remain out.
9. The discharge of committed children be given serious consideration, because there are many instances where children were discharged and the home conditions were very bad.
10. Children should be maintained until they reach at least 18 years of age or until they can do their Leaving Cert. examination if they so wish, or children learning trades be maintained until they have their time served.
11. Maintenance grant to be based on an average number of pupils.
12. Method of paying grants be radically changed. Would suggest that grants be paid every three months by Co. Councils and not every six months as at present.
13. Clarification of Health Act in regard to Industrial Schools.
14. Remission of rates on Industrial Schools.
15. Grants towards buildings and repairs should be made available.
16. That a statement on Government Policy towards Industrial Schools would be welcomed by Resident managers before next meeting at Easter.

Probation service for young people

4.97 By the early 1960s, the number of full-time officers in Dublin was five with a caseload of less than 250. As a consequence of the lack of work, one probation officer was seconded to the adoption board, a practice that continued over the years. In 1964 it was agreed to establish the post of Probation Administration Officer and to employ six full-time staff, two male and two female to be attached to the Children's Court and one male and one female to the adult Custody Court at Chancery Street, with each officer having a caseload of 65 persons at any one time. Officers were expected to be 'well-educated, have satisfactory experience in social work and otherwise possess the requisite knowledge and ability and be suitable to discharge the duties of the post of probation officer' and a qualification in social science was desirable, but not essential. As late as 1968, no full-time probation officers were employed outside of Dublin. In January 1969 a review of the Probation and After-care Service was conducted by Mr Mac Conchradha¹⁴⁰, who was also a

¹⁴⁰ In an interview given on 30th April 2002, Mr Mac Conchradha stated that prior to moving to the Department of Justice in the early 1960s, he had worked in the Department of Education for 15 years and claimed that his appointment to the *Committee of Enquiry into Reformatory and Industrial Schools' Systems* was not welcomed in the Department of Education as 'I was a poacher turned gamekeeper. I knew the way they operated. I knew what a backwater the reformatory and industrial school sector was...They [Education] didn't want it. By and large the people placed in that section wouldn't have been placed anywhere else'. Keating, A (2002) *Secrets and Lies: An Exploration of the Role of Identity, Culture and Communication in the Policy Process Relating to the provision of Protection and Care for Vulnerable Children in the Irish Free State and Republic 1923-1974*. Unpublished PhD Thesis, School of Communications, Dublin City University

member of the Committee of Enquiry into Reformatory and Industrial Schools' Systems, being an appointee of the Minister for Justice.¹⁴¹ Mr Mac Conchradha, in his report dated 14th July 1969, concluded: 'For all practical purposes, probation operates only in the Juvenile Court in the Dublin Metropolitan District. Five officers – two men and three women are attached to this court at Dublin Castle. They had approximately 600 cases during 1968.'¹⁴² He noted that one of the reasons for the absence of the widespread use of probation was:

Strange as it may appear, District Justices generally (and most likely the Judges also) do not seem to have adverted to the potentialities of probation. This was both my own impression and the opinion expressed of their colleagues by the few justices that are 'probation minded'. It was often clear that invoking probation scarcely crossed their minds, although the virtual non-existence of a service was accountable to some extent for this. By and large, Justices were committed to the very conservative view, that probation, while not so specifically so limited in law, has in practice been considered valid for the very early offender amenable to supervision and ordinarily is indicated for juveniles only.¹⁴³

4.98 Mr Mac Conchradha concluded that the 'Juvenile Court in Dublin Castle requires attention urgently.' Noting that approximately 300 juveniles were placed on probation each year, the relatively low number in part being explained by the 'Justice's feeling that the existing probation staff could not cope with any more', but also by his view that 'what is certain is that there has been no liberal or experimental use of probation. Consequently it cannot be excluded that there would not be greater recourse to probation if more officers were available.'¹⁴⁴ Mr Mac Conchradha also provided background information of the emergence of pre-trial and pre-decision reports in relation to juveniles and the implementation of this practice prior to the publication of the *Committee of Enquiry into Reformatory and Industrial Schools' Systems*. He outlined:

For some years past, there has been an international trend for courts to have a social enquiry made about offenders, before passing sentence. In Britain, this has been the practice with young persons and with all first committals to prisons. The practice commended itself to Justice Kennedy. I surmise that her views crystallised from the sessions of the Committee for Industrial and Reformatory Schools – of which she is the Chairman and I am the Minister's nominee. The Committee discussed at length this matter of a court's decision, in cases involving the prosecution of young people or their committal to care, being informed by their history and environment. The Committee's favouring of this idea was supported by what they saw in Britain and throughout the Continent. Justice Kennedy introduced the procedure into the Juvenile Court in June 1968 and, in the case of every juvenile coming for the first time before the Court (1) on charge or (2) as liable to committal as being in need of care, remanded the case to enable the probation officers to carry out a pre-trial social enquiry. There was simply not the staff to undertake this additional work. For ten months, the existing five officers have virtually done nothing else but prepare pre-trial reports. Contacts with and supervision of their probationers became irregular, were mostly confined to urgent matters or to instances where there was an untoward development and were superficial apart from this. Recently, while Justice Kennedy was ill, some of her colleagues, while supplying in the Juvenile Court, adverted to the practice and advised her that it was objectionable to have these reports compiled in advance of the hearing and that they should properly be prepared only when the court had reached a conclusion on the issue before it but in advance of deciding the outcome.

¹⁴¹ The terms of reference were (1) to investigate the probation and after-care service at first hand, (2) to report on the improvements that might be feasible and necessary, (3) to implement those recommendations that might be approved and (4) for the duration of the assignment to carry out the duties of the probation administration officer. Mac Conchradha, R (1969) *Report on an Assignment to Investigate the probation and After-Care Service and to submit recommendations for Consideration*. (Edited and Furnished to the Department of Finance). p 1.

¹⁴² Ibid. p 7.

¹⁴³ Ibid. p 7.

¹⁴⁴ Ibid. p 8.

Justice Kennedy discontinued pre-trial reports in April 1969. She intended to introduce pre-decision reports there and then but, as the supervision of probationers had previously been so adversely affected in the existing staffing situation, she deferred the matter. The practice of having a pre-decision report prepared for the information of the court is fundamentally sound and is supported by what has transpired abroad. It is most likely that the Committee on Industrial and Reformatory Schools will recommend social inquiry, psychological assessment and medical psychiatric investigation, as a pre-requisite to the committal of young persons in need of care or for delinquency. This is now standard international practice and is something which Justice Kennedy will want to do, apart from all that, it would be a desirable advance and provision should be made for it.¹⁴⁵

4.99 The report recommended that the service be expanded, a new central headquarters provided in Dublin and the recruitment of a substantial number of additional probation officers, prison welfare officers and clerical staff.

4.100 The long-standing Joint Committee of Women's Societies and Social Workers¹⁴⁶ also published a series of recommendations on the future of child welfare in Ireland in 1970. Summarised in a letter to the editor in the *Irish Times*, the Committee argued for:

- The urgent need for a new Children's Act.
- The urgent need for co-ordination of departments dealing with children at State level, and at county level through a children's committee.
- The need for trained social workers as children's officers, probation officers, school attendance officers, career guidance advisors and youth workers.
- A sincere effort is needed to keep the child in his own family and only when necessary a substitute family. Emergency care in an institution should be brief. We need to reduce the emotional disturbance caused by our present system.
- To prevent institutionalism fosterage should be encouraged by improving conditions, and allowing a more realistic maintenance (at present this varies from 12s 6d to £3 per week, whereas institutional care, which causes most emotional disturbance, costs £8 5s. per week per child).
- Scattered family group homes such as those established in Kilkenny, are better substitutes than institutions.

¹⁴⁵ Ibid. p 9.

¹⁴⁶ The Joint Committee was established in 1937 with the objectives of working 'together in matters of mutual interest affecting women, young persons and children and to study social legislation and recommend necessary reforms'. It comprised of approximately 17 organisations including the Institute of Almoners, the Irish Countrywomen's Association, the Mothers Union and the Soroptimists. The Joint Committee campaigned on a range of issues and had a particular interest in children in care. Only a few short years after their establishment, the Joint Committee published a detailed '*Memorandum on Children in Institutions, Boarded out and Nurse Children.*' In the memorandum they argued inter alia that foster care had many advantages over institutional care for children; that all institutions for children, both public and private, should be subject to regular inspection; that legal adoption was urgently required; that foster care allowances were inadequate and that children's officers be appointed to inspect foster children. In relation to residential care, the memorandum recommended: 'that all orphanages, institutions and industrial schools should be subject to frequent inspections.' The issue of inspection was a continuous demand from the Committee over the decades. For example, in 1963, the Committee wrote to the Minister for Education asking him to consider the 'setting up of a visiting committee such as those operating in other institutions'. In 1967 the Committee sent a further memorandum to the then Minister for Education, Donagh O'Malley arguing that 'over the years the Joint Committee has insisted that children should seldom be removed from a family and placed in an institution and that instead, every assistance should be given to maintain the family intact either by financial help or long term supervision by qualified social workers' Joint Committee of Women's Societies and Social Workers (1967) *Children in Care or Children's Institutions*. Dublin. For further details on the work of the Committee, see Skehill, C (1999) *The Nature of Social Work in Ireland*. Lewiston: The Edwin Mellon Press and Skehill, C (2004) *History of the Present of Child Protection and Welfare Social Work in Ireland*. Lewiston: The Edwin Mellon Press.

- Where institutional care is inevitable, regulations should govern qualifications and number of staff, and special efforts should be made to enable these children maintain contact with their families.
- A visiting committee should follow the progress of each child through school reports and school medical reports. Backwardness should be detected early and dealt with in special cases. All successful pupils should be given the opportunity of vocational or secondary education. At present the proportion is unreal.
- Above all, the Joint Committee deplores the present practice of transferring deprived children from institution to institution, even at the age for employment.
- After-care for these children is seriously neglected. Social workers are essential for career guidance and for placing the children in the normal community, in hostels, or preferably, families.¹⁴⁷

4.101 The Department of Health were also giving active consideration to the future of residential child welfare in Ireland, in particular their responsibilities under the Children Acts and sections 55 and 56 of the Health Act 1953.¹⁴⁸ On 23rd September 1968, Mr O'Rourke in the Department of Health wrote a memo addressed to Miss Murray¹⁴⁹ and Miss Clandillon, the Lady Inspectors of Boarded-out Children. The memo argued that the Department of Health:

should, at this stage, review the services, dealt with in this division, which are provided for children who come within the scope of the Children Acts and the relevant provisions of the 1953 Act. What I have in mind is that we should consider the adequacy and inadequacies of the services provided for boarded-out children, those placed in approved schools and those who are at nurse; that we should aim at suggesting improvements which might be made in the existing services or innovations which are required to meet needs that at present are unfulfilled; consider the type of service which will be developing during the next decade or so and which will have to be organised within the framework of the regional service envisaged in the White Paper; consider, in particular, in the context of those regional arrangements, the type of case work which will need to be done at local level and the appropriate nature of the regional and departmental supervision which such services will need and, finally, study the services for which we, in this Department, have responsibility in the context of the total services required by the deprived child in general.

4.102 His memo went on to note that having reviewed the available statistical data on children in care, there was a:

constant and continuing decline in the number of children boarded-out; the consistent growth in those being adopted and a continuing fall in the number of children at nurse. The disquieting feature which it also shows is the increase in the number of children maintained by health authorities in approved schools despite the fact that policy, to date, has been to encourage boarding out or adoption to the greatest possible extent.

4.103 In particular he wished the inspectors to

critically examine the service as it exists at present and comment, not alone on its advantages, but on the deficiencies existing in it.

¹⁴⁷ *Irish Times*, 24th June 1970.

¹⁴⁸ All correspondence between O'Rourke, Clandillon and Murray is contained in the Clandillon papers, file no RM/INA/0/489385 held by the Department of Health and Children.

¹⁴⁹ Mary E Murray was appointed in 1946 as Inspector of Boarded out children and retired in 1970. She had responsibility for such children in Dublin and all the counties north of a line between Dublin and Galway. See McCabe, A (2000) *The Inspection of Boarded-out Children 1897-2000 and its Impact on Child Care Standards*. A Dissertation submitted to the National University of Ireland, Dublin in part fulfilment of the degree of Master of Social Science (Social Work).

4.104 Mr O'Rourke observed that it appeared increasingly difficult to recruit foster parents and this needed to be addressed and that the supervision of children, both 'at nurse' and 'boarded-out' required attention. In relation to children maintained by health authorities in Industrial Schools, he noted that such children were not subject to any inspection by the Department of Health and consideration of how best to address this issue was required. Finally, Mr O'Rourke noted that the existing range of services was fragmented, and as a consequence 'three departments all have partial responsibility for the provision of limited services for children who, for reasons varying from poverty to delinquency, come under central government control' and this state of affairs 'is not a satisfactory one'. While acknowledging that the Commission of Enquiry into Reformatory and Industrial Schools, a Commission, which in his view, 'shows an uninhibited tendency to exceed its restricted terms of reference' might deal with this issue in their report, Mr O'Rourke argued:

what may be needed most of all is a broadly based commission with very wide terms of reference which would enable it to inquire into the services available for all classes of deprived children and to make recommendations about the manner in which they would be provided in the future.

4.105 Both Miss Murray and Miss Clandillon provided detailed written responses to the memo and these provide a snapshot of thinking in the Department of Health on the cusp of substantial changes in child welfare in Ireland. Responding to the query as to why the numbers of boarded-out children had declined over the previous decade, Miss Murray attributed it to introduction of legal adoption, the continuing emigration of unmarried mothers, and most importantly, the:

lack of interest in, or, in some cases, the positive antagonism to the scheme on the part of many health authorities and/or their officials. In Counties Louth and Sligo for example the boarding out scheme is almost non-existent while in some other areas it is barely tolerated. Boarding-out is the Cinderella of the local authority services and there is little informed opinion on the subject at a local level. The emphasis now is on legal adoption which was welcomed by the local authorities for the wrong reasons, viz. as a means of avoiding financial and supervisory responsibility for illegitimate children, and health authority officials have been known to put pressure on unmarried mothers to allow their children to be placed for adoption, even to the extent of refusing any alternative help.¹⁵⁰

4.106 Murray argues that the advantages of boarded-out over other means of dealing with deprived children were well known and that the:

deficiencies in the boarding-out scheme as it operates in Ireland may be traced to a general lack of interest which manifests itself in the absence of a uniform system of supervision, the appointment of unsuitable officers, and as mentioned above, an unsympathetic attitude on the part of many health authorities. Failures involving the removal of the children are surprisingly rare in view of the haphazard administration, and in my area occur chiefly in Counties Dublin and Sligo...Boarding breaks down occasionally in Dublin due to (a) the background and heredity of some of the children which renders them more difficult to control than rural children, (b) careless and haphazard selection of foster homes and foster parents, and (c) the absence of preventative and remedial measures at a sufficiently early stage. Failures in Sligo are due, inter alia, to (a) the late age at which children are placed in foster homes (usually from Nazareth House, Sligo,) which militates against their settling down in normal surroundings, and (b) the complete lack of expertise in the selection of foster homes and foster parents.

4.107 However, despite outlining these deficiencies and recognising that health authorities did not collect statistics on the after-care of boarded-out children, Murray nonetheless noted:

¹⁵⁰ Reply from Ms Murray and Ms Clandillon to Minute from Mr O'Rourke to Miss Murray and Miss Clandillon 23/10/68 re: review of child care services.

While the occasional failure in boarding-out is well publicised – usually by interested parties – the outstanding success of the scheme as a whole is rarely alluded to. Former boarded-out children are represented in all walks of life. They are to be found in farming and business, as members of Religious Orders of Brothers, among nuns, teachers, civil servants, and nurses, in the army and naval service, in the hotel trade and in all skilled occupations. At the moment a number of boarded-out children are attending Irish Universities, and at least four are studying for the priesthood. Foster parents have reason to be proud of the work they have accomplished down the years, frequently without significant assistance from the local authority.

4.108 Miss Clandillon was equally positive about the after-care employment of boarded-out children in her area, highlighting that ‘among the girls at least ten became nuns, one of whom is now on the missions in Zambia and three are teaching in England.’ Like Miss Murray, Clandillon was positive about the use of boarding-out and suggested that breakdowns in placement were comparatively rare. She observed:

the vast majority are illegitimate children who are born in mother-and-baby Homes and who are boarded-out at an early age with a view to being reared as members of the fostering family and of residing permanently with the foster parents. Removals are comparatively rare, the chief reasons being the death of a foster mother in the case of a young child.

4.109 However, she did note:

the need for close liaison between Children’s Officers and the mother-and-baby homes...the mother’s background must be studied and also that of the putative father, although the latter is often difficult because of the inaccuracy or lack of information available. Time must be allowed to ‘match’ a child to a family – placing any child in any home is worse than useless and may lead to very poor results in which the child is always the sufferer.

4.110 Commenting on the issue of standards in foster homes, Murray claimed that:

It is true that of recent years foster homes of an acceptable standard are in somewhat short supply but they are not as scarce as we are led to believe. The bias at local level against boarding-out may result in a prospective home being turned down for frivolous reasons, or a prospective foster parent being disqualified for not measuring up to the bizarre or unrealistic standard set by some local official.

4.111 Miss Clandillon argued that one of reasons for the difficulties observed in recruiting foster parents was:

The maintenance allowances paid to foster parents by health authorities vary enormously throughout the country. At present the highest rates are paid by Donegal: £104 per year, and lowest by Roscommon: £36 per year for the older children...A review of the reasons for the very great variations between health authority rates should be undertaken, the old argument usually given in defence of low rates was that the health authority did not wish to attract the wrong type of foster parent. This danger could be overcome only if each health authority has trained social workers who can evaluate the attitudes of prospective foster parents and their reasons for wanting to rear a child. It is time that foster parents were considered more as members of a team working for the deprived child in a semi-professional capacity and that the allowance reflected this recognition of their very responsible role. The great gap between the £214 per annum paid for children removed to schools and present rates paid to foster parents should be closed.

4.112 In relation to the increase in the number of children in approved schools and institutions, Murray argued that local authorities favoured this method of dealing with deprived children because:

the children are not subject to inspection either at local or Departmental level, no reports on their progress are called for, and no records or case histories have to be compiled in relation to them; frequently not even a register is kept despite continuous pressure by inspectors. Once admitted to a school, therefore, the Health Authority has no further trouble with a child apart from an occasional letter from the Department inquiring why he has not been boarded-out. The easy answer to this is that a suitable foster home is not available and there the matter rests.

4.113 Murray elaborated on this issue noting:

Article 4 of the Boarding-Out of Children Regulations, 1954 lays down that a health authority shall not send a child to a school approved by the Minister unless such children cannot be suitably or adequately assisted in being boarded out. Health authorities were reminded of this in paragraph 2 of circular 5/64 and again in paragraph 5 of circular 23/70. It is, nonetheless, admitted that there are many children that health authorities cannot place in foster homes or for adoption, e.g. lack of parent's consent, or some physical or mental deficiency. As you know, in spite of constant reminders to health authorities and representations by this Department's Inspectors in respect of individual children, the number of children maintained by health authorities in institutions continues to grow. In 1968 and 1969 they were 648 and 715 respectively. Careful examination of the records for 1967 showed that the vast majority of these cases were children of broken homes or of parents suffering from mental or physical disabilities who refused consent to boarding out. Apart from the Industrial Schools (to which children are committed for minor offences as well as because they are in need of care and maintenance and of the use of which for Health Act children, the Department's Inspectors have never been in favour) there are only nine institutions approved by the Minister for Health for the purposes of section 55. Three of these are for Protestant children only; one for children under two years; two for boys and three for girls. One of these, the Convent of Mercy, Kells, has only 6 Health Act children, placed there by counties Meath and Westmeath; the Grange Convent until this year accepted girls over 11 years and has room for 25. This year they have added a new building designed to accommodate only 12 children from infancy which will be run on group home lines.

4.114 For Clandillon, one of the reasons for the increase in the number of children admitted to industrial schools and other institutions was the:

result of a poor staffing situation in particular counties. Usually where the County Medical Officer and a number of Public Health Nurses are charged with the care of deprived children and office staff are also involved in the maintenance of registers and casepapers there is little or no liaison with the mother-and-baby homes. Moreover, where a number of different people are involved in this work as a part of their main duties in another field, the results are usually poor and the service deteriorates because of the fragmentation of the staffing situation – what is everyone's business becomes nobody's business, e.g. Laois, Offaly and recently Kildare and Carlow.¹⁵¹

4.115 In contrast, counties that employed a children's officer maintained contact with the mother and baby homes and as a consequence:

¹⁵¹ Clandillon provided her report on Offaly as an example. The report showed that the vast majority were transferred from the county home or mother and baby homes such as the Manor House Castlepollard. Clandillon described these returns as 'appalling' stating 'the 'reasons for admission' reveal a complete indifference to the fate of deprived children. Obviously no effort whatsoever is made to find homes or adoptive parents for them'. She noted that in Counties Laois and Offaly that there were 146 children in institutions and the 'vast majority of whom appear to be sent automatically' and that 'the present state of affairs should not be allowed to continue'.

The mothers maintained in the homes thus have an opportunity to discuss with the Children's officer the alternatives open to them in making arrangements for their baby's future. If the mothers wish to have their babies adopted they may be placed in homes in their county of origin (if the mothers do not object) or outside with the co-operation of the Children's Officer for the outside area, or again, the mothers may decide they would prefer the adoption to be arranged directly by the Sisters in the Home. If a mother opts for boarding-out the Children's Officer can arrange this in her own county. If, on the other hand, a mother wishes her child to be reared in an institution, possibly in the hope of visiting the child from time to time, the decision must be respected, though the disadvantages of such an upbringing will naturally be pointed out to the mother. I have pointed out in my reports the necessity for close liaison between the Children's Officers and the mother-and-baby homes and the dangers for the future welfare of the children where it is lacking. In one county, Kilkenny, a few years ago I found there were eleven cases of mothers leaving the Homes with their infants, ostensibly to return to their own parents, and in none of these instances had any inquiries been made as to the final destination of these infants. Such babies may not be brought home at all but may be committed quite unnecessarily to industrial schools or placed at nurse in most unsuitable and unregistered foster homes. The seriousness of this situation is quite evident. Obviously if the case history shows that the girl's parents were aware of her confinement no harm can be done by inquiring whether she and her child did, in fact, return home. If the parents were not aware of the case, inquiry is more difficult but can still be made if sufficient tact is used. This must be done in a number of cases where a mother's whereabouts are unknown and her consent to adoption or boarding-out is required.

4.116 In terms of the organisation of child welfare services, Clandillon argued that:

the work for deprived children should be removed from the public health offices (County Medical officers and Public Health Nurses) where this arrangement exists in my area, e.g. Laois/ Offaly where, as I have pointed out earlier, hardly any children are boarded-out yet over 140 are in schools; Wicklow, where the C.M.C. was brought into the work very recently; Carlow / Kildare where, with the resignation of the Children's Officer the work deteriorated rapidly in a little over a year; Waterford, Kilkenny, Clare.

4.117 Children's officers should in her view be 'professionally qualified social workers i.e. those with post-graduate qualifications, should be appointed to children's officer posts, with a view to the eventual setting up of a social work department in each health authority area'. If this was to happen, such Departments, she argued:

should cater for a much wider section of the community than children in need of social work help. They should include families at risk of breakdown for various reasons, one parent families and unmarried mothers, Child Guidance services, social care of the physically handicapped, mentally ill and mentally subnormal and social services for the aged. They should also cater for those who are incapable of providing for themselves or their dependents. A 'homemaker' service is of vital importance and also the supervision of day nurseries which should be obliged to register with the social service department. Housing welfare services should also be included as many of the problems of family breakdown are associated with inadequate living accommodation. Adoption work should be transferred to the new Department and should be carried out only by staff having post-graduate training. It follows that social workers at present employed in various fields of social work would belong to the social services department: Children's Officers, medical and psychiatric social workers, probation officers, housing welfare officers.

4.118 What was required, Murray argued, was:

making children maintained in institutions under section 55 of the Health Act subject to inspection and reports both at local and departmental level, and by requiring health authorities to keep personal files and case histories of these children in the same manner as for boarded-out children. The Department's inspectors would then be in a position to make recommendations regarding the suitability or eligibility of the children for fosterage. At present the inspectors have instructions not to visit children in approved schools and institutions; and it was only recently, and after years of pressure by the inspectors, that the Department agreed to instruct health authorities to submit half-yearly returns of such children.

4.119 Clandillon made similar observations when noting that:

Although children are admitted to approved institutions under the Health Act and the Department and health authorities contribute to their maintenance there is no provision under the Act for their inspection by officers of the health authorities or of the Department.¹⁵² A Department circular issued to health authorities 2nd July 1954 (no. 37/54) drew attention to the lack of provision for inspection¹⁵³: Unfortunately this was not followed up and at a later date it was decided in the Department that as the schools were under the Department of Education and inspected by one of their officers there was no need for inspection by the Department of Health. Thus it came about that nobody visited the Health Act children to ascertain the reason for their admission in the first place, their level of mental and physical development and their suitability or otherwise for adoption or boarding-out, unless a mother had indicated that she wished her child to be reared in an institution. These children might be described during these years as the 'forgotten ones'.

4.120 Clandillon also highlighted that returns of such children were not requested until 1965 and these returns 'revealed that a number of children had been admitted to Industrial Schools and other institutions such as St Clare's Stamullen, directly from a mother and baby home without notice being given to the Department. Most of these children were moved on to senior Industrial Schools. By then, little or no information was available as to their backgrounds.' Clandillon went on to stress the need for a system of inspection in the homes in order

to ascertain the reason for admission if not already clear, to follow up mothers to obtain their consent to the boarding-out or adoption of suitable children, to arrange for mental assessment in some cases and follow up for admission to Special Schools where recommended, and to check that physical defects are being treated, including those requiring surgery. The longer children live in institutions the less chance they have of integration into families and the dimmer become their hopes of adoption.

4.121 More generally, Murray signalled that a new system of child welfare was required and a broad-based commission of inquiry as suggested by O'Rourke were required and that all services for

¹⁵² Section 47(3) of the Public Assistance Act 1939 allowed for (a) an inspector appointed by the Minister may at any time visit and inspect such school and make such examination of the condition and management of such school and the state and treatment of the children therein as he shall consider requisite; (b) whenever an inspector visits and inspects such school under the next preceding paragraph of this sub-section, he shall report to the Minister the result of such visit and inspection and of any examination made by him in the course thereof; (c) any public assistance authority which has sent a child to such school may, at any time while such child is in such school, appoint a suitable person to visit such school, and such person may visit and inspect such school accordingly; (d) the managers of such school shall permit and give facilities for every such visitation, inspection, and examination as is authorised by any of the foregoing paragraphs of this sub-section. The Health Act 1953, repealed this section. In a memo dated 18th January 1963, both Murray and Clandillon highlighted this situation and recommended that 'the right of visiting such children be restored. There is no question of inspecting the school or of examining the conditions or management, which may be considered to be a function of the Dept. of Education, but simply of visiting the children with a view to having as many as possible placed in foster homes'.

¹⁵³ 'Where a child is placed in a school in pursuance of Section 55, the arrangements between the health authorities and the Manager of the School should include provision that the child may be visited at any reasonable time by an authorised officer of the health authority or of the Minister'.

deprived children should be the responsibility of a single Department. The system of institutional care was particularly in need of reform as Murray commented:

At present children coming before a juvenile court as a result of poverty, neglect, or minor delinquency may be committed either to an Industrial School or to the care of a 'fit person'; but a 'fit person' within the meaning of the Children Act, 1908, does not include local authority. A local authority however may apply to the court to have a case dismissed and guarantee to take the child into care, but given the present climate of opinion at local level it is not surprising that apart from Dublin this solution is rarely availed of.

4.122 Murray noted the limitation of the Children Act 1908 in this regard was removed in Britain and Northern Ireland and urged a similar legislative change in Ireland; however, she also noted:

this suggestion presupposes a properly organised and staffed social service department at local level capable of making the right decisions regarding the children confined to its care and with no motive other than their best interests. There appears to be no doubt that many of the children now condemned through no fault of their own in institutional life could be placed in a family circle if the law were amended and a serious effort made to provide the with foster parents.

4.123 Clandillon offered a similar analysis arguing:

the greatest need is for a new and comprehensive Children Act which would include the children boarded-out or in schools under the Health Act, 1953, those covered by Parts I and II of the Children Acts, 1908-1957, and many more who are included under any of these. The new legislation would naturally indicate the need for one Government Department to be responsible for all the services for children in need of help, or a Children's Department as a subsidiary of one Government Department as is the case in England and Wales. There has been adverse criticism for many years of the present arrangement whereby three Departments are concerned with different facets of the needs of deprived, delinquent or neglected children.

4.124 She also found favour with the proposal for a broad-based Commission of Inquiry into Children's Services, but argued that 'there is no point in looking into the causes of deprivation – family breakdown, delinquency, illegitimacy and so on. There is little use in trying to improve the lot of a child if the unfavourable circumstances which caused the trouble are allowed to continue. This would be merely putting a thin coat of paint on rotten wood.'¹⁵⁴ Murray concluded her memo by stating:

Without anticipating the report of the Committee on Industrial Schools it may be assumed that the day of the large Industrial School is over, and that in future, institutions in this category will take the form of much smaller units capable of giving individual attention to the children and of catering for special needs. The Department of Health has a special interest in the pattern which will emerge as children in the care of local authorities who need the discipline of an institution or who are unsuitable or ineligible for fosterage must be catered for in some type of school. The recommendations of the Committee therefore will be awaited not alone with interest but with some degree of apprehension.

¹⁵⁴ She also argued 'at least 80 percent of the membership of the Commission should be professional social workers who are already working in various fields where children and their families are involved. A great deal of time and energy is wasted if members have not got first hand knowledge of the matters to be studied. There should be a professional social worker from the Family Welfare Bureau, of the Catholic Social Welfare Bureau, which provides training in family casework for social science graduates during their professional training. There should also be professional workers from the probation service and also housing welfare officers. The ISPC should be represented by one of their qualified social workers, and the Civics Institute, which does valuable work in caring for the young children of working mothers in their day nurseries or crèches, should also be represented'.

4.125 The core ideas set out in the correspondence between Clandillon, Murray and O'Rourke were eventually encapsulated in a detailed circular issued in July 1970.¹⁵⁵ This circular effectively established the template for childcare services for the next two decades, in particular the shift from residential care to foster care as the primary form of extra-familial care in Ireland and is quoted in full in Appendix 1 to this report to give a sense of the importance of the document.

4.126 The Incorporated Law Society of Ireland also contributed to the debate on the future of the Reformatory and Industrial School system in a memo to the Department of Education in April 1969. The memo recommended inter alia that separate institutions were required for children who committed an offence and those who were taken into care. It further advocated the appointment of a psychologist to each school and the development of group homes. The memo also highlighted the absence of any provision for non-Catholic children which they argued was:

completely unconstitutional and utterly unjust. If there were only one such child it is an inescapable obligation of the State to make precisely the same provision for that child as they would for a child of any other faith. It is accepted that there may be very few children of the Protestant faith or of the Jewish faith but it is believed that the statistics available are not reliable in as much as no committals are made of such children because there is no place for them to go. If there were a place for them to go undoubtedly many more cases would come to light. In any case the number of cases is quite beside the point. Under the Constitution and in justice equal provision must be made for all and this is a matter of the utmost urgency.¹⁵⁶

4.127 The memo also argued that while their recommendations would involve greater demands on the Department of Finance, that:

Fortunately there is ample room for improvement here because at the present time the fees paid by the State to institutions for the accommodation of children of this kind are completely inadequate and is the prime factor leading to the complete breakdown in the system. Indeed were it not for the self-sacrifice and dedication of the people who run these schools the whole system would have broken down completely long ago.

4.128 Thus, in the immediate years preceding the publication of the deliberations of the Committee of Enquiry into Reformatory and Industrial Schools Systems, a broad consensus had emerged on the difficulties with the existing system of child welfare, in particular the provision of substitute care. The need for new legislation was acknowledged by all and the dramatic decline in the numbers in residential care and the consequences of this for the capitation system of funding were widely realised.

The establishment of the Committee of Enquiry into Reformatory and Industrial Schools' Systems

4.129 On 5th January 1967, Mr John Hurley wrote to the Minister for Education, Mr Donagh O'Malley about the consequences of institutional life on a named young person. He also enclosed two documents, both written by Fr Kenneth McCabe, one on juvenile delinquency, which was based on McCabe's studies of various institutions in the country, the second a descriptive account of St Patrick's Training School in Belfast. The first report argued that:

Our reformatory and industrial school system as it stands, is at best, only punitive. Reformatory and industrial schools are absolutely inadequately endowed. No institution could run on £3-10-0 per boy per week (This may not be an exact sum). The result is as one would expect. The food is bad. Boys are disgracefully dressed. In Daingean when I

¹⁵⁵ Circular 23/70 15th July 1970 Children in Care of Health Authorities. Department of Health.

¹⁵⁶ *Irish Times*, 22nd April 1969. The memo was prepared by Mr John B Jermyn, Mr Patrick Noonan and Mr William A Osborne.

was there (Summer 1964) boys were not supplied with handkerchiefs. Spitting was a common habit. The boys got one shower per month (this at the height of summer). The school had only seven showers. Too much time, far too much, is spent in the school square; a large yard where the boys just hang around for hours at a time. There is no segregation of new boys from the rest. A relatively good boy is thrown in with the rest and, within a month, he is as bad as all the others.

4.130 He went on to claim that:

The system in all our reformatory and industrial schools is repressive. Given the facilities at the disposal of the schools it seems unlikely that it could be otherwise. Boys are taken out of the natural (if defective) atmosphere of their homes and placed in an institution. If the institution is to succeed it must be as like a home as is possible. It will have the added job of supplying the defects of the home which were probably the root causes of the delinquency. Perhaps the most obvious problem to begin with here is that of sex. Boys from 12 on are reaching the most difficult period of their emotional growth. Too often, even in reasonably good circumstances, the adolescent will turn to sex for an escape from the hardships of everyday life. Nowadays, even though it is largely neglected in Ireland, psychologists and educators insist on the need for positive sex instruction. The majority, if not all of, the boys in reformatory and industrial schools simply have no positive sex instruction. They are placed in a repressive system, at a time of intense emotional and sexual growth, with no instruction, and are expected to develop naturally. There is no need to go into the detail of how sex can 'go wrong' at this stage and how habits can be acquired that will cause endless unhappiness in later life. What can we say of boys in abnormal and repressive environments? We can certainly say that only a miracle could avoid an intensification of the usual sexual problems. I want to stress this point for one very important reason. In any boarding schools one must expect a certain degree of 'homosexual' activity. We must emphasize, however, that homosexual activity is not the same as homosexuality. Placed in unnatural circumstances (an all boys school) boys will inevitably engage in such activities. They must be checked but they are not serious. In an 'intenser' atmosphere, such as an industrial school, this will be magnified. Boys will look for an outlet from repression and unhappiness in physical pleasure, either alone or with others. I have evidence that this is, in fact, the case in all industrial schools. I also have definite evidence of serious incidents of homosexual practices in some schools. A circumstance that doesn't help matters here is the very unsuitable situation of most industrial schools. Daingean is situated in a place where almost all outside contact is impossible. Letterfrack and Upton are even worse. It seems completely wrong to send a Dublin boy to an environment so different from his home environment.

4.131 The following day, on 6th January 1967, the Taoiseach, Mr Lynch, wrote to Mr O'Malley noting that:

During the course of being interviewed as the 'Person in Question' on R.T.E. on Thursday (5th) evening, Very Reverend Brother M.C. Normoyle, Vicar General of the Irish Christian Brothers, mentioned the 'difficulty in getting Government policy in regard to industrial schools' and seemed to imply that this was a factor in closing some of them. This may be true but if it is not, much as I admire the Brothers, I would not wish to let the matter go without some comment. On the other hand, if there is something in what Brother Normoyle has said you might look into it.¹⁵⁷

4.132 The response from Mr O'Malley to Mr Lynch on 19th January reiterated the point made by successive Ministers for Education, that the primary problem with the schools was the inadequacy of the capitation grant. For Mr O'Malley,

¹⁵⁷ Memo for Government: Proposed committee for Reformatory and Industrial schools. NA D/T 98/6/156 Children – General.

The only difficulty in regard to Government policy which these school managers have ever brought to the Department's notice is that of the small size of grants and matters stemming from that. It is a constant cry with them that the grant is only about one-third that given in the six counties. There is of course something in this. It is not so easy for them to provide a building, maintain it, provide staffing, clothe and feed the pupils, take them on annual holiday, provide medical and other care for them, and so at £2.7s.6d per head per week. In fact, while the forty or so industrial schools generally are run very well, there are some marked deficiencies especially in relation to the provision for the psychiatric treatment of children.¹⁵⁸

4.133 Mr O'Malley went on to dismiss Br Normoyle's comments, claiming:

I don't know exactly therefore what Br. Normoyle was getting at and I have a shrewd idea that he wouldn't know either. It was probably his first appearance on television and his instinct was to fob off from the Order any blame that might be going on. On the whole I would be inclined to let the matter go at that. He is not a man who normally opens his mouth much.¹⁵⁹

4.134 Mr O'Malley went on to express some minor reservations he himself had about the operation of the schools or, more importantly in his view, the public image of the schools, as he believed that:

One of the troubles in that regard is that Daingean reformatory, which is really suffering from very poor accommodation, understaffing and under-everything practically, is confused with the forty industrial schools of which the vast majority cater very well indeed for their children.¹⁶⁰

4.135 He then went on to say that he had a 'notion of setting up an ad-hoc committee' to report to him on this matter, as 'if it were to do nothing else, it might at least have the effect of allaying public unease.'¹⁶¹ Mr O'Malley proposed this to the Association of Resident Managers of Reformatory and Industrial Schools who responded positively 'that a representative number of the schools visited by a group of persons, appointed by you, who would furnish you with a report on the position as they would see it.' The Resident Managers in their reply on 1st April 1967 stated that they would:

co-operate with you in whatever steps you may take to improve the system and dissipate the public image which is detrimental to the pupils of these schools and frequently embarrassing to the managers and staffs. They also request that the visiting committee be appointed as soon as possible and that the report should be confidential and confined to yourself, the members of the committee and the managers.

4.136 On 10th May 1967, Mr O'Malley received a deputation from the Dublin Junior Chamber of Commerce Mr DL Lennon, Mr J Freeley and Miss M McGivern. At the meeting the delegation outlined their interest in the work of the Artane Industrial School, particularly the extension of vocational educational classes in the school. From a note of the meeting, it appears that Mr O'Malley stated:

he was concerned about the public image of Reformatory and Industrial Schools and aware of a lot of vague public criticism of the system. He felt the time had come when a small lay independent committee should be set up to examine and report to him on the whole question in order to allay public disquiet.

4.137 The matter was discussed with the delegation and the note of the meeting records:

¹⁵⁸ Letter from O'Malley to Lynch 19/1/67. NA D/T 98/6/156 Children-General.

¹⁵⁹ D/T 98/6/156 Children – General.

¹⁶⁰ NA D/T 98/6/156 Children – General.

¹⁶¹ NA D/T 98/6/156 Children – General.

it was agreed that a committee of about seven would be ideal. The Minister thought the proposed committee should, before commencing investigation, be as conversant as possible with similar problems in other countries. He also thought its inquiries might be extended to other associate fields, such as Magdalen Homes and that it should consider establishing liaison with other interested Departments, Health, Social Welfare, Justice and Labour. The Runai Cunta (D. O'Laoghaire) stated that the full co-operation of the schools could be counted on in any such investigation. The deputation assured the Minister that, if requested, one or two of their members would be willing to serve on the proposed Committee. Finally the Minister said he planned to get the Committee formed in the near future with a view to commencing its inquiries in the Autumn. Terms of reference would be prepared, followed by a thorough briefing of the Committee and he would hope to have their report in six to nine month's time.

4.138 Mr Ó Laoghaire wrote to Mr Ó Raifeartaigh on 23rd May 1967 outlining the outcome of the meeting with the deputation from the Junior Chamber of Commerce and noted that sanction had been obtained from the Department of Finance for payment of a travel and subsistence allowance for members of the committee and that the resident managers had agreed to co-operate with the inquiry. Mr Ó Raifeartaigh replied on 20th June stating that:

I think the terms of reference should be broad in scope and suggest the following:-

- (1) to make a survey of the active reformatory and industrial school system and to report thereon to the Minister, making such recommendations and suggestions as they think might be helpful to him in considering the modification or improvement thereof, and
- (2) to visit the schools and to furnish a separate report to the Minister on each of them with such comments or recommendations as they deem appropriate. The above suggested terms of reference do not include the Place of Detention, Glasnevin as it has already been decided to replace that institution and to frame fresh legislation which would considerably enlarge its functions and purpose.

4.139 The following day, 21st June 1967, Fr Kenneth McCabe wrote to Mr O'Malley from St Anthony's Presbytery in Middlesex, stating:

For many years I have been interested in the prevention and treatment of delinquents in Ireland. One aspect that interests me particularly just now is the 'fate' of so many reformatory and industrial school boys who find their way to Britain, and, almost inevitably, to trouble. I am just recently ordained but I can see possibilities and would like to begin as soon as possible to get something done for these boys. If anything is to be done, however, some change in policy at home would be essential. This would mainly entail an effort to keep track of where boys go in the months or year after they leave the schools, and, if they do come to Britain, to let us know. All this sounds elementary. From what I know of our present reformatory system, it would demand a radical reform of the whole approach to after-care. However, I won't bore you with ideas. What I have in mind could only be adequately discussed in an interview. Should you be interested in doing something about the problem, I should be very glad to meet you when I am home in Dublin in early August. Do please let me know and I can put a tentative programme on paper. Just for the moment I would be grateful if you would please keep this letter confidential. I would ask in particular that you do not communicate it to the industrial school section of your department. If and when we meet I will let you know why I prefer to keep my suggestions separate from department level.¹⁶²

¹⁶² McCabe wrote again on 9th July 1967 thanking O'Malley for his letter of the 3rd July and stating 'I should be glad to prepare a confidential memorandum for you, if you could let me know the particular aspects of the problem that interest you particularly'.

4.140 On 24th June, Mr Ó Laoghaire wrote to the Assistant Secretary, Mr Mac Gearailt, outlining the terms for the proposed committee. He stated:

- (a) The terms of reference should be as precise as possible as follows: To survey the Industrial and Reformatory School System and to make a report and recommendations to the Minister
- (b) care must be taken to represent the opinion of the Secretary of the Managers Committee The report should be confidential and confined to yourself and to members of the Managers Committee – letter of 1/4/67. The members of the Committee should be instructed beforehand to be as discreet as possible and the question of what to do with the report should be left until the report is completed.
- (c) Regarding the composition of the Committee, there are two proposed from the Junior Chamber of Commerce together with Declan Costello. I think two more from the country districts should be sufficient.

4.141 Mr Ó Laoghaire further communicated with Mr MacGearailt on 30th June, stating:

As a result of our discussions with the Minister on 30/6/67, it was agreed

1. that the Managers would be approached and requested not to insist on the confidential clause
2. that the terms of reference would be at 'A' above
3. that the following would be members of the Committee: John Hurley, Chairman, Declan Lennon, Margaret McGivern, Sr. Kevin. A person to be nominated by Declan Costello T.D. I think it would be best if the Secretary spoke to Br. O'Raghallaigh about 1. and to Declan Costello about 3. We thought that a woman would result from 3 but on second thoughts maybe a man would suit better i.e. 3 men & 2 women instead of 2 men & 3 women.

4.142 On 6th July 1967, Mr Ó Raifeartaigh wrote to Mr Declan Costello TD. In the letter he stated:

Further to our recent telephone conversation, please excuse my delay in letting you have the names of four people the Minister has in mind for the Committee on Industrial and Reformatory Schools which he proposes to set up. They are: -Mr. John Hurley, Chairman, Mr. Declan Lennon, Miss Margaret McGivern, Sr. Kevin. Mr. Hurley is Chairman of the Allied Cinemas group. Mr. Lennon was last year's Chairman of Dublin Junior Chamber of Commerce. (He is also in the insurance business). Miss McGivern is also a member of Dublin Junior Chamber of Commerce. Sister Kevin is an expert in Social Science. I should explain that the Dublin Junior Chamber of Commerce has had for some time been especially interesting itself in the Artane Industrial School for Boys. The terms of reference of the Committee would be on the lines of: 'To survey the Industrial and Reformatory School system and to make a report and recommendations to the Minister'. The Minister would be happy to have from you a suggestion for a fifth member.

4.143 Mr Costello replied on 12th July and suggested the Rev Kenneth McCabe as a member. He outlined that:

I have known Father McCabe for a number of years. He was educated in Dublin and joined the Jesuit order here and was a member of that order until last year. He was most anxious to do social work (particularly in the field of juvenile delinquency) and with the permission of his authorities he left the order and went to a diocese in England. He was ordained a priest here in Dublin in the month of June but is now as indicated by his address working in an English diocese. I understand that he anticipates that he will be able to get permission from his Bishop to act on the Minister's committee if it is thought fit to appoint him to it and that he will be able to travel to Dublin for the meetings of

the Committee. Fr. McCabe has been intimately acquainted with problems of juvenile delinquency and also industrial schools for many years. I know that in addition to great personal interest in the problem, he now has a very wide knowledge of them. He has spent some time in the Daingean Reformatory and also, during his holidays, has studied the problem in Northern Ireland. He is a young man (in his early thirties) and is very intelligent and would make, I believe, a good committee member. He is a discreet person, but he has decided and firmly held views on how improvements in the present situation could be brought about and he would not, I believe, be in any way inhibited in expressing his views to the committee.

4.144 On 4th August 1967, the Department of Education submitted a memo to Government proposing to establish a Committee to inquire into Reformatory and Industrial Schools. The terms of reference for the Committee were to 'to survey the Reformatory and Industrial Schools systems and to make a report and recommendations to the Minister for Education' and the rationale was that:

Representations have been made from time to time by various groups....that the conditions in reformatory and industrial schools are in urgent need of improvement. References have been made to this matter in the public press on many occasions. With a view to subjecting the problem to outside objective appraisal the Minister for Education proposes to appoint a committee to report and make recommendations to him in relation to it.¹⁶³

4.145 The initial proposed membership of the committee were:

Chairman, Mr. John Hurley, Cinema manager – has wide social interests

Mr Declan Lennon and Miss Margaret McGivern – members of the Dublin Junior Chamber of Commerce which has interested itself in seeking improvements in the facilities and amenities provided in Artane Industrial School.

The Rev. Kenneth McCabe, S.J. Middlesex, England. He has done a great deal of work in the field of juvenile delinquency and neglected children. Specially recommended by Mr. Declan Costello, T.D., who for many years has interested himself in the problems of children suffering from physical or mental handicap.

An tSuir Caoimhin O'Caoimh – Little Sisters of the Assumption, Corbally, Limerick. Prominent social worker attached to Limerick Social Service Centre.

Br. Francis O'Reilly, Resident Manager Artane. Sec. Association of Resident Managers of Reformatory and Industrial Schools.

Dr. John Ryan, Medical Director, St. John of God's Services for the Mentally Handicapped.¹⁶⁴

4.146 This proposal was submitted to Cabinet and was approved on 5th October 1967 subject to a number of changes on the proposed membership of the committee. These changes were:

- (1) The deletion of Rev K. McCabe;
- (2) John Hurley to be an ordinary member – not chairman;
- (3) DJ Miss Eileen Kennedy¹⁶⁵ to be chairman; and
- (4) the addition to the membership of the committee of a nominee each from the Ministers for Education, Justice and Health.¹⁶⁶

¹⁶³ D/T 98/6/156 Children – General.

¹⁶⁴ NA D/T 98/6/156 Children – General.

¹⁶⁵ Born in 1914, Ms Kennedy, who initially trained as nurse, was appointed a Justice of the District Court and Justice of the Metropolitan Children's Court in 1964: the first women to be appointed as a District Justice in Ireland.

¹⁶⁶ NA D/T 98/6/156 Children – General.

4.147 On 12th September 1967, Mr Barry Early,¹⁶⁷ a member of Dublin City Council, was also appointed to the Committee and two days later, on 14th September 1967, the Department of Justice wrote to the Department of Education informing them that ‘the Minister’s nominee for membership of the committee is Mr Ristead Mac Conchradha, a higher executive officer, of the prisons division in this Department’. The other Departmental nominees were Dr JG O’Hagan, Senior Medical officer, Department of Health and Mr Antoin Ó Gormain, Psychologist, Department of Education. At the inaugural meeting of the Committee on 20th October 1967, O’Malley stated that his reason for establishing the Committee was that ‘various individuals and groups interested in sociological activities, had from time to time represented that the provision being made in our reformatory and industrial schools is in urgent need of improvement’. He further stated that the Committee ‘should not feel that limits are being placed on their investigations’.¹⁶⁸

The Report of the Committee of Enquiry into Reformatory and Industrial Schools’ Systems

4.148 The publication of the of the *Report of the Committee of Enquiry into Reformatory and Industrial Schools’ Systems* on 12th November 1970 is generally viewed as a pivotal moment in the history of residential childcare in Ireland. The Report recommended, inter alia, that the childcare system should be geared to the prevention of family breakdown and residential care should be considered only when there are no satisfactory alternatives; that the system of institutional care should be replaced by small group homes; the Reformatory at Daingean be replaced by a modern Special School; Marlborough House be closed; childcare staff should be fully trained; children in residential care should be educated to the ultimate of their capacities; after-care should form an integral part of the child-care system; administrative responsibility for childcare should be transferred to the Department of Health, with responsibility for the educational element retained by the Department of Education; there should be a new updated Children’s Act; the age of criminal responsibility should be raised to 12 years; both Reformatory and Industrial Schools should be paid on a budget system rather than the existing capitation system; an independent advisory body with statutory powers should be established and there should be continuous research into childcare.

4.149 In addition to these broad recommendations, the Committee made a number of recommendations specific to residential care. These included:

- When children have to be placed in residential care, those from one family should, where at all possible, be kept together.
- In order to create a home atmosphere the children should be reared in self-contained units in groups of not more than 7-9 children. In well populated areas these units could be purchased or rented houses in different housing areas.
- The term ‘Industrial School’ should be replaced by the term ‘Residential Home’.
- Each home should have house parents who would be responsible for the day-to-day running of the unit as a home. Where this is not feasible every home should have a house mother; continuity of staff in these units is fundamental.
- There should be no suggestion of a dormitory system in units. Children should sleep in bedrooms with not more than three and, in some cases, only one in a bedroom.

¹⁶⁷ Early, in commenting on the composition of the committee observed that the ‘membership was unusual in many ways. Three of the members were women including the Chairman; three were Civil Servants of whom only one was an administrator; two were clerics. Four members of the committee had little or no practical experience of dealing with deprived children and in particular children in residential care. Three of these members were actively involved with the Junior Chamber of Commerce who were pressing for changes in the system.’ He also commented that ‘As with most committees which sit for a long time the interest of some members waned. At the end of the period the active members had been reduced to less than half of the total.’ Early, B (1974) ‘The Kennedy Committee and Its Work’. *CARE Newsletter*, 1, 2, 2-3.

¹⁶⁸ Irish Times, 21st October 1967.

- Units should house both sexes as in a normal home and children should be of different age groups.
- All homes catering for children in care should be subject to regular inspection.
- The approach to deprived children in residential care should be one of over-compensation.
- The children should enjoy the right to, and be encouraged to have, personal property. This means that they should be given pocket money, and should have some say in the choice of their clothes.
- Children should be encouraged to join in as many outside recreational activities as possible and to use local facilities such as swimming pools, tennis courts, and playing fields. They should be encouraged to mix with friends from outside and allowed to bring them to their homes as well as to accept invitations to visit their friends.
- Every effort should be made to foster the individuality of the children by allowing them to encounter and cope with circumstances existing outside the home as much as possible.
- When new buildings are being planned, units should be separate from one another.
- Where old buildings have to be adapted this adaptation should take the form of modern self-contained units with their own bedrooms, bathroom, lavatories, kitchen, living room, dining-room and entrances.
- Where it is necessary to alter existing buildings not more than 3-4 units should be in the one building.
- Grants should be made available for building purposes as in the case of schools and hospitals.
- Before a child is admitted to residential care he should be assessed to ascertain where he can be suitably placed with most benefit to himself.
- For this purpose every region should have one centre designated as a reception and assessment centre. This centre should also be a Residential Home.
- This reception and assessment centre would receive all new cases and be responsible for collecting the background information required for the assessment of the child and his subsequent placement.
- Before a child is placed into residential care from a reception and assessment centre certain records concerning him should be obtained. These should include birth, baptismal and confirmation certificates, a social background report, a schools report, other personal records. These reports should accompany the child when placed.
- A comprehensive record should be kept of every child in residential care including medical case history, school progress reports, psychological tests and any other relevant reports.¹⁶⁹

4.150 The apparent significance of the Report can be gauged by the observations of one commentator with a long involvement in the provision of residential care, who argued:

the impetus for change and improvement came with the Kennedy Report of 1970. A number of the larger, single sex, isolated institutions were closed down altogether. All the others began to develop small units within their buildings and/or group homes in the community. Alongside with this, training at a basic qualifying level was initiated, starting in 1971 with one training centre, eventually rising to six separate centres...¹⁷⁰

¹⁶⁹ *Reformatory and Industrial Schools Systems* (1970) Report. Dublin: Stationery Report. pp 23-5.

¹⁷⁰ Brennan, PD (1994) 'Ireland: Changes and New Trends in Extrafamilial care in the last Two Decades' in Gottesman, M (ed) *Recent Changes and New Trends in Extrafamilial Child Care: An International Perspective*. London: Whiting and Birch. pp 91-2.

4.151 More generally, he argued that the report:

brought about a remarkable shift in emphasis – from reformatory/punitive to caring; from large institution to small familial group homes; from controlling/corrective to understanding/caring; from custodial to educative; from basic vocational training to all-round education; from untrained, with no opportunity for training, to professionally trained and recognised care workers. It also pointed out that the deprived child needed an investment over and above that required for a child safely and securely growing up in its own family. It also set in train the up-dating of all laws relating to children and child care...¹⁷¹

4.152 Denis O’Sullivan argues that it was only from the late 1960s, that a ‘social risk’ model of childcare, which had influenced policy for the previous hundred years, became displaced by a more developmental model of childcare. This was brought about by the discovery of the ‘deprived child’ in Ireland. Prior to this period childcare intervention was viewed as ‘a means of social control rather than of individual fulfilment’.¹⁷² The primary facets of the emerging developmental model were disenchantment with institutionalisation and the need to move beyond a narrow interpretation of childcare. Rather than focusing, almost exclusively, on the physical needs of the child, the need to incorporate emotional and psychological dimensions in promoting the welfare of children gained acceptance. The Reformatory and Industrial Schools Systems Report (the Kennedy Report), prefaced with the statement that ‘All children need love, care and security if they are to develop into full and mature adults’¹⁷³ most clearly articulated this shift. O’Sullivan has argued that ‘[the] application of changing interpretations of equality to the life circumstances of children who came into care, mediated to the public through conferences, publications and considerable media coverage, was to be one of the major sources of the “discovery” of the deprived child in Ireland’.¹⁷⁴ However, while the Report was symbolically an important stage in the evolution of child welfare and, in particular, residential childcare services, it is perhaps better understood as the distillation of an understanding of the role, function and dysfunctions of residential care that had emerged most articulately since the mid-1960s. The key recommendations of the report, from the need for new legislation and the need to provide a coherent administrative structure were recognised and broadly accepted before the report was commissioned.

4.153 Mr Pdraig Faulkner, the Minister for Education who received the report of the Commission, in his memoirs recalled that:

It was an excellent report, highlighting as it did the serious deficiencies in the service, which I accepted. It gave my Department a base on which to build for the future....I remember being pleased that in reference to religious institutions the committee stated: ‘We are very much aware that if were not for the dedicated work of many religious bodies the position would be a great deal worse.’¹⁷⁵

4.154 He further stated that:

It was to be quite some time after I left the Department of Education that I first heard the word ‘paedophile’. During my time as Minister I hadn’t an inkling that child sex abuse existed. When I published the Kennedy Report in 1970 Dáil questions on a variety of aspects of it came thick and fast. Some deputies praised the diligence and selflessness of the religious orders in caring for children in care. Nobody raised the question of abuse.

¹⁷¹ Ibid. p 92.

¹⁷² O’Sullivan, D (1979) ‘Social Definition in Child Care in the Irish Republic: Models of Child and Child Care Intervention’. *Economic and Social Review*, 10, 3, p 211.

¹⁷³ *Report on Industrial Schools and Reformatories* (The Kennedy Report) (1970). Dublin: The Stationery Office p v.

¹⁷⁴ O’Sullivan, D (1979) ‘Social Definition in Child Care in the Irish Republic: Models of Child and Child Care Intervention’. *Economic and Social Review*, Vol 10, No 3, p 215.

¹⁷⁵ Faulkner, P (2005) *As I Saw It: Reviewing Over 30 Years of Fianna Fail and Irish Politics*. Dublin: Wolfhound Press. p 68.

Dr. Noel Browne and Dr. John O'Connell were among my most persistent questioners and nobody doubts that if these two deputies had heard so much as a whisper about abuse they would immediately have raised the matter in the Dáil. I suppose in a way, like most people, I was living in an age of innocence when nobody believed that people in authority, be they religious or lay, could commit such heinous crimes.¹⁷⁶

Establishment of health boards and child welfare

4.155 It was only with the construction of health boards in 1970, as a result of the Health Act 1970, that the State began to take a more active role in the provision of childcare services.¹⁷⁷ The Act established eight regional health boards and within each health board a number of community care areas. Previous to this Act, services were delivered by local authorities, for whom services for children formed only a very minor proportion of their multitude of tasks.¹⁷⁸ Health boards had responsibility for what were termed three 'programmes': (1) community care services; (2) general hospital services; and (3) special hospital services. Community care services are further subdivided into three sub-programmes (i) community protection sub-programme; (ii) Community health services sub-programme; and (iii) community welfare sub-programme. Services for children were provided through the community welfare sub-programme of community care services.¹⁷⁹ Gilligan has argued that as health boards began to establish their own social work services, social workers employed by the boards identified childcare as a priority and quickly subsumed the Irish Society for the Protection of Cruelty to Children¹⁸⁰ as the key agents responsible for placing children in care.¹⁸¹ This was facilitated by utilising the 'fit person' order¹⁸² under the Children Act 1908,¹⁸³ a section long forgotten, but initiated by Eastern Health Board social workers and adopted by the other boards.¹⁸⁴

4.156 The Department of Education were also reorganising their services at this time and on 16th July 1971, it was announced that 'the industrial and reformatory schools branch will not henceforth

¹⁷⁶ Ibid. pp 70-1.

¹⁷⁷ In a review of Social Work Services in 1985, it was noted 'Both the Health Act, 1953 and the Children (Amendment) Act, 1957 (which extended the powers of the Children Act, 1908) made specific provision for certain child welfare services. The 1953 Act and regulations made under it provided for the boarding out of children in certain circumstances. Regulations under the 1957 Act related to the discharge of children from residential care. These provisions led to the appointment in 1959 of twelve children's officers throughout the country (Donegal, Mayo, Kerry, Cork, Carlow / Kildare, Cavan, Galway, Wexford, Limerick, Tipperary and two in Dublin). In addition to their duties under the legislation, these officers gave assistance to unmarried mothers and ensured that no child was admitted to residential care who could be boarded out or adopted. These children's officers, who reported to assistant county managers, were not, initially, social workers. They were, for the most part, nurses. In 1959, Galway Health Authority was the only agency to appoint a social worker for this work.' The Report noted that while the Health Act 1970, which established the regional health boards, did not make any specific provision for social work, the establishment of community care teams ensured the provision of a minimum level of social service provision in the community. On 19th January 1973, the Department of Health issued guidelines on to the regional health boards on the development of social work within the community care services. In terms of priorities, the memo stated, 'the existing statutory requirements in relation to the provision of services for deprived children must be given the highest priority. Where a trained social worker is employed on this work its discharge is normally most effective; where the work is at present being undertaken by officers whose primary training has not been in the social work field the appointment of a trained social worker would facilitate a professional review of such service'. The memo also noted 'currently the Department has an Inspector who advises on child care work and three temporary Social Work Advisors who are seconded from health boards.'

¹⁷⁸ Skehill highlighted that certain difficulties existed in relation to the role of social workers in this new administrative configuration and to the nature of the social work task itself, observing that 'social work as a strategy did not even feature in the draft proposals for the newly structured health boards in 1970 (McKinsey Consultants, 1970). Moreover, evidence on social work developments and practices between 1970 and 1991 suggests that the profession was fraught with dispute and confusion over whether social workers should be experts in child protection or generic practitioners over this time period.' Skehill, C (2003) 'Social Work in the Republic of Ireland: A History of the Present'. *Journal of Social Work*, 3, 2, p 149.

¹⁷⁹ NES (1987) *Community Care Services: An Overview*. Dublin: National Economic and Social Council.

¹⁸⁰ A National Society for the Prevention of Cruelty to Children (NSPCC) was established in London in 1889 and a Dublin branch established in the same year. By the 1930s, more than 30 such branches were established in Ireland. In 1956, the Irish branches of the NSPCC split forming an Irish Society for the Prevention of Cruelty to Children. See Ferguson, H (1996) *Protecting Irish Children in Time: Child Abuse as a Social Problem and the Development of the Child Protection System in Ireland*. *Administration*, Vol 44, No 2, pp 5-36.

exist as a separate branch but will be joined to the Special Schools Sub-Section of the Primary Administration branch under the Principal Officer L Lane and the Assistant Principal officer T Ó Gilín. L Ó Criodhain is appointed as an Inspector of Reformatory and Industrial Schools in the grade of HEO'. Mr Ó Maitiú later commented that the work of this subsection was 'innovatory and in some ways experimental. It calls for staff of a high quality' Despite this re-organisation, by November 1973, Mr Ó Maitiú stated that 'While significant headway has been made in bringing about the reform of the old discredited system, progress in some aspects has not been as satisfactory as it could have been, mainly because of staffing problems.' As a consequence, he reported that 'resort has been made to keep the work of the section above the water line'. These included:

- (i) Formal inspections by HEO of residential homes and special schools suspended since June 1973, apart from a few urgent journeys. As the HEO is bound by law to inspect each school at least once a year, this is a matter of the gravest importance.
- (ii) Parental Monies
 - (a) Visits by E.O. to homes of parents have practically ceased.
 - (b) arrears in payments of parental monies not being fully investigated. As a result the weekly amounts collected have fallen: immediate action is necessary if the continuing loss in revenue to the State

¹⁸¹ Gilligan, R (1993) 'Ireland' in Colton, MJ and Hellinckx (eds) *Child Care in the EC: A country-specific guide to foster and residential care*. Aldershot: Arena, pp 121-2. See also Ferguson, H (1996) 'Protecting Irish Children in Time: Child Abuse as a Social Problem and the Development of the Child Protection System in Ireland'. *Administration*, Vol 44, No 2, pp 5-36, for a similar analysis of the growth of statutory social work in Ireland. The number of social work staff employed by the Eastern Health Board in childcare work rose from 13 in 1973 to 287 in 1998. McQuillan, P (1977) 'Family Support in Ireland' in: CARE, *Planning for Our Children. The Report of a Care Conference*. Dublin: CARE. p 39. On the development of social work and social work training in Ireland see Kearney, N (1987) 'The Historical Background' in *Social Work and Social Work Training in Ireland: Yesterday and Tomorrow*. Department of Social Studies, Occasional Paper No 1. Dublin: Department of Social Studies; Darling, V (1972) 'Social Work in the Republic of Ireland'. *Social Studies*, 1, 1, 24-37 and Luddy, M (2005) *Women, Philanthropy and the Emergence of Social Work in Ireland*. Dublin: School of Social Work and Social Policy, Trinity College Dublin.

¹⁸² The validity of using this mechanism was the subject of the parliamentary question and the note the Minister was as follows: A 'Fit Person' Order is an order, made by a court of competent jurisdiction, for the committal of a child or young person to the care of a relative of the child or young person, or to the care of some other fit person named by the Court, such person being willing to undertake such care. According to section 38 of the 1908 Act, the expression 'fit person' in this context includes 'any society or body corporate established for the reception or protection of poor children or the prevention of cruelty to children'. This section does not however, provide an exhaustive definition of a fit person and 'some other person (section 21) other than a relative, society or body corporate may be regarded by the Court as a fit person. Health Boards, established under the Health Act 1970 are bodies corporate. However, they are not established solely for 'the reception or protection of poor children or the prevention of cruelty to children'. Moreover, although section 38 of the Children Act, 1908 appears in Part II of the Act, the functions of a Health Board (as specified in section 6 of the Health Act, 1970) do not extend beyond Part I of the Children Act. Notwithstanding the above position, the Department's former legal advisor was of the opinion that a health board can act as 'fit person' as defined in the Children Act, 1908. A similar opinion was given by Mr Peter Shanley in his capacity as legal advisor to the Task Force on Child Care Services. In practice, health boards are named as fit persons, but as the legal validity of this situation has never been tested, the position remains in some doubt. Doubts expressed as to the validity of 'Fit Person' orders are usually based on the question of the legality or otherwise of health boards acting as 'fit persons' as described above. The Department is not aware that the constitutional validity of the procedure has come into doubt publicly although the Department of Education in 1976 suggested that, without a right of appeal, the exercise of 'fit person' rights by a health board could be challenged on constitutional grounds. The suggestion arose from the fact that the 1957 Amendment of the Children Act, 1908 gave parents a right of appeal in the event of a refusal by the Minister for Education to accede to request by them for discharge of a committal order. This provision was made in legislation because an earlier High Court case had questioned the adequacy of the Children Acts as they stood to afford due constitutional protection to parental rights. Note for Minister PQ Children Act, 1908 28.06.78 –Children Act, 1908 – Health Boards as Fit Persons C1.04.02.

¹⁸³ However, it was found in 1989 by the Supreme Court in the case of *The State (D and D) v G and the Midland Health Board* that health boards were in fact not 'fit persons' under the Children Act, 1908. This judgment necessitated the introduction of emergency legislation to remedy the situation. The Children Act 1989 provided that 'the expression fit person in section 38 of the Children Act, 1908, includes and shall be deemed always to have included a Health Board established under the Health Act, 1970, and the functions of a Health Board shall include and be deemed always to have included the functions conferred on a fit person by the first mentioned act as amended by any subsequent Act'.

¹⁸⁴ Gilligan, R (1993) 'Ireland' in Colton, MJ and Hellinckx (eds) *Child Care in the EC: A country-specific guide to foster and residential care*. Aldershot: Arena, pp 121-2. See also Ferguson, H (1996) 'Protecting Irish Children in Time: Child Abuse as a Social Problem and the Development of the Child Protection System in Ireland'. *Administration*, 44, 2, pp 5-36, for a similar analysis of the growth of statutory social work in Ireland.

is to be countered. (iii) Other duties: Certain of the minor duties of the clerical assistants have been curtailed or eliminated.

Responses to the Report of the Committee of Enquiry into Reformatory and Industrial Schools' Systems

4.157 After the publication of the *Report of the Committee of Enquiry into Reformatory and Industrial Schools' Systems*, the Department of Education invited observations on the recommendations contained in the report from various interested parties.¹⁸⁵ Before examining these responses, it is worth examining the initial response from the Department of Health. In a memo dated November from PW to Mr O'Sullivan, it outlined that:

The main recommendation from the point of view of this Department would appear to be that the Commission recommends the taking over by this Department of the administration of the various Acts dealing with Child Care and the setting up within the Department of a Child Care Division which would deal with all aspects of child care.

4.158 The consequences for the Department of Health was that:

Apart from finance which would mean transfer not only from the Vote of Education to the Vote for Health, but also from local authorities to health boards of the cost of maintenance of committed children, there would be an increase in the routine work in child care. This

¹⁸⁵ Somewhat ironically, the first substantial criticism of the Report were directed against the Chairperson of the Committee, District Justice Eileen Kennedy, when Nell McCafferty highlighted in a series of articles in the Irish Times the gap between the rhetoric of the report and the day-to-day reality of the Children's Court in Dublin, presided over by Eileen Kennedy. See, McCafferty, N (1970) 'Children in Court -1: Notes on Reality'. Irish Times, 9th December 1970, more generally, see McCafferty, N (1981) *In the Eyes of the Law*. Dublin: Ward River Press. pp 74-93. Dr Ian Hart, later to become a member of CARE and the Task Force on Child Care Services, provided this description of the Children's Court in Dublin in the Early 1970s. '...the Dublin Metropolitan Children's Court, it must be plainly said that the court building was generally unsatisfactory. There was no proper waiting room, only a dirty room with a couple of benches. There was no consultation room for lawyers and the cell was dark and windowless. The child had to stand for the duration of his trial even though there were usually vacant benches. Gardaí had a habit of mumbling their evidence to the justice and the author often had great difficulty in hearing what they said. Cases were listed for only two times during the day, i.e. for the morning or afternoon session. Consequently, those involved in a case might have to waste a full morning or afternoon if the case was not called. There was a long delay in hearing appeals against sentences, often of the order of four to six months. Basically, the main defect was that the justice who worked about a four and a half day hearing cases, five days a week, had to deal with about 15,000 cases in a year (16,586 in 1970. The justice thus had to deal with perhaps 5,000 children in the course of one year.' Hart, I (1974) *Factors Relating to Reconviction among Young Dublin Probationers*. Dublin: Economic and Social Research Institute. Paper No 76. p 67. On 14th January 1974, the Editor of the Evening Herald wrote to the Minister for Justice in relation to the Children's Court, which he described as 'a sad affair – mumbled evidence, poor representation and every sign of conveyor belt justice'. He continued that 'I have been there and really it does little to even grapple with the clear result of every case – that the defendant will be back again...a more humane approach, plus rehabilitation is needed in the Children's Court...I had a feeling that the free legal aid in the Children's Court was of poor quality' (D/Taoiseach 2005-7-21. Trial of Children). The Children's Court remains the subject of considerable criticism in recent times. Kilkelly, in 2003 and 2004 aimed to evaluate the extent to which the Children Courts operate in line with national and international standards. She concluded, 'Apart from the problems of delay and general inefficiency, the Court does not fare well when measured against international standards. Although the Children Act 2001 attempts to distinguish the Children Court from its adult counterpart the fact that its provisions are inadequately implemented in practice means that, at best, the process is slow and inefficient and, at worst, it is failing to minimize the negative impact for a young person of an appearance in court, contrary to the Act's objectives. The Children Act 2001's provisions deal more with the administration of the court list than the administration of justice and, taken on their own, they fall short of prescribing how the Court is to be transformed into a specialist tribunal in which young people have the right to age-appropriate treatment, to have their privacy respected, and to understand and participate in their criminal proceedings as required by international standards. To a large extent, the Children Court continues to operate like an adult District Court and inadequate attention has been given to how to transform the court into a specialized forum for dealing in an age appropriate manner with young defendants. Nor is sufficient importance attached to the rights of young offenders – their right to a fair and expeditious hearing in the presence of their parents, and their right to be heard and to understand the proceedings that have such a dramatic effect on their lives. Inadequate efforts have been made to ensure that the young people before the Children Court are dealt with in a manner that takes account of not just their age, but also their maturity and intellectual and emotional capacities.' Kilkelly, U (2008) 'Youth Courts and Children's Rights: The Irish Experience'. *Youth Justice*, 8,1, p 53. See also McPhillips, S (2005) *Dublin Children Court: A Pilot Research Project*. Dublin: Irish Association for the Study of Delinquency.

work is at present dealt with as part of the work of this section, which also deals with Public Health Nursing Services, and the Maternity and Infant Care Scheme, and by two posts of Inspectors of Boarded Out Children. At present, one of these posts is vacant. The Department of Education Reformatory and Industrial School Branch is staffed by one A.P.O. who also acts as Inspector of the Schools, one HEO, one E.O., one C.O. and 4 clerk typists. Individual returns are received from each school by the Department half yearly.

4.159 The memo concluded

While the taking over the care of children committed through the Courts for indictable offences would be new to this Department, there is duplication between the work of this Department and the Department of Education where the taking of children into care for social reasons is concerned. I feel that this Department should take over administrative responsibility for the residential care of all children as recommended by the Committee, and that co-operation between the Department and the voluntary organisations running the schools might result in the closing of some of them and the adaptation of others to the requirements set by the Committee at the most economic price possible while meeting the high standards advocated.

4.160 Miss Clandillon, who drafted a memo within three weeks of the publication of the Report, dated 4th December 1970, stressed the need for additional staff, particularly qualified social work staff and the limitations of the existing system of training.¹⁸⁶ She observed that:

If it is agreed by the Departments concerned that the Department of Health should take over the children in Approved Institutions at present under the Department of Education it is inevitable that inquiries will be made as to the present social work staff both in the Department of Health and at local authority level. At present there are no social workers employed by the H.A.s in the following areas: Carlow, Kildare, Kilkenny, Longford, Roscommon, Leitrim, Sligo, Donegal, Monaghan, Laois, Offaly, Meath, Westmeath, Waterford, Wicklow, Tipperary (N.R.) and Tipperary (S.R.) In Counties Wexford, Limerick, and Cavan the Children's Officers have no formal training in social work. This applies to some of the Children's Officers employed by Dublin Health authority and to one of the Cork Health Authority staff. While most of these officers are doing valuable work it would be a great help to them if a course of in-service training were set up either by the Department of Health (on the lines of those organised by the Home Office in England) or else as an extra mural course run by the Department of Social Science at U.C.D. consideration would have to be given to practical work as well as lectures on various aspects of social work. For family case work it might be possible to arrange placements of one or two students at a time with the Family Welfare Bureau of the Catholic Social Service Conference which arranges training for social science graduates during their post-graduate training. Practical experience of adoption placements and procedures might possibly be arranged, again for one or two at a time, with the Catholic Protection and Rescue Society, South Anne St., Dublin, which is the only registered adoption society in the country having sufficient trained staff. On the other hand, it might be found more

¹⁸⁶ Skehill estimates that by 1970, less than 100 social workers were employed in Ireland, and most of them were working in hospitals. In relation to training, she notes 'UCD was the first to establish a social science degree in 1954. TCD introduced its degree in social studies in 1962, and UCC established a social science degree course in 1968. Course curricula for this period shows that teaching of social work theories only became an essential component of teaching from the late 1960s onward. In UCD, for example, Fr Kavanagh's (1954) *Manual of Social Ethics*, based on Catholic and Christian principles, remained on reading lists up to the 1970s. Thus, whereas in Britain, social workers were becoming an established part of the growing welfare state and were being employed as child care officers, probation officers, almoners, and so on, Irish social work was struggling to establish itself as a profession, gain recognition from other professions, and find occupational spaces within which it could expand and develop.' Skehill, C (2000) 'An Examination of the Transition from Philanthropy to Professional Social Work in Ireland'. *Research on Social Work Practice*, 10, 6, p 698.

convenient to send the few C.O.'s concerned to Britain for a training course. In areas where Public Health Nurses are working with deprived children this arrangement should be dropped and in these areas, listed above, qualified social workers should be appointed as soon as possible.

4.161 Clandillon further argued that additional staff would be required in the Department of Health and that each social service department should not exceed that of the country areas, and within each department:

there should be a qualified Senior Social Workers, with post-graduate qualifications and experience...who would direct and co-ordinate the work of the other social workers so that the most appropriate member of the staff would take over each case and thus avoid overlapping and waste of time and personnel. A weekly case conference should be held but the Senior Social Worker should be available for consultation in any case of particular difficulty. She should also supervise all initial placements of children whether for boarding-out or adoption.

4.162 In relation to the Adoption Board, Clandillon noted that 'it is a matter of concern that only a small number of their welfare officers is qualified in social work and a recent advertisement in the daily press for further officers for adoption, probation and prison welfare work equates qualified with unqualified staff. At the present time I would not consider the Board a suitable agency to take people seconded for in-service training'. She further noted that she thought 'it unlikely that the Department of Justice will agree to the inclusion of the Adoption Board and its officers under a new Children's Department though this could be of benefit to the children to be adopted'.

4.163 In more general terms, Clandillon suggested that when responsibility was transferred to the Department of Health:

All the remaining Industrial Schools and the two Reformatories should be visited to ascertain the numbers of committed children and the reasons for committal. All the information possible should be collected on each child, including psychological test results in cases of doubt. The normal children who have no marked disturbance or behavioural problems should be placed as soon as possible with suitable relatives or foster parents. Both categories should be asked to take the children on a boarded-out basis. They should get supportive help from a social worker in helping the children to integrate into the family. Disturbed children and members of families who are being kept together will require special study. Some emotionally disturbed children will be better cared for in small units for such children where the close ties and demands of small family would be too much for them. They should have psychiatric help and the support of a highly qualified social worker. The ground work done in this field should be of benefit to the new departments as they set up and form the basis from which to work towards the integration of more children into the community.

4.164 In addition, she argued that:

the takeover of the children at present under the Department of Education should run quite smoothly in areas where there are good Children's Officers. In other areas appointments of qualified and experienced social workers should be made as quickly as possible. These areas would need special help and consideration from the Inspector(s) of the Department at first but the Senior Social Worker could always keep in touch if any difficulty arose. It would be valuable to have a seminar for all the staff of the new departments here in the Department of Health to discuss the most efficient way to keep records and personal files, and so on, so that a similar pattern of organisation would be adopted in each region and in the county area offices throughout the country.

4.165 Clandillon envisaged the replacement of the large industrial schools with small group homes, housed in ordinary houses designed for family living in cities and towns. Again, ideally, the house should be run by married couples, the husband going out daily to his work and the wife doing the running of the home. It may be difficult to get sufficient numbers of married couples who would be interested in this work. It has been remarked that breakdown in child care of this kind may occur if the couple has children of their own in the pre-teenage group. It would be more useful, therefore, to look for couples whose families are grown up so that there is no conflict between the couple's children and those entrusted to their care. If such couples are found they should be encouraged to meet each other from time to time in the presence of the appropriate social worker to discuss any problems.

4.166 On 13th January 1971, the Irish branch of the Association for Child Psychology and Psychiatry provided the Department with their observations on the report. In a letter they stated:

It would appear that the Committee of Enquiry, although stating in its opening remarks that it intended to cover the whole field of Child Care, did not, in fact, do so. There is no definition of what percentage of the population is under discussion and there is no indication of what percentage of children require care. Although generally stating that reform is needed, the whole effect of the criticisms, which are many and entirely substantiated by our experience, is unstructured, failing in total impact and unconnected. The specific problem of four systems of central governmental control is not tackled satisfactorily. We would support the proposition that responsibility for all aspects of Child Care be transferred to the Department of Health and, furthermore, we would consider that ideally one department should be responsible for the whole system under review. The lack of an adequate system of Social Administration and the lack of an establishment for social workers within central and local government prevents any improvement or action on foot of the Committee of Enquiry's proposals. Social workers are of vital importance to adequately gather and access knowledge of the child and his family before 'care' is instituted and assisting in adequately 'paving the way' on this charge. The inadequacy of present 'would be' social workers is perpetuating the naïve concept of Child Care and fails to recognize the developmental aspects of the child and his family.

4.167 The letter concluded by stressing the grave concern of the Association that:

the many excellent recommendations for reform and improvement in the Child Care System contained on the Committee of Enquiry's Report will not be acted upon or acted upon in a piece-meal fashion. It is obvious that a new Children's and Families Bill should be presented to the Dáil. In furtherance of the objectives of the Committee of Inquiry's Report, my committee is of the opinion that there is urgent need for a government established Commission of Enquiry into the present Child Care System and allied areas of Social Service.

4.168 The Protestant Child Care Association also replied to the Department of Education on 13th January 1971. They welcomed the report and pressed for the speedy implementation of the recommendations. They also made a number of recommendations not included in the Committee of Enquiry's report. These were:

- revise law on minimum age of criminal responsibility;
- age of criminal responsibility to be school leaving age;
- no corporal punishment in any establishment;
- part-time crash courses for senior staff;
- hostel provision for handicapped;

- protect the retarded;
- fine for fund for family service as addition to maintenance orders for absconding husbands;
- treatment advisory panel for juvenile court.

4.169 They concluded by stating ‘We are strongly against placing the institutional Child into further institutions.’

4.170 *Comhairle le leas Oige*¹⁸⁷ responded to the report on 14th January 1971 and stated:

We welcome the report and whole heartedly agree with the recommendations made by the Committee of Enquiry into the Reformatory & Industrial School System. We are especially pleased to note that the Committee recognises the need for specially trained personnel in this field and recommends a break from the institutional to small group unit as a basis for an adequate system of child care.

4.171 The Protestant Adoption Society also replied on 14th January 1971, and opened their letter by stating, ‘In general this is a superb report’. However, they also noted:

the only reference of consequence to non Roman Catholic children is contained in paragraph 1.5 on page 3.¹⁸⁸ With this one paragraph the Committee appears to dismiss any further responsibility for non Roman Catholic Children. Although this paragraph so far as it applies to the rest of the Country may be correct, it is certainly not true of Cork. The position in Cork is that cases are referred by the Local Gardaí and the Inspector of the I.S.P.C.C. first to the Pastor of the child’s religious denomination and / or to a layman and it is only when they fail adequately to deal with the case that it is likely to come before the Courts. However, very few non Roman Catholic children are ever brought before the Courts in Cork. The Authorities have long since learned that this is a completely fruitless exercise. They know only too well that since there is no Institution to which a child in need of care can be committed the Courts are powerless to take any effective action in the matter. The result is that these children are permanently deprived of the right guaranteed by the Constitution to the same treatment as their peers. Whilst I recognise that the smallness of the number involved creates special difficulties it is not good enough for the Committee to sweep the problem under the carpet. If, however, the Committee’s excellent recommendation to replace Industrial Schools by small residential homes containing not more than seven to nine children is implemented, then the problem of non Roman catholic Children should be simple to solve.

4.172 The letter went on to comment that the report noted the link between young female offending and prostitution, but that they ‘noted with some alarm however the first recommendation of the Committee on page 45 that a closed psychiatric unit for their treatment should be provided’. The letter writer, Mr John B Jermyn conceded that he may have misinterpreted the intention behind the recommendation, but that if it meant that:

they should all be locked up in some special form of mental Asylum than I heartily disagree with it. However I cannot think that the present homes which mostly seem to be run by Religious Orders are adequate to deal with the problem however good the intentions of the people who run them. I cannot think that a life of prayer and penance is an adequate substitute in the minds of a young prostitute for the rewards of her profession. Experience has shown that Alcoholics Anonymous saves more people from alcoholism than all the

¹⁸⁷ Comhairle was established in 1942 as a sub-committee of the City of Dublin Vocational Educational Committee and renamed The City of Dublin Youth Service Board in 1995.

¹⁸⁸ ‘Children other than Roman Catholics who come before the Courts are entrusted through the local Gardaí to the charge of the local Pastor of their own denomination who sees to it that they are placed in the care of suitable families or School.’

Doctors and Psychiatrists put together. This is so because the alcoholics know they are being helped by others who have suffered the same torments as themselves. While I do not suggest by analogy that young prostitutes can be saved by ex-prostitutes neither do I believe that they can be rescued by professional Virgins. There must be a more reasonable solution than either permanent penance or incarceration in Asylums.

4.173 In relation to after-care, the letter complimented the report on the excellent recommendations noting:

It is ludicrous to assume that a child brought up in the protective atmosphere of an Institution is capable of looking after himself at the age of 16. Even a well adjusted boy of this age with a sound and happy family background is not capable of doing so and must rely for some time upon the help and advice of understanding parents. The child from an Industrial School, unless he is extraordinarily lucky in his first placement, has no chance whatever of succeeding. The present failure rate is horrifyingly high.

4.174 The letter also argued that:

There can be no doubt that it is far better for a child to be placed in a suitable foster home than in an Industrial School. However, the emphasis must be on the word suitable. In adoption cases the Adoption Board insists on a proper investigation of the home background and general suitability of the proposed adopting parents and ensure so far as it possible that the proposed adopting parents are of approximately the same social standing as the child's natural parents. No less stringent enquiry should be made in the case of foster parents. It is a sad fact that the Cork Health Authority which is so excellent in every other respect falls down very badly indeed in this particular matter. Details of some of the more disastrous cases can be made available if required.

4.175 In March 1971, the Council for Social Welfare¹⁸⁹ organised a seminar in Killarney, to discuss the implications of the Kennedy report. In an overview paper, Sr Winifred was broadly positive of both the analysis and the recommendations in the Report.

4.176 However, she did highlight that:

there is not one word of appreciation or even commendation of the work done by voluntary bodies. We are told in the report if it were not for the dedicated work of many of our religious bodies the position would be a great deal worse than it is now! Talk about damning by faint praise. The one stark and most obvious fact in the situation is nowhere stated. Just how could any body, voluntary or statutory, be expected to provide a skilled and humane service on the pittance granted by the State?¹⁹⁰

4.177 In her address to the seminar, Sr Stanislaus Kennedy highlighted what she claimed was a general lack of confidence amongst the Religious providing childcare services. This lack of confidence, she asserted, was:

due in no small way to newspaper articles and TV programmes written and produced with inaccurate data or little insight into the nature of the life of the people whom they analyse, and sometimes hold up to ridicule. Criticism of the religious, especially the nun, by both clergy and laity is a popular sport, and can be quite devastating. We are out of date, immature personalities, when we are given credit for having any personality at all. Our attitudes to life, sex, to literature are out of touch and archaic. Our child care standards are low and our living standards are high. We give our children too much, or else we give them too little. Each of us could add to this litany of comments we have heard. Feedback

¹⁸⁹ A Committee of the Irish Catholic Bishops' Conference.

¹⁹⁰ Sr Winifred (1971) 'Current Trends in Residential Child Care' in *Child Care – Papers of a Seminar held by the Council for Social Welfare*. Dublin: Council for Social Welfare. p 11.

of this nature is shaking the confidence of the religious, and they are understandably sensitive.¹⁹¹

4.178 In his contribution to the seminar, Mr Antoin O’Gorman, a member of the Kennedy Committee, responded to the points raised above about the role of the Religious in childcare, stated:

I think it is right and appropriate to mention that the Committee did state clearly and sincerely that in point(ing) out limitations in the systems of Reformatory and Industrial Schools it was not the intention of the Committee to criticise those responsible for running the schools. Another matter which I think should be stated is that it was not the stated intention either explicitly or implicitly that religious should cease to participate in the work or to run the homes and schools.¹⁹²

4.179 In April 1971, the Association of Resident Managers of Reformatory and Industrial Schools responded to the Committee of Enquiry’s Report. It described the Report as ‘an important event in the history of child care in Ireland’¹⁹³ and went on to state that the report:

emphasised community responsibility in the matter and revealed the extent to which the community directly and through Government had failed to provide the support required by those within the system to attain the standards for which they strove....Media coverage following the publication of the Kennedy Report emphasised the shortcomings of the system, and in general it appears that much of the good work done and being done was overlooked or misunderstood by the public at large. This is considered to be unfortunate in that it provides a scapegoat and diverts attention from the central point that ultimately the community as a whole is responsible for the system and for its development to meet modern standards by modern means.

4.180 The response outlined how the Report was discussed by assembled Managers at three specially convened means and that each Manager prepared and submitted an individual report which was collated to form a composite report which was then approved by the Association. The submission noted:

The Religious Orders wish to participate in the work and to contribute to the development of a better system. They welcome the Report of the Committee on Reformatory and Industrial Schools in that it emphasise the need for Government and community support. As this document shows, they are in agreement with the Report on many issues, and have themselves been advocating such changes for a very long time. They are dissatisfied

¹⁹¹ Kennedy, S (1971) ‘The Role of the Religious in Child Care’ in *Child Care – Papers of a Seminar held by the Council for Social Welfare*. Dublin: Council for Social Welfare. p 22.

¹⁹² O’Gorman, A (1971) ‘Report on Industrial and Reformatory School Systems’ in *Child Care – Papers of a Seminar held by the Council for Social Welfare*. Dublin: Council for Social Welfare. p 62.

¹⁹³ The response of the Resident Managers to the Kennedy Report was considerably more positive than their response to an earlier inquiry, chaired by Mr GP Cussen which sat between 1934 and 1936. This inquiry had terms of reference to ‘inquire into and report to the Minister for Education on the present Reformatory and Industrial School system in Saorstát Eireann, and matters connected therewith, including: (1) The existing statutory provisions and other regulations in relation to Reformatories, Industrial Schools and places of detention, and to the committal of children and young persons thereto. (2) The care, education and training of children and young persons in Reformatories and Industrial Schools, and their after-care and supervision when discharged from these institutions. (3) The treatment and or disposal of children committed to Industrial Schools who are found to be suffering from physical or mental defects. (4) The staffing of Reformatory and Industrial Schools, and the qualifications and conditions of service of the teachers employed therein. (5) The arrangements for defraying the expenses of these institutions.’ The Managers in a letter dated 8th May 1937, gave their response to the report which was published in September 1936, and outlined that ‘the Managers felt that an undeserved slur was cast on their work in some of their findings, due to the prejudice on the part of some member or members of the Commission. It is matter of serious moment that men and women who have given their lives and labour in the cause of the education of these poor and often-times wayward children amidst hardships, worries, inconveniences and misunderstandings; and all this time at considerable saving to the State, should be harshly judged and found fault with by members of a Commission appointed by the Beneficiary. The members of the Commission had no first hand experience of the work of the Industrial Schools and could not know what it entails. Even the notes of appreciation in the Report appear to have been grudgingly given. It is easy for Critics to tear a work to pieces but it is a different matter to re-construct.’

with the system now in existence and feel they have tolerated for too long the lack of Government support and grossly inadequate financing. The Religious Orders involved in the field of Child Care wish to participate in the work but not necessarily to administer it, and they wish the Government to state without further delay their view on the role of religious in child care. The Association recommends the earliest possible establishment of an advisory body to co-ordinate the general effort, and proposes in the meantime to establish a voluntary advisory body representative of the Association and professional interests, to devote immediate attention to the areas of assessment, training, research and optimum use of existing facilities. The Association is prepared to make a positive contribution towards the establishment of a better system of Child Care in Ireland.

4.181 The detailed recommendations made by the managers are to be found in Appendix 2. In addition, later that year, on 30th September, they reported:

The Association of Resident Managers of Industrial and Reformatory Schools have made it clear in a report to the Minister for Education their conviction that the community as a whole must more fully recognise its responsibility to provide an improved system to care for deprived children, and that a central co-ordinating authority with statutory powers is essential to the effective operation of the system. It is recognised by the Association that, at best, it will be many years before a statutory body can be formed, and they have decided in the meantime to establish an Advisory Council with powers to form executive committees who will conduct working programmes in agreed priority areas; who will advise the Association on ways and means of achieving the optimum utilisation of present resources, and how best to contribute to the development in Ireland of the best possible system of child care.¹⁹⁴

4.182 The Eastern Health Board responded in July 1971 by enclosing the recommendations made by a number of personnel in the Eastern Health Board concerned with deprived children following a meeting in February of that year.¹⁹⁵ The group noted that the report 'did not deal with all children in care, but rather concentrated on children in Industrial and Reformatory Schools', but nonetheless, they broadly agreed with the recommendations of the Report. They did however, have a number of observations on the recommendations. They noted:

that there is a growing tendency to depart from the group home system in England because of the problem associated with operating a group home. Staffing problems present themselves, the hours of duty are a cause of concern to Trade Union Officials and the coming and going of staff members has the effect of subjecting the children to constant change, much to their detriment. It was felt that Group Homes have a part to play in a Child Care System but they not be accepted as recommended in the Report as the only form of Residential Care.

4.183 The meeting also agreed 'that a good Child Care Worker' would be the best person to undertake the task of after-care. It was noted that the Health Authority had no knowledge of the release of children who were committed through Dublin Corporation and the Department of Education and it was suggested that after-care for all children should be the responsibility of the authority. It was agreed that there is a great need for Hostels in the Dublin area, 'particularly to accommodate boys'. In relation to the administration of the system, the group argued that: 'responsibility for all

¹⁹⁴ The members of the Advisory Council were: Fr William McGonagle, OMI, Chairman, Dr Paul McQuaid, Mr Seamus O Cinneide, Fr Jim Clarke, Mr Joe Dillon, Mr Dermot J Cafferky, Br Leo Clancy, Sr Carmel, Sr Liguori, Sr Kevin, Sr Veronica, Sr Bernard, Sr Vincent, Sr Regina, Fr Vincent Kennedy, Br Stapleton and Miss Irene Diffy.

¹⁹⁵ These were Mr FJ Donohue, Senior Administrative Officer, Welfare Department; Dr Paul McCarthy, Chief Child Psychiatrist, Dublin Health Authority; Rev Sr Bernadette, Sister in Charge, St Patrick's Home; Rev Sr Patricia, St Patrick's Home; Mr PM Sheehan, Section Officer, Children's Section; Mr MJ O'Connor, Secretary, St Louise Adoption Society; Misses K Neary and B Rutledge, Children's Officers; Misses C Clyne, M Cox, E Lyng and S O'Reilly, Social Workers.

aspects of Child Care should not be divided between the Department of Health and the Department of Education, but rather that total responsibility should rest with the Department of Health.’

4.184 In relation to residential care, the group ‘felt that the task of house-father and house mother may have to be left to the religious communities’ and that ‘consideration should be given to the concept of a new type of foster-parent who would take on the task as a regular working arrangement and be paid an appropriate salary by the Health Authority’. The group elaborated on this point arguing: ‘highly skilled women would be needed to undertake this arduous task. They should be the type who would not become emotionally involved with every child placed in their care, and they should be able to go looking after children, and accept the facts of the situation i.e. that the children will, at some stage, be taken from them’.

4.185 The group also agreed that ‘there is a need for some form of detention for teen-age girls’ and that there ‘should be a two-sided approach to the problem of prostitution (a) the prevention of young girls from setting out on such a career (b) the provision of an escape route for girls who genuinely wish to reform their lives’. On legal issues, the group noted ‘the defining of Health Authorities as “fit persons” will greatly increase the responsibilities of those Authorities. It is essential that they have the resources necessary to meet the added responsibilities thrust upon them.’

4.186 In addition, a few weeks later, on 5th August 1971, a deputation from the Eastern Health Board comprising the senior administrative officers of the Welfare Department, the Director of the Child Guidance Clinic in the Mater Hospital, the Chief Child Psychiatrist of the Board and the Section Officer of the Children’s Section met with representatives of the Department of Education in relation to accommodation for Dublin boys in Industrial Schools. The deputation highlighted that while 450 boys from Dublin were accommodated in Industrial Schools throughout the country, there were a further 90 to 100 boys for whom accommodation in Industrial Schools could not be found. The health board deputation claimed, ‘many of them are disturbed and the difficulty of getting schools to take many of them is resulting in their becoming a “hard core” of unwanted’. The Department of Education were of the view that this difficulty had largely arisen from the closure of the Artane Industrial School on 30th June 1969. However some spare capacity existed in the Salthill Industrial School in Galway and it was hoped that the opening of the new school in Finglas would alleviate some of the difficulties.¹⁹⁶

4.187 The Department of Justice responded to the request for observations on the report on 20th April 1972. In relation to places of detention, they ‘considered that formal responsibility for providing places of detention for juveniles would be more appropriately exercised by your Department than by the Department of Justice which has heretofore had that formal responsibility as the successor to the “police authority” referred to in the Children Act, 1908’. Responding to criticisms made of

¹⁹⁶ The Department of Education also noted that they were in the process of opening a new school for young male offenders in North County Dublin. In a memo to the Minister, it outlined, ‘Work on a new Training School at Oberstown Balrothery, North County Dublin, began last April. It was planned following visits by officers of the Department, members of the Oblate Community, and the Department’s Architect to modern training schools in England, Scotland and Northern Ireland. It is being built on a sixty-acre site, which has been purchased from the Oblate fathers. Oberstown will not be a new Daingean in a new setting. Qualified staff would cater for every need in the new Training School – educational, psychological and sociological. It will be staffed and administered on the most modern lines and will represent a completely new approach down to the last detail. Accommodation will be provided at Oberstown in 4 self-contained units for 70 boys in the age-range 12-17. The modern concept of the role and function of a reform school is that of rehabilitation of the young offender so that he may learn to take his place as a useful member of the community. This general programme of rehabilitation will consist of (a) a school programme to be implemented at times when schools normally operate (b) an educational programme based on recreational and extra curricular activities for out-of-school periods (evenings, weekends, holidays) and (c) a social-action programme including the provision of family counselling and after-care services. Such a programme is expected to function ideally in the unit system which will obtain in Oberstown, where separate recreational, refectory and sleeping accommodation and common educational facilities will be in operation. Oberstown will be designated a special school and as such will have generous pupil/teacher ratio.’

St Patrick's Institution and the aftercare of children leaving reformatory and industrial schools, they noted that improvements had been made to St Patrick's since the preparation of the report and that the welfare service operated by the Department had expanded since the publication of the report with plans for further expansion.

4.188 Although not formally a response to the invitation issued by the Department of Education, Mr O'Mahony in an article in the *Irish Jurist* provided an overview, both of the Report and of the case law on residential care in Ireland. In relation to the latter he observed that:

There is, perhaps unfortunately, a marked absence of reported decisions of the Irish courts on the provisions of the Children Acts dealing with residential care and the administrative and judicial procedures leading to it. This is somewhat surprising, and disquieting, particularly when one considers, in the light of the Irish Constitution, the wide scope of Section 58 of the 1908 Act (as amended) which gives statutory power to the Children's Court to commit children, up to the age of 15 years, to long periods of detention in industrial schools for a variety of reasons far removed from the criminal law. Such a sense of disquiet is greater to-day if one accepts that the statutory definition of an 'industrial school' as being 'a school for the industrial training of children in which children are lodged, clothed and fed as well as taught' is not now, if it ever was, an accurate definition, and that a place of detention would be closer to reality.¹⁹⁷

4.189 In relation to a core recommendation in the Kennedy Report and indeed a host of other reports that examined residential care in Ireland that the Children Act 1908 (as amended) should be replaced, Mr O'Mahony stated that:

in the short term and from a strictly legal viewpoint, the case for a completely new Children Act is not as obvious as many would make it out to be. Clearly, if the immediate effect of an updating and consolidation of the law on this subject was the blotting-out of the past and the providing of inspiration for the future it could be argued for that reason alone new legislation would be worthwhile. However, there is, at present, sufficient statutory power to have most of the recommendations of the Kennedy Report put into effect, because basically these recommendations come down to, (i) new buildings, and (ii) training and research as to what is best for children in residential care. New buildings require money from the State (i.e., the Department of Education) and there is sufficient statutory power for this to be done. Training and research also require money and time but not necessarily immediate new legislation.¹⁹⁸

Response of the Department of Health

4.190 Having earlier considered the recommendations of the report, on 4th February 1972, Mr O'Sullivan drafted a commentary for Mr O'Rourke on the Kennedy Report. Acknowledging that the Department of Health had a representative on the Committee, he nonetheless went to say that:

The report of the Committee could be criticised on the grounds that it has dealt with services outside the terms of reference prescribed for it by the Government. While the recommendations made by the Committee are in general exceedingly valuable, they may be questioned for example on the grounds that while the Committee dealt with Boarding-out for children, it had neither a Children's Officer nor a health authority officer conversant with that field of activity, amongst its members. This may be the reason why the services administered by Health Authorities under the Health Acts, the Children's Acts and the Adoption Acts (boarded-out and nursed out children etc.) were not examined in the same detail as those available to children in Industrial and Reformatory Schools, although the total number of children dealt with by Health Authorities exceeds those dealt with by the

¹⁹⁷ O'Mahony, MV (1971) 'Legal Aspects of Residential Child Care'. *The Irish Jurist* (ns). pp 227-8.

¹⁹⁸ *Ibid.* p 234.

Department of Education in their residential schools. Furthermore the Report does not give all the credit it might to the enlightened approach of many health authorities in this field.

4.191 The memo, having dealt with the inadequacies of the Report, noted that it had:

made several fundamental recommendations aimed at providing an efficient and fully satisfactory care system for all children requiring it. The achievement of this objective will of necessity take many years, as it would involve the implementation of new legislation, the recruitment and training of staff, and considerable expenditure both on revenue and capital projects. The principal recommendation which affects this Department is one which suggests that administrative responsibility for all aspects of child care should be transferred to the Department of Health. The immediate effect of the implementation of this recommendation would be the handing over of administrative responsibility for 28 Industrial Schools, 3 Reformatory Schools and one Remand Home. A further recommendation made by the Devlin Committee¹⁹⁹ and supported by the Committee on Reformatory and Industrial Schools is that the Department of Health should take over from the Department of Justice responsibility for adoption work.

4.192 Mr O'Sullivan went on to state that:

Ideally child welfare services should as far as possible be planned and be subject to supervision by one Department, to ensure that they are looked at in a comprehensive way and also to ensure there is no conflict in aims which may very well arise if the services are the responsibility of different Departments. Child care is but one aspect of family care and a proper family care service would in fact tend to eliminate the need for taking many children into residential care -e.g. children from broken homes or children whose mothers must go into hospital for short-term care. Similarly, it is not satisfactory to isolate the residential schools aspect of child care from the facilities provided for the community care of the child. For example the need to have a child committed to an Industrial School should be considered in the light of the ability of the mother or other member of the family to care for it in its own home, supported, where necessary, by ancillary services, including day nurseries. While Health Authorities avail of the accommodation provided in Industrial Schools this Department has no control, no legal right of entry to inspect the Schools. It seems to be that good grounds exist for having all social aspects of child care including crèches, day nurseries, boarding-out, residential care and adoption dealt with by the one Department. As it is not really feasible nor indeed desirable to separate child care from family care and as the latter seems to be a field in which the Department is becoming more and more involved it would seem logical that we should agree with the recommendations of the Reformatory and Industrial Schools Committee that all aspects of child care should be dealt with by this Department. The Department of Education would, however, continue to have control of the educational aspects affecting the Schools.

4.193 While acknowledging the desirability of such an administrative change, he went on to note:

..it is equally clear that this Department is not in a position to assume responsibility for all aspects of child care, including residential care, until an adequate staff (both at professional and administrative level) becomes available to provide a proper service. No real improvement will be effected in the existing services merely by transferring functions relating to Industrial Schools etc., to this Department.

¹⁹⁹ The Report of Public Services Organisation Review Group, better known as the Devlin Committee, after its chairman Mr Liam St J Devlin, was established in 1966 with the following terms of reference: 'Having regard to the growing responsibilities of Government, to examine and report on the organisation of the Departments of State at the higher levels, including the appropriate distribution of functions as between both Departments themselves and Departments and other bodies ...'. The recommendation was that 'An Bord Uchtala (Adoption Board) and functions related to the welfare of children generally should be transferred to the Department of Health and Welfare' (1969: 237).

1. Adequate staff

(a) Departmental – both professional and administrative. The Report recommends that establishment of a child care division in the Dept!

(b) In the field – Health board staff providing child care services must be recruited in sufficient numbers and appropriately trained. This applies also to staff of voluntary agencies active in child care.

2. Adequate Services

(a) (missing)

(b) Residential schools and children's homes must be modernised where necessary, and their role must be more closely linked with the necessary community services provided.

(c) Services for day care of children require considerable expansion.

(d) After care services, including advisory services, placement in employment, provision of hostel or other accommodation must be expanded.

Unless control of these developments rests with one Government Agency, progress in child care will tend to remain uncoordinated as at present and will also be slow and haphazard.

4.194 The memo concluded by arguing:

I feel that there is not much point in commenting on the very many other recommendations made by the Committee until a decision is first taken on whether this Department will have overall responsibility for the Residential Schools. The recommendations are, however, in general acceptable, but I would have reservations about the establishment of a Statutory Advisory Committee as suggested in the Report, which would act as a 'watchdog committee', to encourage the training of staff and the undertaking of research and publicity. If the other recommendations of the Committee are to be implemented, I would feel a better approach would be the establishment of a working group representative of the Departments concerned, the Health Boards and the organisations active in the field of child care, to consider existing legislation, to examine developments abroad, and to advise on the broad lines of legislation which might be developed here. This group would also be useful in that it would give an opportunity to the various voluntary organisations to air their views at the formative stage of legislation on certain controversial aspects of child care which are bound to arise, e.g. the question of compulsory notification of both legitimate and illegitimate children placed in residential care for reward or not. Finally, I would recommend that officers of the Department of Education should be invited to discuss the report with officers of this Department, if there is a difference of opinion between the two Departments as to who should be responsible for industrial schools.

4.195 Mr O'Rourke in his response to this memo stated that he had:

some misgivings about the transfer of responsibility in relation to special schools and remand homes for those aged 15 and upwards to what is described in the report as a child care division. Nevertheless, I would accept that on balance the advantage lies in placing, in the one Department, administrative responsibility for various aspects of the care of deprived children mentioned in the report and on the whole my personal view would be that this recommendation is acceptable in principle. I would hope, however, that when the matter comes to be considered at Government level, it would be fully apparent that the radical improvement in services for deprived children suggested in this report is going to cost a great deal of money. Much of the expenditure will be on proper staffing and training and because of its nature will involve heavy revenue costs. There will also, if many of the report's recommendations are accepted, be considerable capital expenditure

involved on such residential homes and special schools will be continue to be needed even if an adequate level of prevention services is built up. It would highly undesirable, in my opinion that an impression should be given that these proposals are to be accepted in principle unless there is at the same time a definite commitment to capital and revenue expenditure of an amount adequate to implement the recommendations.

4.196 He concluded by stating:

I would like to emphasise that in my opinion there can be no question of administrative responsibility for the services mentioned in this report being transferred to this Department without the establishment of a special division to undertake the reform of the services for deprived children...Unless there is an unequivocal commitment to providing the financial and staffing resources required to implement a reform programme in this field it would, in my opinion, be better to put the report away.

4.197 In November 1971, the journalist Nell McCafferty, in an article in the *Irish Times*, noted that a year had passed since the publication of the Kennedy Report and posed the question 'Just what has been done about the Kennedy Report?' Her answer was that the report contained 13 recommendations and that 'the Government has taken action on one part of one recommendation, relating to the training of staff responsible for child care. A one month residential course for senior personnel was held in Dublin in July. Otherwise, nothing. It's been a grim year for children.'²⁰⁰

Residential accommodation for offending children

4.198 In July and August 1971, a deputation from the Department of Education visited the Daingean Reformatory and the Salthill, Letterfrack and Clonmel Industrial Schools.

4.199 The stated purpose of the visit was 'a contribution towards an attempt at arriving at some tentative conclusions and recommendations....in the context of considerations for a reorganised and modernised system of Industrial and reformatory Schools'.

4.200 A number of difficulties with the children described as 'uncontrollable' and 'fire-bugs' were identified by the manager of Daingean, Fr McGonagle, who stated that he was unwilling to accept such children for any period of detention. The delegation concluded from this:

It needs to be stated that the present situation appears to be highly unsatisfactory. A boy who will not be accepted by the manager of Daingean or Letterfrack (and Clonmel, which is still more inappropriate for such a type of child) either has to be set free on probation or sent for one-month to Marlborough House (or to St. Patrick's²⁰¹, if 16 years of age – or to prison in certain circumstances, if he is 15 years of age). Such boys committed to Daingean or Letterfrack get to realise that the shortest route to release is to behave in such a way as lends to their again being brought before the Courts for a further offences and being committed to Marlborough House or being released on a suspended sentence. We mentioned tentatively to Fr. McGonagle the possibility of the provision of such a suitable secure unit in connection with the new Reformatory School in Oberstown. The boys in it would be separate from the boys in the Reformatory School and a separate programme of courses would have to be arranged for them. The staff, however, would be common to both institutions and it would be under the administrative management of the Oblate Fathers. Fr. McGonagle appeared to be well disposed to this idea but, of course, could not commit himself or the Order in any way and the matter was left in abeyance at that stage.

²⁰⁰ McCafferty, N (1971) 'Remember the Kennedy Report?' *Irish Times*, 12th November, p 6.

²⁰¹ On the history of St Patrick's, see Osborough, WN (1975) *Borstal in Ireland: Custodial Provision for the Young Adult Offender 1906-1974*. Dublin: Institute of Public Administration.

4.201 Following on from their visit to Letterfrack, Salthill and Clonmel Industrial Schools, the delegation observed that the function of the proposed new units at Finglas would have to be taken into account in any future policy. The memo noted that the centre at Finglas:

is not a replacement for Marlborough House in that it does not make provision for the 'one-month detainees' or for the 'uncontrollable or fire-bug' type who might be sent to Marlborough House for one month. It will, however, assume the functions of Marlborough House in relation to Remand when the Remand and Assessment Centre is functioning. There remains the question of the provision to be made for the 'one month detainees' and the uncontrollable (including the fire-bug) type of boy. As already mentioned in this memorandum, Fr. McGonagle and Bro McKinney were adamant that open Training Centres were not adequate or suitable for a certain type of boy and that he could not be accepted in them. It had already been decided that he could not be accepted in St. Laurence's Training Centre, Finglas. In the course of a discussion which representatives from the Leinster Regional Health Board had in August with officials of the Department of Education reference was made to this problem. Both Dr. McQuaid and Dr. McCarthy, who were members of the deputation, stated that they had recently become confirmed in their view that such a type of boy existed for whom the Training Centres as envisaged – such as St. Laurence's – were inappropriate and in relation to whom only a high security unit would meet requirements. They stated that plans for the provision of such a unit at Dundrum was at an advanced stage of preparation and that its availability within perhaps two years would serve to relieve the Department of Education of the necessity of making special provisions for this type of boy. It seemed that until alternative arrangements can be made in relation to the future position with regard to the 'one month detainee', Marlborough House would have to be kept open on a restricted scale. The Minister for Justice has been requested to agree that discussions should take place between officials of the Departments of Justice and Education in relation to this matter.

4.202 On 15th March 1972, CARE – the campaign for the care of deprived children²⁰² – wrote to the Minister for Education, Mr Padraig Faulkner, enclosing a paper setting out their views generally on residential care for young offenders, and specifically on the proposals to establish a new facility at Oberstown in North Dublin. They firstly outlined what they saw as the deficiencies in the system:

(a) In the first place there is excessive reliance on residential care as compared with care of children in their own homes, in the community. (b) The residential system generally is undifferentiated in respect of the needs of children. Children are classified roughly by sex and by age but not according to their needs. (c) The buildings are old and make it difficult to avoid institutionalisation and to provide effective homely care. (d) The staff, with few exceptions, are untrained. Marlborough House recruits staff through the labour exchange. (e) The institutions are in most cases quite apart from the community in which they are located, even more so from the communities from which the children are drawn. Thus they do not allow for a service which deals not just with the children but with their families

²⁰² Originally called the 'Group for the Advancement of Child Care', CARE was established at the end of 1970 and was formally launched in early February 1971. The initial publicity for the organisation stated that: 'The Group for the Advancement of Child Care is an independent, authoritative, single purpose body which has been founded to promote actively the welfare of deprived children in Ireland and to look for improvements in children's services. Deprived children are children who, because of their family circumstances, or the environment in which they live, are deprived of their facilities, the care and the opportunities, which they need and are entitled to. The group was founded by, and is made up of, persons with expert knowledge and/or practical expertise of the problems of, and the services at present available for, deprived children. These founder members now comprise the Council of the Group...members of the Group act in an individual capacity; they do not represent organisations or special interests other than the common interest of the Group. The Group is unique in being concerned with the whole field of deprived children and in having no function other than a promotional or campaigning one.' Of the founding two members, two had served as members of the Committee of Enquiry into Reformatory and Industrial Schools' Systems and a further two were to become members of the Task Force on Child Care Services established in 1974. A Department of Education memo in the early 1980s stated that 'Since the group got power into their hands through the Task Force they seem to have become comparatively quiet.' CARE eventually disbanded in the mid-1990s.

too. (f) Until now there has been no adequate system of assessment and referral which would ensure at least that residential care staff know the background and problems of their charges. (g) Apart from Marlborough House and St. Patrick's Institution all of the Institutions are run on a voluntary basis by Religious Orders and they retain the freedom to accept or reject children sent to them. In the past year the boys' reformatory in particular has cut down on the number of boys it takes because of lack of facilities. In these circumstances the courts are often unable to dispose of children to residential care even if they need it. (h) There are no specialist residential facilities for distinct problem-groups e.g. the emotionally disturbed and psychopathic young persons. (i) Marlborough House, the Remand Home, has been particularly criticised for its complete lack of facilities and adequate personnel.

4.203 The delegation was particularly opposed to the proposed new Reformatory School to be built at Oberstown as a replacement for the Daingean Reformatory (St Conleth's). The reasons for their opposition were fourfold. Firstly,

the location of the proposed institution is wrong. An institution at Oberstown is still far from the city of Dublin from which most of the young offenders from St. Conleth's are drawn, so far in fact that it would be quite impossible to provide a service dealing with not just the boys but with their families too. On a less sophisticated level visiting by families would still be very difficult. In addition access to specialist services is more of a problem the farther away from Dublin – or another city – the institution is and the more difficult it is for specialists to be involved on a part-time basis. Secondly the Oberstown project is too big. It is widely agreed that institutionalism is largely a function of size; in that respect Oberstown function would relate to boys from all over Ireland. There is a strong argument for decentralisation of this function as opposed to its concentration in one place. Thirdly, the thinking embodied in the Oberstown proposals is conservative and incoherent. The problems presenting themselves to the Government are clear, though probably wrongly defined, and Oberstown is intended as the main solution to them. It will fit into the existing pattern of juridical and administrative structures which are grossly deficient. If it embodies any new thinking, this thinking is not carried through to any logical conclusion. It retains too many of the inherent disadvantages of the old outmoded system, many of which are associated with the proposed size and type of location. Fourthly the Oberstown project cannot be conceived of as a temporary measure pending fundamental rethinking of legislation and comprehensive reform of services. The fact that it will cost so much and that it will exist in bricks and mortar will give it permanence, will make it liable to be cited as the solution to existing problems, and will thus pre-empt the choice of better options in the future.

4.204 The paper also noted the reluctance of the Religious engaged in residential childcare to accept certain children and to operate 'juvenile prisons'. Instead of the Oberstown project, CARE recommended that a secure unit for between 20-30 boys should be opened in, or close to, Dublin and 'should be managed, for the time being at least, by the Department of Education'. On 2nd May 1972, a delegation²⁰³ from CARE held a meeting in the Department of Education with officials from the Departments of Education, Health and Justice. The record of the meeting made by the Department of Education noted that:

Much time was spent in discussing the security arrangements at the new school in Oberstown. The delegation from CARE was very much against the security unit being attached to the school for the reasons already discussed at other meetings. This resistance mellowed somewhat when it was explained in more detail by the Department what was involved – that it would not be a complete security like a prison – and the reasons underlying it. The CARE people were dissatisfied with the location and size of

²⁰³ They were Seamus Ó Cinnéide, Paul McQuaid, Ian Hart, Peter Shanley and Kathleen O'Higgins.

Oberstown and the way these two things combined to stifle any other initiative. In relation to the last point, they were informed that the Department was not adverse to any other arrangement, for example, community based, but that whatever arrangement was chosen, there would be a need for Oberstown in the future.

4.205 CARE wrote to Mr Ó Floinn, Runai Cunta of the Department of Education, the following day thanking him for the helpful meeting and outlining:

We accept that the Oberstown project is going ahead and we hope to maintain an interest in its development and in the development of the associated establishments at Letterfrack, Clonmel and Finglas. On that basis I would like to reiterate a few points which we mentioned in our paper or which came up in the discussion. (a) We feel that children should be treated with reference to their needs and not with reference to their deeds: offenders, children who come before the courts, should not be segregated in committal from other children with the same problems who do not come before the courts. Thinking in terms of 'reformatories' and 'junior reformatories' would be a barrier to developments in this direction. (b) The future organisation of residential services for children will have to provide differentiated facilities to meet the different needs and problems of various groups. (c) If the high standard of services sought by CARE and envisaged by your Department are to be achieved and maintained it is not enough to have goodwill on the part of most of those who are engaged in planning and providing the services, which goodwill undoubtedly exists at present. It seems to us that detailed provision will have to be made with regard to inspection, co-ordination, training and research and that this will have to be guaranteed by regulations, stated standards, specific administrative structures, and procedures as appropriate.

The CARE memorandum

4.206 At the end of June 1972, CARE published a detailed memorandum on deprived children and children's services in Ireland.²⁰⁴ The memorandum claimed:

children's services in Ireland are vastly underdeveloped in a number of respects as compared with other social services in Ireland or as compared with children's services in other countries like ours. This is an indictment of our community and demands action now for reasons of justice and charity and even economy. The deficiencies in our provisions have long been recognised; they have been the subject of informed comment and protest for decades. But the protests have not been acted upon. The responsibility now devolves on us who can learn and speak out and act today. It is CARE's purposes to strive that the community accepts this responsibility, that provisions are improved now – late in the day.²⁰⁵

²⁰⁴ A series of empirical studies of children in residential care, particularly institutions for young offenders which appeared in the late 1960s and early 1970s, which focused on the social and personal characteristics of institutionalised children provided a research base, albeit comparatively small, for organisations such as CARE. The picture that emerged from these studies showed institutionalised young offenders to be primarily male, overwhelmingly from working class backgrounds, overwhelmingly from urban centres, the majority displaying low levels of literacy and numerical ability, low IQ levels, coming from larger than average size families, and high levels of parental separation. See Flynn, A, McDonald, N and O'Doherty, EF (1967) 'A Survey of Boys in St Patrick's Institution: Project on Juvenile Delinquency'. *The Irish Jurist*, Vol 2; Hart, I (1967) 'The Social and Psychological Characteristics of Institutionalised Young Offenders in Ireland'. *Administration*, Vol 16, pp 167-77; Hart, I (1970) 'A Survey of some Delinquent Boys in an Irish Industrial School and Reformatory'. *Economic and Social Review*, Vol 1, pp 182-214; Hart, I (1974) *Factors Relating to Reconviction among Young Dublin Probationers*. Dublin: ESRI. General Research Series No 76; Hart, I and McQuaid, P (1974) 'Empirical Classifications of Types among Delinquent Referrals to a Child Guidance Clinic'. *Economic and Social Review*, Vol 5, No 2, pp 163-73; Power, B (1971) 'The Young Lawbreaker'. *Social Studies*, Vol 1, pp 56-79.

²⁰⁵ CARE (1972) *Children Deprived: The CARE Memorandum on Deprived Children and Children's Services in Ireland*. Dublin: Care. p 28.

4.207 Both in the Memorandum and in subsequent publications, CARE argued for the need for co-ordination in the delivery of childcare services, arguing that ‘there is no one planning authority for services for deprived children, no co-ordinating machinery, no means of overall development. The interests of deprived children consequently suffer in the content of national planning.’²⁰⁶ In relation to residential care, CARE proposed:

That all institutions for deprived children while retaining their independence should be more fully integrated into a total child-care service under the Health Boards and should be inspected by the Boards’.²⁰⁷ That the regional care authorities in each health region should together, and in consultation with the Health Board, work out a plan for co-ordination and specialisation in residential care in the region’.²⁰⁸ The need for training for staff of residential care services.²⁰⁹ The need for extensive research designed to find the right methods of care for various categories of deprived children.²¹⁰

4.208 Later that year, CARE, in conjunction with a range of other organisations²¹¹ submitted a memo to the Government demanding one Minister for children. Having outlined the difficulties with the existing system of administration, the memo proposed:

that one Government Minister should be designated as having overall responsibility, or the main responsibility, for deprived children and children’s services in Ireland. This means the allocation of additional functions to a present Minister, not the creation of a new Ministerial post. Any less radical solution, would not resolve the problems we have described. The establishment of a co-ordinating inter-departmental committee and the appointment of an advisory body, have been recommended elsewhere: such structures are desirable but they alone could not meet the needs of the present grave system. With regard to the choice of department we think that the Department of Health is the most appropriate department to have charge of deprived children. At the moment this department has many welfare responsibilities. In the long-term we foresee the possibility of the amalgamation of the Departments of Health and Social Welfare into one Department of Health and Welfare (as recommended by the Devlin Committee, 1969 and recently by the Catholic Bishops Council on Social Welfare) which would be responsible for health services, social security and social work services. Children’s services are only one part of social work services and when we talk of the co-ordination of children’s services we see this as a first step towards the ultimate co-ordination of social work services, or welfare services, at a national level. Children’s services, or welfare services generally, merge into other social services, such as housing and social security, at one end, and into custodial services at the other. For this reason one minister, or one department could not be responsible for all aspects of services which meet the needs of deprived children: what we are asking for is that responsibility, for the basic ‘children’s services’(emphasis in original) and responsibility for overall policy and planning in respect of deprived children should be defined and allocated to one Minister. It might be considered necessary to delegate this responsibility to a Parliamentary Secretary. In the first instance we would suggest that a children’s Services Section should be established within the Department of Health under a Principal Officer with no other responsibilities initially it would be the task of the section to survey all services for deprived children and to consult with relevant interests. It could then assume planning and executive

²⁰⁶ Ibid. p 28. CARE subsequently organised a conference on the topic of ‘Planning for Our Children’ on 4th and 5th April 1974.

²⁰⁷ Ibid. p 67.

²⁰⁸ Ibid. p 69.

²⁰⁹ Ibid. p 70.

²¹⁰ Ibid. p 72.

²¹¹ These included the National Social Service Council, the Irish National Teachers Organisation, the Catholic Bishops’ Council on Social Welfare, the Irish Association of Social Worker, the Irish Society for the Prevention of Cruelty to Children, the Irish medical Association, the Association of Workers for Children in Care, the Psychological Society of Ireland, the Incorporated Law Society and the National Youth Council of Ireland.

responsibility for a range of services at present coming under the three departments. The decision in principle to have one minister and one department with the main responsibility in this area should give the section the necessary authority to approach its task with commitment and strength. It would be of the utmost importance that the new Children's Services Section should command child care expertise, or social work expertise, of a high order. A senior qualified social worker with expertise in child care should be recruited to the section; if that is not possible expert personnel from Ireland or abroad should be retained as consultants, at least in the short term.

4.209 The initial response by the Department of Education to the suggestion from CARE and others that one Minister and one Department be responsible for children's service was:

There does seem to be logic in the recommendations in question. So far as this Department is concerned, this shows itself primarily in relation to the Residential Homes (formerly Industrial Schools) which now, with one or two exceptions, send all their children to school in the neighbouring national and post-primary schools and whose functions of caring for children seem most appropriately the administrative responsibility of a Welfare or Health Authority. In the case of the Special Schools (formerly Reformatory Schools), the residential and care function and the educational function are inextricably intertwined and it is difficult to see how they could be suitably separated.

4.210 The note also observed that at the time of writing the Department of Health had not yet given their considered views on this recommendation, but that the Department of Education understood that while the Department of Health saw the merits of the case, the 'Department felt itself to have so many commitments at the present time that it did not welcome the financial and personnel problem which would be attached to taking over a complex block of work'. In the Department of Health, Clandillon drafted a discussion document in late 1972, outlining the recommendations of both the Committee on the Reformatory and Industrial Schools System and the CARE memorandum. She noted that while the recommendations of the CARE memorandum 'differ in some respects from those in the Kennedy Report, ...basically it is a re-hash of the Kennedy recommendations'. In particular Clandillon noted that both reports recommended:

- (a) that the Reformatory at Daingean and the Remand Home in Marlborough House should be replaced and that the present institutional system of residential care should be replaced by groups homes which would approximate as closely as possible the normal family unit;
- (b) that an independent statutory board should be established. The Kennedy Report visualised this largely as an advisory board but interested in the promotion of child care. The CARE memorandum went further and visualised it as providing services directly and concerned with questions of planning, finance, organisation and personnel, and with responsibility for all residential establishments, for adoption and for preventative services.
- (c) administrative responsibility for all aspects of child care should be transferred to the Department of Health. The Department would cater for all aspects of child care – prevention, boarding-out, remand, admission and committal to residential care, after-care and adoption.

4.211 In relation to the recommendation that responsibility for all childcare services be transferred to the Department of Health, Clandillon noted some potential difficulties. She argued that the Department should not have responsibility for certain aspects of the childcare system, in particular, the juvenile liaison scheme, the juvenile courts, the adoption service or the probation service. She noted:

The concept of one Department having responsibility sounds ...take over everything which could affect the welfare of children. Included would be family income maintenance, housing, employment and education. It would not, for instance, be feasible for a Minister

for Health to have special responsibility regarding the type and amount of education which would be provided for children in poor areas. It is suggested that it has to be accepted that different Ministers must have responsibilities in the field of child care and that our efforts must be devoted to seeing –

- (a) what is the most rational distribution of responsibilities,
- (b) how can co-ordination best be achieved and how can we ensure that an overall view of the problem is taken.

On the distribution of services the main things in which it has been suggested that this Department should have responsibility are –

- (a) adoption, the probation service, and the juvenile liaison service – all at present administered by the Department of Justice;
- (b) relations with the juvenile courts;
- (c) remand homes, reformatories and industrial schools – all now administered by the Department of Education.

In regard to adoption, the Reports do not offer persuasive arguments why this should be transferred to the Department of Health other than the fact that is an important aspect of child care and is a substitute form of care. The Department of Justice has not taken an official line on this matter but officers of that Department with whom the matter was discussed feel that there is no reason why it should be transferred. They have built up a certain amount of expertise and they have established relations with the various bodies dealing with adoption. They agreed that close co-operation and co-ordination between the Adoption Board and Health Boards are important. It must be remembered that the Adoption Board is an independent statutory body. I do not think that the taking over of the Adoption Board by this Department would lead to any substantial improvements although there is a theoretical justification for taking it over. In regard to probation, the officers of the Department of Justice felt that this service is closely linked with the Gardaí, the Courts and the prisons. It deals with both juvenile and adult offenders. They have 40 officers employed at present and it is intended to increase this number to 70. I do not think the taking over of this service is desirable. If we took it over we would have to establish close liaison with the adult service, with the prisons, the Gardaí, and the Courts and the position would probably be more complicated than it is at present. It is agreed that co-operation between the existing service and the Health Board service is very desirable. In regard to the juvenile liaison service, this is a system under which selected members of the Gardaí talk to young offenders and their parents and frequently, by advice and persuasion, succeed in stopping delinquency. This is a scheme operated by the Gardaí and I do not think it would be desirable that this Department should take it over. I do not think it would be desirable that we should attempt to deal with the Courts. The problems of juvenile offenders are intimately linked with the whole problem of the operation of the Courts, the probation service, the work of the Gardaí and the criminal law. I see no advantage in our trying to accept responsibilities for one portion. The need for co-ordination with the various other interests involved would probably leave the position worse than it is at present.

4.212 On the question of responsibility for reformatories and remand homes, Clandillon was of the view that:

It is not easy to make a firm recommendation in regard to which Department should have responsibilities for the reformatories and remand homes. The attitude of the Department of Education is that the residential and educational aspects of the care given in these centres cannot be divorced and that special teaching related to the deficiencies of the children is a vital element. There is a considerable amount in these views. On the other hand, the Department of Education has very limited responsibilities regarding the running of institutions. It is agreed that an input from the Health side is essential but whether this

health aspect should outweigh the educational aspect is not easy to decide. If there is co-operation it seems to me that there is no great need for the transfer of these centres to this Department. There is, however, a particular factor which has to be borne in mind. There seems little doubt that there will be pressure in the coming years for a special security unit to deal with disturbed and aggressive children and those who tend to escape. We already have a proposal to provide a special unit at Dundrum but this is intended for mentally ill and severely emotionally disturbed children. There is a tendency for voluntary bodies to be selective and to pass on to somebody else those who create too much trouble. If we provide a special unit there is going to be considerable pressure on us to take anyone who causes any trouble and I could see considerable differences of opinion between us and Education. My feeling is that if Education want to keep the special schools we should agree, but that we should insist that they take the rough with the smooth and operate a special security unit as well as the normal centres where strict security is not a feature.

4.213 In relation to Residential Homes, Clandillon noted the increase in the number of children placed by health boards and that the Department of Education 'seem prepared to agree that these homes should be transferred to the Department of Health but the Parliamentary Secretary seems to have some misgivings and reservations. Again these places could be operated by either Department provided there is co-operation and liaison on balance, however, I think it would be more logical that they should be under the control of this Department.' The recommendations outlined by Clandillon, as she acknowledged:

leave things as they are and may seem to suggest that there was no justification for the Reports. This is not so. A lot has happened since the reports were issued. On the Department of Justice side the welfare services have been expanded enormously and there are plans for further expansion. On the education side, Marlborough House has gone, Daingean is on the way out and new centres have been provided at Finglas and considerable improvements in the residential centres have been made. On our side we are developing our welfare services and we visualise a far greater development under the proposed Departmental re-organisation. On co-ordination, we could probably achieve this by regular meetings between ourselves, Justice and Education....Over and above all this is the question of new legislation...A possible solution would be for each Department to deal with its own bit of the legislation, but the various provisions are so inter-linked I think a comprehensive Act is essential. Instead, therefore, of simple liaison between the Departments of Health, Education and Justice, I would suggest the establishment of an advisory Council which would contain representatives of those Departments. It could be given as one of its first tasks the preparation of proposals for legislation. The Council should be appointed by the Minister for Health and it should report to him and he would take a lead role in the whole field. This, of course, will involve him in dealing with what will be a complicated, and possibly controversial, Bill. All this will be a futile exercise unless we have the staff and funds to deal with the problems which will arise.

Management of Residential Homes

4.214 An emerging issue for both the Department of Education and the Department of Health was the future management of children's Residential Homes. In an undated memo, but probably late 1972, relating to the closure of Letterfrack Industrial School and its possible replacement by a school in Dublin, the future role of religious Congregations in managing Residential Homes was discussed by the Department of Education:

The Christian Brothers, who conduct Letterfrack Special School for delinquent boys, have informed the Runai that they propose to phase out the school and have offered lands at Swords, Co. Dublin for a new school in replacement....It doesn't automatically follow that because Letterfrack is to be closed it must immediately be replaced. A replacement school

will cost something of the order of £300,000 to £400,000. The new schools at Finglas and Oberstown will not be fully operative until early 1973 and mid-1973, respectively, and it might be suggested that it will take some time before the impact of these new schools on the delinquency problem is clear. Moreover, opinion generally at the moment is against residential measures to cope with delinquency except as a last resort. As against this, if a replacement for Letterfrack is in fact needed, delay could result in a serious position for the Courts on the closure of Letterfrack. The Department of Justice strongly believes a replacement is needed. Growing urbanisation is likely to lead to an increase in the delinquency problem. While there is a certain overlap between Finglas and Letterfrack, the latter caters for a type of boy requiring a longer stay than is provided for in Finglas. Much of the opposition to residential institutions is misinformed: full development of welfare services will still have a residue of boys who cannot be effectively provided for except on a residential basis.

4.215 It was also noted that:

Incidentally, while the Christian Brothers would operate the school in Swords, the land would be bought from them by the Department. This was done in Oberstown where the Oblates got the full market price from the State: there is no indication the Brothers would sell the property at Swords to the State for less than market value.

4.216 In considering future arrangements, the memo noted the arrangement in the newly opened centre in Finglas where 'the religious order administers the school on behalf of the Department. A management committee representative of the State, the order and independent lay people supervise the general operation of the school and the day-to-day running is undertaken by the religious Director who is legally manager. A similar arrangement will operate in Oberstown.'

4.217 However, the memo highlighted that a number of difficulties had manifested themselves in this arrangement, in particular:

- (1) With all schools conducted by religious orders, lay teachers and lay housemasters, who will form the bulk of staff, will have practically no promotional outlets. This applies particularly to the new service of house master which will be almost entirely confined to the four schools of this type.
- (2) The decline in vocations and the pressure on the resources of religious orders are resulting in a position in Finglas and Oberstown where the orders concerned have a major say in the control and running of institutions owned, built and financed entirely by the State and staffed largely by lay people.
- (3) The religious working in these schools are assigned by their orders without consultation with the Department. In view of the degree of the Department's involvement with the schools, some of our recent experiences in relation to the assignment of personnel by the orders have been unsatisfactory.²¹²
- (4) The orders concerned do not specialise in education with the disadvantaged and there are tendencies to transfer talented personnel to other fields in which an order may have wider commitments.
- (5) Past experience engenders definite reservations on the suitability of the Christian Brothers in particular to conduct residential schools.'

4.218 In considering the establishment of a school under lay administration, the memo notes:—

The objection to a proposal of this nature would be the fact that it would be a State school in the straightforward meaning of that term and, secondly, that the Christian Brothers could read into such an action wider implications for the State's attitude to their place in Irish education generally. The management arrangements could accommodate the first

of these objections to some extent and the second would be a matter of discretion in the approach to the Brothers. The proposal would also entail an approach to the Archbishop of Dublin and would not be feasible unless a site other than the Swords site were available. A further objection is that, with a religious order administering an institution, the Department escapes a certain kind of public criticism in relation to its day-to-day running. On the other hand, a new kind of criticism is developing in having all educational institutions conducted by orders and we have lately had raised with us the question of provision for Protestant children whose numbers are too small to warrant a special school.

4.219 As the Department of Education was grappling with the management of reformatory and industrial schools, concern was expressed in the Department of Health in relation to the increase in the number of private orphanages, who because of rising costs, were seeking approval to allow health board children to be maintained by them. In a memo dated March 1973, it noted institutions seeking such approval in recent years included:

St. Saviour's Boys Home, Dominick Street; Mrs. Smyly's Homes; Nazareth Home, Fahan; Extensions to Kill O' The Grange Convent; Sacred Heart Home for Girls, Drumcondra; St. Vincent's, Glasnevin. As a result, Health Boards, in some cases, accepted maintenance of children already in these homes, e.g. Kirwan House, although when possible they examined the possibility of boarding these children out with relatives. Mrs. Smyly's Homes, another Protestant orphanage, which includes a nursery from which children may be placed for adoption, had on 29.09.1972, 29 children being paid by Health Boards. Two other Protestant Homes had 15 H.A. children between them. These figures show an increasing reliance on Health Boards of private Protestant orphanages, which in former years were able to manage an income from investment and private subscriptions. Because we have recognised the value of such orphanages as Kill O' the Grange Convent and St. Joseph's Tivoli Road, we have in recent years approved of grants by the Eastern Health Board to assist in extending and improving them. We are particularly aware of these places because they assist and encourage the children to train for careers and keep in touch with them in after years. The Eastern Health Board which accepts a large number of children into care has difficulty in finding sufficient suitable foster homes. We

²¹² Denis O'Sullivan, who was conducting research in the Letterfrack Industrial School at this time noted that 'Discussions with present and past staff members of the Research School and other correctional schools controlled by the religious Congregation suggested that in the past the allocation of a Brother to the Research school had been sometimes used as a disciplinary measure, and even in recent times Brothers reported being sent to the school to help them resolve religious and personal difficulties. In fact, shortly after field work was completed two members of the teaching staff left the order. The Manager, like the other Brothers, had expressed no desire to serve in the Research School and had no particular interest in this type of work or schooling before being allocated to the school. His experience in the Research School however generated an interest in this type of work, but his superiors' refusal to allow him to attend a course in Residential Child Care indicated to him that his service in a correctional school was to be short lived. The other Brothers do not appear to have developed any special interest in the type of pupil they were dealing with. It was, for them, a phase in their career to which they applied themselves vigorously and with professional concern, but none of them expressed a desire to devote himself entirely to this type of work. For the manager and staff, then, it was a phase which soon would pass when they would be transferred back into the regular school system.' O'Sullivan, D (1978) 'Negotiation in the Maintenance of Social Control: A Study in an Irish Correctional School'. *International Journal of Criminology and Penology*, 6, 1, 34. Barry Coldrey, himself a Christian Brother, has argued that: 'the least qualified in the Religious Orders gravitated to work in childcare institutions. In addition, before the Christian Brothers established specialist aged-care facilities for its own members, old, sick, odd and mentally unstable members were commonly 'hidden' in institution communities. Brothers or Sisters who worked long years 'on the orphanage circuit' had low status within their Congregations.' Coldrey, B (2000) 'A Strange Mixture of caring and Corruption': Residential Care in Christian Brother orphanages and Industrial Schools during their last Phase, 1940s to 1960s. *History of Education*, 29, 4, 349-50. The historian, Professor Tom Dunne, reflecting on his time in the Christian Brothers and their role in Industrial Schools has written that 'it was generally believed in the order that men were often sent to staff such terrible places because they had proved difficult, or inadequate, or had got into trouble in 'normal' schools. They, too, often felt punished and incarcerated, and the threat of banishment, especially to the more remote schools like Daingean (sic), was often the subject of nervous jokes. While their 'houses of formation' were staffed with their brightest and best, the Brothers, it seems, often left the far more needy boys of their industrial schools to the inadequate or the troubled, who were given no special training and little supervision.' Dunne, T (2002) 'Seven Years in the Brothers'. *Dublin Review*, 6, 28-29.

encouraged St. Vincent's Glasnevin to seek approval for the purposes of section 55. As you will recall this orphanage was not keen to seek approval. It has a high standard of teaching and results, and was afraid that the acceptance of Health Act children would lower its standards. Ten Health Act children, nine of them from Dublin, were being maintained there on 30.09.1972.

4.220 Part of the reason for the increase in the numbers of children admitted to residential care was:

...that there are many children that health authorities cannot place in foster homes or for adoption, e.g. lack of parent's consent, or some physical or mental deficiency. As you know, in spite of constant reminders to health authorities and representations by the Department's Inspectors in respect of individual children, the number of children maintained by health authorities in institutions continues to grow.

4.221 Later that month, a circular was issued to the health boards, which stated:

Having regard to Article 4 of the Boarding Out of Regulations 1954, the Minister notes with concern that over the past few years in some areas the numbers of children placed by Health Boards in institutions has showed a marked increase. He is aware that this may be due to a tendency on the part of health boards to accept into care children who at one time would not be regarded as eligible for such services. It appears nevertheless that in some areas the policy of not providing care for such children other than in an institution is not strictly observed. This may be due to difficulties encountered in finding suitable foster homes. Care should be taken to insert regularly in the public press advertisements seeking such homes. No doubt health board personnel with direct responsibility for children in care will be aware of families suitable to rear such children and should be of assistance in bringing to the notice of such families the health board's advertisements. Health Boards do not have to be reminded of the present high cost of maintaining a child in an institution. In light of recent increases in the cost of living they should review upwards the maintenance rates payable to foster parents as well as clothing allowances.

Implementing Kennedy

4.222 On 18th May 1973, a draft memo for Government on the Kennedy Report was circulated in the Department of Education. The memo focused primarily on the issues of administrative responsibilities and the updating of legislation. The memo signalled that the Department of Education concurred with the recommendation of the Committee that 'administrative responsibility for all aspects of child care should be transferred to the Department of Health. Responsibility for the education of children in care should remain with the Department of Education.' However, this could not happen immediately as 'the extensive measures of re-organisation and development which are currently engaging the attention of the Department of Health and the health authorities are unlikely to enable a transfer to take place without risk of some loss of efficiency.'

4.223 On this basis, the Department of Education proposed:

- (a) that administrative responsibility for the appropriate institutions remain with the Department of Education for the time being;
- (b) that the Department of Education take over, again for the interim period, the administration of similar institutions which, by reason of the fact that they do not accept children through the Courts, are at present under the Department of Health ;
- (c) that the Department of Health retain responsibility for boarding-out children;

- (d) that the planning of the development of facilities for the institutions and children in question be jointly undertaken by the two Departments in an inter-departmental committee under the direction of the Parliamentary Secretary to the Minister for Education and which would include also representation from the Department of Justice;
- (e) that the Department of Health arrange with the local health authorities, and through the inter-departmental committee, to place at the disposal of the schools the necessary psychological, psychiatric, medical and social worker service.

4.224 In relation to the recommendation in the Report that 'all laws relating to child care should be examined, brought up-to-date and incorporated into a composite Children Act', the memo outlined that:

pending provision of the new institutional arrangements which new legislation would embody, the exact outline of new legislation could not be anticipated. Moreover, it was difficult to see what direction new legislation should take in the absence of a decision in regard to administrative responsibility... The Minister therefore proposes that an inter-departmental committee be set up under the direction of the Parliamentary Secretary to the Minister for Education and comprising representatives of the Departments of Education, Health and Justice and of the Attorney general to examine the present framework of laws relating to children, to consider the amendments, deletions and additions demanded in these laws by present-day circumstances and policies, to make recommendations and to prepare for submission to the Government the heads of a Bill embodying their recommendations.'

4.225 In addition, the Parliamentary Secretary to the Minister for Education, Mr John Bruton outlined his views in a memo to the Minister. Noting the recommendation of both the Kennedy Committee and the CARE memorandum that responsibility for Residential Homes be vested in the Department of Health, he argued: 'unlike the Department of Education, the Department of Health does not at this time have a staff with experience or competence in dealing with residential child care'. He also argued that:

the multiplicity of agencies dealing with individual families and the lack of longterm overall planning – will not be solved by a simple transfer of Departmental responsibility for Residential Homes and Special Schools. Nor will it be solved by the setting up of a mere outside advisory body as proposed by CARE. It requires the establishment of more efficient means for co-ordination between Departments in dealing with both individual cases and overall policy.

4.226 In relation to this overall policy, he proposed that:

an interdepartmental committee should be set up with representation from the Departments of Health, Education, Justice, Finance and the Attorney General. This Committee should draft a new Children's Act, prepare proposals for the long-term financing of Child Care Services and establish permanent consultation procedures between Departments in relation to policy. A transfer of responsibility will require legislation anyway and thus would properly form part of the new Children's Act which should be prepared by the inter-departmental committee suggested in the last paragraph.

4.227 Mr Bruton met with the Association of Workers for Children in Care (AWCC)²¹³ on 4th July 1973 and sought their views on the transfer of residential childcare services to the Department of Health. Fr Gormley, on behalf of the organisation stated:

that the administration of child care services by one Department would greatly facilitate the work, and the AWCC had stated this in its response to the Kennedy report. However, it was not for the Association to say which Department could best provide the services that were needed. As far as the Association was concerned, it was the quality of the administration and the back-up services which counted. The real problems facing workers in the Homes were often haphazard method referral, the lack of assessment facilities in many areas, inadequate finance, the lack of ongoing support for children after they have left care. The Association saw the need for a Family Welfare Department which would co-ordinate the work and generate the various services which were needed.

4.228 The Department of Health also drafted a memo for Government outlining their views on the situation, particular the need for decisions to be made on matters arising from both the Kennedy Report and the CARE memorandum and noting that 'while the recommendations in the two reports differ in some respects basically CARE reiterated the recommendations in the earlier Kennedy Report'. The memo acknowledged that progress had been achieved in realising some of the recommendations of the Reports, 'but there are two major areas which have not been dealt with – the recommendations regarding the administration of services and the need for comprehensive examination and up-dating of legislation in relation to child care'. The memo outlined that responsibility for the probation services, the juvenile liaison scheme and the children's courts should be retained by the Department of Justice rather than being transferred to Health as recommended in the Kennedy Report. The memo argued that Government should accept in principle that adoption services should be transferred from the Department of Justice to the Department of Health, but that 'further consideration should be given to the question when the transfer should take place'. On the issue of residential care, in relation to the reformatory schools and remand homes, the memo noted that:

a view has been put forward that the residential and educational aspects of care given in these centres cannot be divorced and that special teaching related to the deficiencies of the children is a vital element; this is a cogent argument as there is no doubt that education must be a major element no matter what Minister is responsible for the centres. However, while there may be little, if any, health or welfare content in the case of a number of residents their initial medical and social assessment would be an essential element. Furthermore, the Department of Health has wide experience in the running of institutions and many of the problems which would arise in regard to the centres would be similar to those arising in other residential centres. The making of arrangements for more specialised care would be facilitated if one authority had responsibility for all centres. Again, there is a large educational element in mental handicap institutions – the Department of Education providing the necessary education works well. There is great

²¹³ The *Association of Workers with Children in Care* (AWCC) was founded in the early 1970s and was effectively the new name for Association of Managers of Reformatory and Industrial Schools. The AWCC, which included both Managers and Staff in residential care, had its beginnings in the early 1970s and at its foundation and through its early years was dominated by religious. That dominance dwindled over time with the decline in vocations and the movement away from residential child care by some of the religious orders. In the late 1980s, the staff formed their own association, the Irish Association of Care Workers, later renamed as the Irish Association of Social Care Workers. The original objectives of the organisation were: (1) to promote the welfare, education and rehabilitation of children in care; (2) to promote a high standard of training and work in the care of children; (3) to encourage the development of an integrated child care service by promoting co-operation and understanding between the various agencies concerned with the welfare of children; (4) to act in liaison, as required, between children's homes, childcare agencies, Government Departments and regional health boards etc.; (5) to promote the welfare of those caring for children by seeking to establish and maintain for them secure and adequate salaries and conditions of service; (6) to promote a wide knowledge of recent developments in child care and to seek to show their relevance and application to Ireland; (7) to review research and scientific literature and to initiate or promote research in Ireland.

need to build up expertise in the sphere of delinquent, aggressive and seriously disturbed behaviour and this almost certainly must be done on the health side. In the circumstances, the balance of argument appears to suggest that the Department of Health should take over responsibility for these centres.

4.229 In relation to industrial schools, the memo argued that as these homes contained 'an increasing proportion of children sent by Health Boards and which can be regarded, to a considerable extent, as part of a family care service', that responsibility for the homes should be transferred to the Department of Health and that the 'Health Boards have the necessary staff expertise etc. to ensure the best possible care for children in these homes'.

4.230 An Inter-Departmental Working Party, along the lines suggested by Education, was established, but difficulties were evident within the Department of Education in making progress in implementing the recommendations of the Report and on maintaining their day-to-day obligations in relation to Residential Homes, in particular, their inspectorial work. On 29th November 1973, Mr Ó Maitiú highlighted that the post of Inspector of Reformatory and Industrial Schools had in effect been downgraded from an assistant principal officer to that of a higher executive officer (HEO). However, 'because of the work involved in implementing the Kennedy Report these arrangements have proved entirely inadequate. The Report has involved the recasting of the system from top to bottom and involves work of very high quality. The HEO has not found it possible to carry out his executive duties as officer in charge of the section and, at the same time perform his statutory duties as Inspector. The inspectorial work has suffered.' Mr Ó Maitiú noted that the Kennedy Report had recommended that 'approximately five or six Inspectors would be required to operate a proper inspectorate'. Mr Ó Maitiú stated:

This is a formidable indictment of the official attitude to the inspection of the homes and of the indifferent approach to the staffing of the Inspector post. Three years later the position, if anything, has worsened. Far from five or six Inspectors being appointed, there is now not even one Inspector fully on the job. Furthermore, the H.E.O. can only carry out an administrative inspection – he has no qualifications otherwise. He has not even the help of a Medical Inspector as this post has not been filled for some years. The situation is now arising where the personnel of the Schools is obtaining child-care qualifications (as a result of courses conducted on behalf of the Department), whereas the Department itself has no inspector qualified in this field. There is an urgent need now for an Inspector with suitable qualifications who will supervise the implementation of the Kennedy Report in the Schools and homes and advise and council staff, co-ordinate arrangements with Health boards and Courts, ensure that medical services etc. are provided, that children are securing the education best suited to their needs and aptitudes, that after-care is receiving proper attention.²¹⁴

4.231 In addition, he noted that:

the Kennedy Report also recommended that the Children Act 1908 and other relevant legislation be up-dated in a new composite Children's Act. This has not yet been tackled – it was decided to wait until the outline of the new institutional and other services had emerged more clearly. However, considerable public pressure is now being exercised, as the existing legislation is entirely inappropriate to modern conditions.

4.232 A fortnight earlier, the Kennedy Report was debated in the Seanad, the first time the report was debated in either House. The Parliamentary Secretary at the Department of Education, Mr Bruton,

²¹⁴ On 14th May 1975, the post of Child Care Advisor in the Department of Education was advertised. The advert stated that 'Candidates will be required to have about three years experience in social work, including experience in child care after obtaining an appropriate professional or academic qualification such as a degree or diploma in Social Science or a certificate in Residential Child Care or in Residential Social Work or a diploma in Institutional Management'. The successful appointee was Mr Graham Granville.

outlined the progress on implementing the recommendations of the Report, but observed 'to date there has been a certain amount of secretiveness in the approach of my Department and also of other Departments to this important subject. This was particularly marked during the tenure of office of the previous Government.' On the issue of Departmental responsibility for child welfare services, he argued:

No matter where we draw the line as between one Department and the other, no matter where we lay the main responsibility, there will always be frayed edges, there will always be areas where demarcation will be unclear. Even within the terms of the Kennedy and CARE recommendations the Department of Education would retain responsibility for general education, for school psychological and child guidance service, for school attendance, for youth service, for remedial education, for education of the mentally handicapped and so on. All these are matters which bear very significantly on the life of the child in care and indeed on national policy in relation to children in care. To take another example, the Kennedy proposal that in the case of special schools one Department should have responsibility for the residential aspect of the special schools and another for the educational aspects, would introduce a duality of responsibility where in fact at the moment unity exists. It may be that the problem it is sought to solve, namely, the lack of co-ordination in overall policy-making and in dealing with the cases of individual children, can best be dealt with by more formalised contact between the various authorities at national, regional and local level rather than by shifting responsibilities around from one Minister to another.²¹⁵

Inter-departmental Working Party on the Kennedy Report

4.233 In February 1974 an Inter-departmental working party was established to 'review the extent to which the Kennedy Report has been implemented and to indicate the areas which still await implementation' and that the Working Party 'would form a briefing for a group to be set up to recommend action, including legislative action, which should be taken in regard to improvements in the field of childcare'. The Working Party systematically reviewed each of the recommendations in the report.

4.234 Recommendation No 1 stated that 'the whole aim of the child-care system should be geared towards the prevention of family breakdown and the problems consequent on it; the admission of children to residential care to be considered only when there was no satisfactory alternative'. The Working Party found that while it was not possible to compare the number of children in care in late 1973 with the position that existed at the time of the Kennedy Committee were reporting, in broad terms the number of children in Reformatory and Industrial schools had declined from 2,202 in 1969 to 1,495 in December 1973. It also noted that for Departmental purposes, Industrial Schools were now referred to as Residential Homes and Reformatory Schools referred to as Special Schools, although for legal purposes, they would retain their original designations. The decline in the number of children in Industrial Schools, the Working Party suggested, was due to a greater reluctance by the courts to commit children because of a lack of proper guardianship was a contributory factor in addition to 'improved living standards generally and the continuing impact of the Adoption Act 1952, and of Department of Health policy favouring boarding-out as opposed to residential care.' In relation to the Reformatory Schools, the introduction of the juvenile liaison scheme in the early 1960s²¹⁶ and a much expanded Probation and Welfare Service²¹⁷ helped divert many young people from having to be committed.

²¹⁵ Seanad Éireann, Vol 76, 15th November 1973.

²¹⁶ For further details, see Shanley, P (1970) 'The Formal Cautioning of Juvenile Offenders', *The Irish Jurist*. (NS) 2, 262-79.

²¹⁷ By early 1972 there were 24 probation officers and 47 by 1974, with officers now deployed outside of Dublin and a caseload of nearly a thousand. For further details, see McNally, G (2007) 'Probation in Ireland: A Brief History of the Early Years'. *Irish Probation Journal*, 4, 1, 5-24 and Geiran, V (2005) 'The Development of Social Work in Probation' in Kearney, N and Skehill, C (eds) *Social Work in Ireland: Historical Perspectives*. Dublin: Institute of Public Administration.

4.235 In relation to the two other forms of residential care for children, homes approved by the Minister for Health under section 55 of the Health Act 1953 and voluntary homes which had not applied for approval, the Working party noted that 'Information is not to hand however of the numbers of children in these institutions other than those placed by the health authorities not of numbers in voluntary homes which had not applied for approval. This makes it impossible on available data to state the present over-all position in relation to the numbers in residential care.' They also noted that the numbers of children boarded-out had declined. This they suggested 'may be due to increased utilization of adoption and a reduction, because of higher living standards and improved services, the numbers of families who are inadequate to the point where arrangements away from the family home have to be made for the children'. In relation to the question of improved services, the Working Party noted that 'there are at present 50 social workers employed by the health boards together with 60 social workers employed by voluntary agencies providing services on behalf of health boards' and that 'The Minister for Health has stated his desire to have the numbers of professionally trained social workers engaged in community work substantially increased and to this end he has arranged with the two Dublin university colleges to provide 27 places this year on professional social work courses for sponsorship by health boards.'

4.236 Recommendation No 2 of the Kennedy Report urged that the institutional system of residential care should be abolished to be replaced by group homes. The Working Party highlighted that over half the homes were in the process of adopting a group structure, this was done in three ways with the aid of grants from the Department of Education: (1) by erecting new purpose built group homes; (2) by purchasing private houses for adaptation as group homes; (3) by converting existing buildings to the group home system. The Working Party noted that the 'general tenor of the report appears to envisage the present system of large institutional buildings being replaced by self-contained units for 7 to 9 children each, these units to be conducted by houseparents and approximating as closely as possible the normal family unit. This would seem to entail a radical reorganization of the residential care system, as it appears to imply numbers of small, independent units.'

4.237 Recommendation No 3 drew attention to the inadequacy of the reformatory system, and in particular it said that St Conleth's Reformatory, Daingean, should be closed and replaced by a more suitable building with trained childcare staff. The Working Party recorded that St Conleth's closed in October 1973, and was been replaced by Scoil Ard Mhuire, in Lusk, County Dublin. The Industrial School at Letterfrack, treated in the Kennedy Report as a junior Reformatory, closed on 30th June 1974. The Working Party noted that:

Some controversy has surrounded the question of the provision of custodial accommodation in the new special schools. The Kennedy Report recommended that the schools be open but that each should have a secure wing. The religious who conduct the schools do not feel it appropriate that they should administer closed units. Pending experience of the working of the schools and having regard to practical problems, special arrangements for closed custody have not been made. There appears to be a small minority of sociopathic offenders who cannot be contained in a special school and who require treatment in a closed psychiatric unit. Proposals are at present being examined in the Department of Health for such a unit at Dundrum. It is possible that the presence of this small but destructive group and the fact that suitable provision has not as yet been made for them is influencing attitudes in relation to some secure provision in the special schools. If adequate special arrangements were made for this sociopathic group, it would help clarify this latter issue and it is possible that this would indicate that secure provision at the special schools would be needed for persistent absconders.

4.238 Recommendation No 4 related to the replacement of the remand home and place of detention at Marlborough House, Glasnevin and the Working Party noted that Marlborough House closed on

1st August 1972²¹⁸ and was replaced by the Finglas children's centre, which opened in January 1972, although the remand unit did not open until August 1973.²¹⁹ The Working Party acknowledged that the detention function of Marlborough House was 'purely punitive and of no educational or rehabilitative value' whereas the new Centre in Finglas provided special education of up to 12 months for those committed, in addition to a designated assessment facility.²²⁰ Again, the Working Group remarked that:

There is a special problem at present in relation to a small number of unruly boys (probably less than 12 in number) aged between 14 and 16 years. Their physical development makes it difficult to cater for them, in view of their conduct, in the remand unit and they cannot legally be taken in St. Patrick's Institution unless they are 16. Under the present law, paradoxically, they may be committed to prison if they are at least 15 years of age and if a court certifies that they are unruly. In the case of those between 14 and 15 years of age, there is at present no provision.

4.239 Recommendation No 5 was to the effect that the staff engaged in childcare work should be fully trained. The Kennedy Committee said that this should take precedence over any other recommendations. In response to this recommendation, the Working Party noted that a full-time residential course in childcare, financed by the Department of Education, was established at the School of Social Education, Kilkenny in 1971 and to date 41 students had successfully qualified. The Department of Education also promoted the organisation of in-service training courses at St Patrick's Training College, Drumcondra; St Vincent's, Goldenbridge; the Waterford Regional College of Technology, and Saint Mary's College, Cathal Brugha Street. The Working Group compared the numbers in child care training in 1969 and 1973 and while the number with full child-care training increased from 4 to 26, the numbers with no training also increased from 27 to 60.

4.240 Recommendation No 6 dealt with the question of educating children in care 'to the ultimate of their capacities'. The Working Party reported that, with the exception of two schools, the children in the remaining Residential Homes attend primary and secondary schools, and the grants system has been revised so that children in care can be paid for by the State while they complete their education, up to third level as appropriate. It noted that 'Grants on this basis are at present being paid in respect of 70 such children.'

4.241 Recommendation No 7 stated that after-care should form an integral part of the childcare system. In the case of the Residential Homes after-care is primarily the function of the Manager of the home, but the Working Party noted that the Kennedy Report did not consider this adequate.

²¹⁸ For further details on Marlborough House, see Keating, A (2004) 'Marlborough House: A Case Study of State Neglect'. *Studies*, 93, 371, 323-35.

²¹⁹ The establishment of a remand home and assessment centre for children, which was eventually established in the early 1970s in Finglas, owed its origins to a proposal in 1946 from Dr McQuaid, the Archbishop of Dublin. However, McQuaid wished to have the centre managed by a religious order, which the Minister for Education agreed to, but the Archbishop was unable to locate an order for this work until the early 1960s. The De la Salle Order, had to wait a further ten years before commencing the management of the centre, despite constant urgings from the Archbishop to establish the centre. In a letter to the Taoiseach in 1966, McQuaid stated that: 'I am grateful for your note informing me of the position regarding the new remand home in Finglas. The delay is easily understood by me, but if I stress that I initiated this project at least 19 years ago with the Department of Justice, you will realize my desire to save so many lives that could be saved. When I see such vast sums being expended on the roads of Dublin and the neighbouring counties, I may be pardoned in wishing that something could have been spent on straightening the crooked souls of very many youths in the past two decades.' The De La Salle Brothers withdrew from the Centre in June 2004 over ongoing differences in opinion between the Brothers and the Departments of Education and Justice on the role and function of St Michael's Assessment Unit.

²²⁰ For further information on the remand and assessment functions of Finglas, see Mayock, P (1995) *Residential Assessment: A Comparative Study of Assessment Practices for Children and Young People 'At Risk' or 'In Trouble' in Northern Ireland and the Republic of Ireland*. Unpublished M.Ed thesis, UCD; Anderson, S and Graham, G (2006) *The Custodial Remand System for Juveniles in Ireland*. Administration, 54, 1, 50-71 and Seymour, M and Butler, M (2008) *Young People on Remand*. Dublin: Office of the Minister for Children and Youth Affairs.

However, they also noted that the decline in the number of children in care has meant that it is easier for the homes themselves to keep contact with the children after they leave. Although the number of children in residential care was in decline, they argued that the children entering residential care tended, not, as in the past, to be illegitimate or orphaned, but were in residential care 'because their families have been inadequate for the task of caring for them'. On that basis, they concluded that 'until the expanding social work service of the regional health boards have developed beyond their present point of growth, it will not be possible to make fully satisfactory aftercare arrangements for those children including support for their families.' In relation to the special schools, the Working Party noted:

arrangements have been made for the provision of after-care in the form of supportive supervision through the Welfare Service of the Department of Justice. Three 'half-way houses' run by voluntary community groups and affiliated to the Welfare Service provide for approximately 30 boys aged 14 to 17 years and there are proposals for opening three further such houses. In addition, arrangements have been made for after-care by the Welfare Service of the Department of Justice to be extended to boys on their release from special schools.

4.242 Recommendation No 8 urged that administrative responsibility for all aspects of childcare be transferred to the Department of Health with responsibility for the education of children in care to remain with the Department of Education. The Working Party reported that:

While this matter has formed the subject of some inter-departmental discussions, no decision has yet been taken in this matter. Legislation would be required to carry this recommendation into effect. Pending such action, this recommendation has promoted increased liaison between the different Departments concerned and regular meetings are held between officers of the Departments in question.

4.243 Recommendation No 9 dealt with the updating of all laws related to childcare into a proposed composite Children Act and Recommendation No 10 involved the raising of the age of criminal responsibility from 7 to 12 years. The Working Party recorded these recommendations had not yet been implemented.

4.244 Recommendation No 11 was to the effect that the Special Schools and Residential Homes should be paid on a budget system rather than by capitation grant. The Working Party reported that the new Special Schools at Finglas and Lusk were being paid in this way and arrangements were in train for this arrangement to be applied to the other Special Schools. However, they noted:

No firm steps have yet been taken to put the recommendation into effect in the 26 residential homes. In the first place, while the homes continue to be the responsibility of the Department of Education there would be practical administrative problems entailed in the direct supervision by the Department of the detailed budgets of so many individual homes. Secondly, transfer to a budget system would require that prior agreement be reached at least on staff structures (numbers, grades, qualifications, remuneration). The matter is at present being approached from two directions. Firstly, the Association of Workers in Child Care (AWCC), representing the management of residential homes and special schools, has been asked to provide information in relation to actual costs of running homes. This will then be submitted to cost analysis with a view to considering the structure and financial implications of a possible budgetary basis of payment. The second approach is indirectly through the discussions on training referred to at the end of the notes on recommendation 5 above. Training requirements have consequences for career structures which in turn involve pay rates etc. Meanwhile, attention is being given to the maintenance as far as possible of the real value in money terms of the capitation grant. The rate of grant which had been doubled in 1969 was increased by 20 percent in 1972,

by a further 10 percent in 1973 and approval is being sought for a further increase in 1974 which would bring the total increase since 1969 to 50 percent.

4.245 Recommendation No 12 was that an independent advisory body be established at the earliest opportunity to ensure that the highest standards of childcare are attained and maintained and the Working Party noted that 'this had not yet been done pending the determination of the matter of administrative responsibility'.

4.246 Recommendation No 13 called attention to the need for continuous research in the field of childcare and the Working Party noted that 'there is at present no research being done by Government Departments (as distinct from what may be in progress in University Departments)'.

4.247 In relation to other recommendations contained in the Report, the Working Party reported:

Under the recent re-organisation of the Department of Health, a Welfare Division has been established which has responsibility for general welfare services including child care. There is a Children's Inspector attached to this division and one of the aims stated by the Minister is to orientate the welfare services towards the family.

4.248 The Group also reviewed the existing legislative provisions relating the major recommendations of the report, and noted:

The laws concerned are chiefly the Children Acts (1908, 1934, 1941, 1949 and 1957), the Health Act, 1953, and the Prevention of Cruelty to Children Act, 1904. The Criminal Justice Act, 1960 and the prisons Act, 1970, relate to St. Patrick's Institution. The Courts of Justice Act, 1924, governs the court procedures and probation is provided for in the probation of Offenders Act, 1907. Other existing legislation which may be considered relevant is the Adoption Acts, 1952 and 1964, and the School Attendance Acts, 1926 and 1967 – in particular, in the case of the 1926 Act, the power of the district court to send a child to an industrial school. No statutory amendments have been made in regard to the legal recommendations on p.78 of the report.

4.249 The Working Party concluded their review by noting that the Kennedy Report, as its title suggested, was primarily concerned with the Reformatory and Industrial Schools system and did not contain a comprehensive overview of all aspects of childcare. On that basis, they recommended establishing a group, who would have access to civil service and outside experts, to consider and make recommendations in regard to:

- (1) the identification of children at risk and the requirements by way of preventive measures;
- (2) the assessment of children at risk;
- (3) the court system and the adequacy of methods of disposition (including boarding-out or fosterage and residential care);
- (4) standards of child care in regard to education, trained staff, specialist services, buildings and equipment, etc.;
- (5) provisions as to after-care, employment, etc.

4.250 They further recommended that:

In order that there be no undue delay, it should be possible for the group to consider more than one of the areas simultaneously and to make interim reports'. In addition, 'It is essential that adequate, full-time secretarial services be available to the group....and

recommendations by the group should be accompanied by (a) draft heads of legislation where appropriate (b) estimates of cost where possible.²²¹

4.251 In addition to the review of the recommendations of the Kennedy Report by the Government Departments with varying levels of responsibility for residential childcare, the Association of Workers for Children in Care (AWCC) and CARE, also conducted their own review of the degree to which the recommendations had been implemented. The AWCC made the following commentary based on a survey of 1,215 children in 25 Residential Homes:

It is clear that family breakdown accounts for an increasing number of children coming into care. These children, in the main, are coming from disturbed family backgrounds and have to suffer the further traumatic experience of separation from their families, however inadequate. They are children with problems. They are in need of therapy and treatment in a relaxed, accepting situation. They need help exploring their own feelings towards themselves, their peers and their own family. The Kennedy Committee did not pay sufficient attention to the increasing incidence of disturbed children in residential care, and the implications of this for future planning.The group home model envisaged by Kennedy is suited to the long stay care of more or less normal children, and does not provide for the majority now in need of care, the children with problems.²²²

4.252 They also argued that:

..some form of closed facility for boys who cannot or will not avail of the programmes offered in St. Laurences's or Ard Mhuire is necessary. If children persistently abscond from both centres, they are eventually left at large in the community, often living rough and deteriorating both physically and socially. Young offenders have a very good understanding of the loopholes in the present legal system, and realise that if they are persistent enough they can escape the law.²²³

4.253 However, the core concern for the AWCC was that:

there is as yet no salary scale or career structure available for child care workers. Despite protracted negotiations between the AWCC and the Department of Education, the Department has not yet accepted the principle that such a scale and structure should be established on a national basis. The present position is that the salaries of the 26 Residential Homes must be paid by the managers of these homes from the capitation grant provided by the Department. But increases in this grant have barely kept pace with the increase in the cost of living, and have in no way taken account of the radical restructuring of these homes in recent years, resulting in a considerable intake of staff, mostly lay. The religious orders managing these homes are placed in the invidious position of not being able to provide lay workers with the adequate salary and security which is their due....The provision of training facilities for child care workers, particularly the diploma course at the Kilkenny School of Social Education, has attracted many more lay people into the work and resulted in improved standards of care and greater professionalism. But elementary justice requires that an adequate salary scale be available to these workers, and in the opinion of the AWCC this salary must be paid by the Department concerned. It cannot be provided from a system of capitation designed for an entirely different staffing structure, composed in the main of members of religious orders who rarely received any formal salary whatsoever.²²⁴

²²¹ D/Taoiseach 2005/7/94. Children General.

²²² AWCC (1974) Options in Residential Care. *CARE Newsletter*, 1, 2, 10.

²²³ Ibid. p 10.

²²⁴ Ibid. pp 10-11.

4.254 CARE also set out to review the recommendations of the Kennedy Report ‘individually and in sequence’. However, they argued that such an approach:

...was a mistake. A mistake in which the authorities responsible for implementing the Kennedy recommendations were implicated too. In general we would agree with the recommendations of the report, but if they were interpreted exactly and implemented as they stand, we would have created new problems in order to solve existing ones. In the report the overall subject indicated in the committee’s terms of reference is dealt with under various chapter headings, but this division, and the sequence, of the various aspects of the subject are not very systematic or logical. The report lacks coherence, it lacks perspective which would facilitate planning. The need for the overall planning of children’s services is recognised in the report, but the various disparate recommendations do not fit into an overall planning framework. For this reason Government agreement with the various recommendations is insufficient if the Government does not see them as part of a coherent purposeful approach to the problems of deprived children; in short, the Government must be concerned with planning for deprived children.²²⁵

4.255 On 17th June 1974, Mr John Bruton, the Parliamentary Secretary to the Minister for Education, wrote to the Minister for Education, Mr Richard Burke, outlining the state of play. In his letter he stated:

while the Working party was originally intended to review progress and indicate gaps in the implementation of the Kennedy Report it has in its introductory statement gone farther and recommended the setting up of another working group. As I read the suggested terms of reference of this new working party it seems as if it would in effect be undertaking the production of another (albeit updated) Kennedy Report. This major undertaking is not demonstrably necessary. The major lines of policy are in fact accepted by all and their main problems are availability of resources, administrative procedures and enabling legislation. I feel that the proposed investigation is too broad and would stifle much needed action pending issue of its findings. It is also unwise in that it involves the handing over to a committee of issues which require more and not less political direction. I suggest that following alternative course of action. In order to provide a firm starting point for action, a decision should be taken now that the administrative responsibilities of each Department will remain as they are at present. To co-ordinate day-to-day implementation of policy an inter-departmental committee (similar to that in operation in relation to handicapped children)...To draw up legislation and consider such wider policy issues as may arise in the context of legislation another higher level; interdepartmental committee should be set up. As the primary task of this committee would be drawing up of substantive legislative proposals it would need to act under continuing political direction. Such continuing political direction would only be feasible if it consisted of public servants.

4.256 On the basis of the proposals outlined in the letter, the Department of Education prepared a draft memorandum for Government. In this the Minister for Education outlined his position in respect of the proposal put forward by the Working Party, arguing ‘the modus operandi proposed by the Working party would appear as a recommendation for another (updated) Kennedy Report and would constitute a dilatory and abstract approach to the problem’. It reiterated the recommendation from the Kennedy Report in relation to administrative responsibility for childcare services, also noting that *The Care Memorandum* recommended ‘having one Minister and one Department have the “main responsibility” for deprived children and children’s services’. The memo went on to state that the *CARE Memorandum* ‘does not, however, attempt to define what should be the limits of this responsibility of the principal Minister (i.e. the Minister for Health) in relation to the services which would remain with the Ministers for Education and Justice. Moreover, it would seem to take

²²⁵ CARE Newsletter, 1, 2, 5.

no account of the very important principle that political accountability and administrative responsibility should rest with the same person.²²⁶

4.257 The view of the Department of Education was that:

the laudable purpose which the Kennedy Committee had in mind would be more appropriately achieved by establishing an efficient and politically directed system of co-ordination between the various Departments under which each would continue to play its existing specialist role as embodied in the concepts 'Care', 'Education' and 'Justice'. To obtain the full benefits of specialisation, it is possible that services at present administered in one of the Departments for historical reasons might be more properly located in another. In the long-term, a re-arrangement of responsibility for services concerned preponderantly either with 'education' or 'care' may be necessary as between the Departments of Education and Health. This, for example, might involve the transfer of responsibility for residential homes (the former industrial schools) to the Department of Health. In the short term, however, the Minister for Education considers the present would not be an appropriate time for such a transfer. Many of the services concerned with deprived children are at present in the course of rapid development and the Minister fears that the task of undertaking a transfer of functions at this juncture, with all that this implies in the way of staff re-organisation and re-familiarisation, might retard rather than accelerate the immediate improvement and expansion of services.

4.258 To achieve these objectives, the Minister argued that 'the first task in order of priority, an inter-departmental committee be established to update all legislation relating to child-care and consider such wider policy issues as may arise in the context of such legislation'. He secondly, proposed the establishment of 'a permanent committee (the 'operations committee') to be set up to co-ordinate day-to-day implementation of policy. The Committee would be representative of the Departments of Health, Education and Justice and would, in the first place, be a formalisation of close contacts at present being developed between the three Departments.' He finally proposed that:

an independent advisory body at national level be set up as recommended in the Kennedy Report except that, at least pending the completion of the work of the legislation committee, the question of its having statutory powers should be postponed. The function of this committee for the time being would be to advise on specific matters referred to them by the legislation or operations committees or by the Government itself.

4.259 The draft memo was circulated to various Departments who responded to the proposals outlined. The Attorney General noted that the memo proposed to reject the recommendation of the Kennedy Report, but that he believed 'that the balance of the argument favours the Kennedy proposals'. The Minister for Public Service:

considered that a decision in principle should now be taken to allocate main responsibility in relation to child care to a single Department; the balance of logic and opinion suggests that the Department chosen should be the Department of Health. The first advantage of such a decision would be to indicate that the Government is committed to an approach based on 'care' rather than law enforcement in relation to children at risk and would direct the attention of the proposed inter-Departmental legislation Committee to the need for such an approach in dealing with the reform of legislation relating to children. Secondly, it would place responsibility for co-ordination on an area of Government under a single Minister rather than on a Committee answerable to no single authority: the establishment of a permanent committee to co-ordinate day to day implementation of policy, would, in the Minister's view, tend to blur lines of responsibility.

²²⁶ D/Taoiseach 2005/7/94. Children General.

4.260 In addition, 'because of the considerable organisation implications involved, a representative from the Department of Public Service should be included on this inter-departmental Committee'.

4.261 The Minister for Health argued that the 'Government's objective should be to institute, as quickly as possible, a unified comprehensive children's service, with administrative structures which reflect the needs of the children concerned. A new Children's Act is required to provide a modern legal framework for the reformed services'. To achieve this, the Minister stated:

that the inter-departmental committee approach, even with the inclusion of outside experts, does not offer the best hope of a speedy review of law and policy in relation to children. Such a committee, because of the other commitments of those concerned, tend to be both slow and cumbersome....the Minister for Health believes that reform proposals can best be instituted by setting up a full-time task force, comprising representatives of the Departments concerned and selected outside experts. In all, he would not envisage more than ten task force members. This group would work directly to the Tanaiste and Minister for Health, and its function would be to prepare a new Children's Bill and other reform proposals which he would bring to the Cabinet for decision. The task force would remain in existence until such time as the necessary reform proposals are laid before the Cabinet by the Tanaiste. It is envisaged that this should not take longer than 3-4 months, if the group is set up on a full-time basis....The Minister believes that unnecessary delay and confusion in planning will only be avoided if one Minister plays a lead role and he feels that he, as Minister for Health, with responsibility for a wide range of children's services, should assume this role in planning the necessary reforms.

4.262 The Department of Justice foresaw problems with vesting responsibility for children's services in one Department arguing that such a proposal ignored:

the fundamental point that problems of young persons who come in conflict with the law or who are otherwise at risk cannot reasonably be divorced from problems of family stress; and that amongst factors that are relevant to family stress, such matters as housing and social welfare benefits are likely to be of major importance, so the argument for a 'single department' for children should logically lead to the conclusion that the Department should also deal with housing, social welfare benefits, not to mention family law, schools and other matters.

4.263 In addition, in relation to matters of legislation,

it is the experience of the Department of Justice, repeated time and again, that attempts to produce 'comprehensive' legislation on what are very complex issues invariably not only prove more difficult (and time consuming) than originally estimated because of the number of unforeseen difficulties which the detailed examination throws up but also run up against the additional and important difficulty that a hold-up on one point means that everything is held up; and, in a matter as complex in its implications as this, there are bound to be very controversial points which will not prove possible to deal with quickly.

4.264 However, the Minister was in favour of the establishment of the 'Operations Committee', but opposed to the establishment of an advisory committee on the grounds that:

it would bring no practical benefit but on the other hand would mean the generation of a constant stream of proposals beyond the capacity of the Government to pay for (and beyond the capacity of available resources to 'process' into workable schemes or acceptable legislation even if they were basically acceptable in principle) and that the practical result would be the existence of a Government-sponsored body which was serving only to generate public criticism.

4.265 The Department of Education, in reviewing the submissions to the draft memo to Government, noted:

that there is a fairly wide divergence in the course of action proposed by each Department. On the question of administration, Departments of Health, Public Service and Attorney General believe that the main responsibility for planning and provision of child-care services should rest with the Minister for Health. Department of Justice, on the other hand, agree with this Department's view that this is neither logical nor practicable. None of the 'one-Department' supporters have defined precisely what they mean by 'child-care' and none in effect have answered the point, that, in the nature of things, both the Departments of Education and Justice must continue to be responsible for many services in relation to children.

4.266 The Department of Education therefore suggested that the:

Department of Health proposal that a full-time task force be set up to complete the job in 3 months is unrealistic. The Department of Justice rightly makes the point that this will be a complex and time-consuming task, which will call for controversial decisions. This is confirmed by own experience in making comparatively small amendments to the children's acts. Current public controversies emphasise how difficult it will be to produce legislation which will satisfy all shades of opinion in Church and State and meet constitutional requirements.

4.267 In light of these difficulties, the Department of Education suggested:

A possible way out of the dilemma might be to set up a small full-time working group or task force controlled by a part-time steering committee representative of the Departments concerned plus outside interests. (This might be something on the lines of the OECD study on Investment in Education where a small team of full-time experts from Departments and Universities worked under the direction of a broadly based steering committee). Since this working group would have to seek advice from outside bodies anyway, it would seem reasonable to postpone the setting up of a formal advisory committee until a later stage.

4.268 The Department of Education also considered the possible membership of this task force or working group, suggesting that outside expertise was required from 'fields such as psychology, psychiatry, social sciences, education' as well as various organisations with an expertise in the area. On the question of chairmanship of the Committee, Mr Ó Maitiú highlighted that would be 'a crucial issue' and outlined that:

We are not prepared to agree to have it operating under the aegis of the Minister of Health and presumably Dept of Health would be opposed to someone from this Dept as chairman. Would it go to sorting the situation if we proposed a chairman independent of all the Departments. Since law revision will be the task of the committee, I suggest that the Chairman should have a legal background – probably a member of the judiciary.

4.269 The Parliamentary Secretary in reply stated that he was 'favourable to outsiders being involved in law preparation if it is on the basis of strict confidentiality of proceedings and non-publication of recommendations. Does something need to be done to ensure this?'

4.270 In the memorandum to Government, the Minister for Education noted that having considered the views of other Departments he remained of the view that the approach suggested by the Inter-Departmental Working party was the most appropriate, and while 'a full-time task force as proposed by the Minister for Health has its merits, he considers that a time-scale of three months or so is unrealistic'. He proposed therefore that:

- (1) administrative responsibilities to remain as at present in the short term.
- (2) An inter-departmental committee to be established under continuing political direction to up-date all the laws relating to child care and to consider such wider policy issues as may arise in the context of such legislation. This Committee to be authorised to set up working parties, which would include experts from outside the public service, to consider specific proposals.
- (3) A permanent inter-departmental committee on operational co-ordination to be set up. This Committee to promote the establishment of local-co-ordinating committees at health board level, starting with County Child Care teams which would review the position in each area,
- (4) A national advisory council on child care as recommended in the Kennedy Report.²²⁷

4.271 However, the view of the Department of Health prevailed and on 11th October 1974 the Government made a decision to firstly allocate to the Minister for Health the main responsibility, including that of co-ordination, in relation to childcare; and secondly authorised the Minister to set up a working party to report within three months on the necessary updating and reform of childcare legislation and of child care services. On 19th October 1974, Mr Brendan Corish, Tanaiste and Minister for Health and Social Welfare issued the following press release:

Last week the Government decided that I, as Minister for Health, should have the main responsibility for children's services in the future. I welcome this decision, since the present arrangements whereby responsibility for children's services is diffused between three Government Departments presents serious obstacles to reform. I intend to begin work immediately in the following areas. I intend to prepare a new Children's Bill. Simultaneously, I will review and draw up proposals to improve and extend the services available to children. At the same time, it will be necessary to carry through reforms. To help me in this work, I am immediately setting up a full time task force comprising one representative from each of the Departments concerned with children's services, together with a number of outside experts...Since the group will work on a full-time basis, I expect that my proposals for reform will be ready within a matter of very few months.²²⁸

4.272 The Task Force on Child Care Services²²⁹ as it became known, was established with the following terms of reference:

- (1) to make recommendations on the extension and improvement of services for deprived children and children at risk;
- (2) to prepare a new Children's Bill, updating and modernising the law in relation to children;
- (3) to make recommendations on the administrative reforms which may be necessary to give effect to proposals at (1) and (2) above.²³⁰

²²⁷ D/Taoiseach 2005/7/94. Children General.

²²⁸ Ibid.

²²⁹ As one commentator acerbically noted 'The title of the committee – a Task Force – suggests an image of urgency and incisiveness that the committee's deliberations did its best to overturn.' McCullagh, C (1992) *Reforming the Juvenile Justice System: The Examination of Failure*. Paper presented to the Conference on the State of the Irish Political System, University College Cork, May, 1992.

²³⁰ The members of the Task Force were: Mr Flor O'Mahony, Advisor to the Minister for Health (Chair); Mr P Feeney, Department of Finance; Mr Tomas O Gilin, Department of Education; Mr Ian Hart, Psychologist; Mr Seamus Ó Cinnéide, Social Administration; Miss Niav O'Daly, Social Worker; Mr Kevin O'Grady, Department of Justice; Mr P O Suilleabhain, Department of Health; Mr Matthew Russell, Office of the Attorney General. The Secretary to the Task Force was Mr Brendan Ingoldsby, Department of Health and Councillor Peter Shanley, BL provided legal assistance to the Task Force. An tOnorach Sean de Buitleir was appointed Chairman in December 1977 replacing Mr Flor O'Mahony; Mr JV Hurley, Department of Health replaced Mr P O Suilleabhain in December 1977 and Mr Brian Murphy, Department of the Public Service replaced Mr P Feeney in December 1977. Dr Ian Hart died in March 1980 and An tOnorach Sean de Buitleir died in July 1980.

4.273 However, in relation to the first decision, no guidance as to the extent or nature of the ‘main responsibility’ to be given to the Minister for Health was provided and this was to adversely impact on both Ministerial and Departmental responsibility for different elements of the child welfare and juvenile justice for a further 30 years.

Interdepartmental Committee on Mentally Ill and Maladjusted Persons

4.274 Before the decision was taken to establish a Task Force on Child Care Services, in August 1974 the Interdepartmental Committee on Mentally Ill and Maladjusted Persons published two interim reports. The first report was entitled *Assessment Services for the Courts in Respect of Juvenile*²³¹ and the second *The Provision of Treatment for Juvenile Offenders and Potential Juvenile Offenders*. In respect of the first interim report, the primary recommendation of the Committee was that:

There should be established, on a permanent basis, an inter-departmental committee to co-ordinate the activities of the Government Departments concerned in relation to children and young persons. Its aim should be to keep the changing needs of the situation under constant review, to advise on any further provisions – remedial, administrative, legislative or otherwise – which it considers, from time to time, to be necessary or desirable in relation to young persons who have come or are likely to come in conflict with the law or who may be in need of psychiatric treatment. It should also have the opportunity of expressing its opinion on the provisions of any projected legislation likely to have an impact on the personal or social well-being of young people.²³¹

4.275 The Committee also reported that:

It appears from enquiries made by the Committee that very little accurate information is available in regard to children and juveniles who appear before Irish Courts. In the absence of adequate information about themselves, their social background, the offences with which they are charged and the court decisions, it is very difficult to decide the nature and extent of the facilities requires’ and on this basis recommended the establishment of a ‘suitably staffed research and statistics unit as a matter of urgency.’²³²

4.276 Crucially, the Committee recommended that children and juveniles should only be referred to a residential unit after a full assessment and that ‘existing legislation should be amended to permit remands to assessment centres for periods of up to 21 days where the court finds that necessary.’²³³ It also recommended the development of additional assessment centres as the Committee noted that the existing centre in Finglas was insufficient to meet the ongoing needs. In their second report the Committee recommended the expansion of the role of welfare officers to provide non-residential services for young offenders. In terms of residential services, the committee recommended the development of small residential homes, an additional Special School to be built for young male offenders, and a closed unit for male offenders and a special residential school for female offenders between the ages of 12 and 17.

²³¹ First Interim Report of the Interdepartmental Committee on Mentally Ill and Maladjusted Persons (1974) *Assessment Services for the Courts in Respect of Juveniles*. Dublin: Stationery Office. p 4. This Committee was established by the Minister for Justice in January 1972 with the following terms of reference: ‘To examine and report on the provisions, legislative, administrative and otherwise, which the Committee considers to be necessary or desirable in relation to persons (including drug abusers, psychopaths and emotionally disturbed and maladjusted children and adolescents) who have come, or appear likely to come, in conflict with the law and who may be in need of psychiatric treatment’. Chaired by the Hon Mr Justice Henchy of the Supreme Court, other members included Risteard Mac Conchradha who had been a member of the Reformatory and Industrial Schools Systems Report; Pádraig Ó Maitiú who was the Principal in the Reformatory and Industrial Schools section of the Department of Education and Dr JA Robins from the Department of Health. In addition to the two reports mentioned above, a third Interim Report entitled ‘Treatment and care of persons suffering from mental disorder who appear before the courts on criminal charges’ was published in 1978.

²³² Ibid. p 5.

²³³ Ibid. p 7.

Submissions to the Task Force on Child Care Services

4.277 After its establishment, the Task Force on Child Care Services sought submissions from interested parties. These submissions provide a useful snapshot of the views of various interest groups in the mid-1970s. In their submission to the Task Force on Child Care Services the Irish Association of Social Workers²³⁴, in relation to foster care argued that:

There should be a recruiting programme for Foster Parents for temporary and long term care and children with special needs. At present, there is no legal provision for short term Foster Care i.e. Mother in hospital, Father can't cope – this provision could prevent a long term break down of the family. At present, children in such emergency situations are placed in Children's Homes where they cannot have such personal attention. There should be no Age Limit for Foster Care. It is assumed that only babies and small children are suitable for foster care but we feel all ages require and would benefit from such a personal type service as offered through Foster Care. Rules should be made governing the standards of assessment of Foster parents and the quality of support necessary to Foster Parents, the Foster Child and the natural family. Allowance should be made for adequate remuneration to Foster parents. All Agencies arranging Foster Care should be encouraged to understand the team approach, i.e. that Foster Parents should be seen as important members of the team caring for the child.²³⁵

4.278 In relation to residential care, the Association argued:

There should be increased and improved training facilities for staff of Residential Homes. There should be increased facilities for the emotional, educational and social assessment of each child as to define the most appropriate type of care for the child. This assessment unit will, of course, have to be Residential and we would need such units throughout the country. Each Health Board should have a wide range of residential facilities available to ensure that children are not placed away from their cultural background and natural family. These should include small group homes, Hostels, Homes for severely handicapped boys and girls, and homes for severely disturbed boys and girls. There should be as few as possible single sex homes. There should be an overall plan worked out for each child between the Agency placing the child and the Home. There should be regular reviews of the child's progress, the suitability of the placement and the Child's After Care at least annually. The Placing Agency and, where appropriate, the responsible Health Board Social Worker should be represented on this Review Board. There should be a registration of all Homes and regular inspection to maintain minimum standards of entrance and physical and emotional care which, at the same times, would give each home the chance to develop their own speciality.²³⁶

4.279 The Manager of the Magdalen Home in Sean MacDermott St in Dublin, Sr Lucy Bruton suggested the need for:

A facility for young itinerant offenders, who are becoming legion and cannot be accommodated in the present institutions, because such units are entirely alien to their

²³⁴ The Irish Association of Social Workers was formed in May 1971, and was the amalgamation of the Irish Society of Medical and Psychiatric Social Workers and the Irish Association of Social Workers.

²³⁵ *Recommendations (Part 1) on Developments in Child Care Services* prepared by the Irish Association of Social Worker. p 6. The Committee that prepared the document were Sr Marie Barry (Child Study Centre, St Vincent's); Miss Colette Delaney (ISPCC); Miss Letitia Lefroy (Dr Barnardos); Mr Chris Morris (Department of Justice); Mrs Clodagh McStay (Temple Street Hospital); Sr Meave O' Sullivan (Child and family Centre, Ballyfermot); Sr Francis Regis (Temple Street Hospital); Miss Brid Rutledge (Eastern Health Board); Mr John Stokes (Church of Ireland Social Services); Sr Francis Xaviour (Child Guidance Clinic, Temple Street); Mrs Gemma Rowley (Convener, Organising Secretary, IASW).

²³⁶ *Recommendations (Part 1) on Developments in Child Care Services prepared by the Irish Association of Social Worker.* pp 6-7.

culture and upbringing. I suggest a section of the Itinerant Settlement Committee, who could be appointed as 'Fit Persons' to look after such offenders.²³⁷

4.280 The Social Workers of Our Lady's Hospital for Sick Children, Dublin, in their submission argued that:

We feel that foster parents should be drawn from all stratas of society and that where possible the child should be placed with people of a similar background to his own. It is important that a child in a foster home should receive adequate stimulation, particularly in early years. In order to acquire the right type of foster parent we consider that it is an absolute necessity that they should receive adequate financial compensation: that it should be looked upon as a profession or career rather than a 'vocation' or doing a good deed as in the past.²³⁸

4.281 As part of their submission to the Task Force, the Western Health Board reviewed a sample of cases in their two residential facilities, St Joseph's School and St Anne's and provides a detailed analysis of the changes that had taken place in these two Industrial Schools since the publication of the Kennedy Report. The report, authored by R O'Flaherty, concluded:

Both institutions visited are making sincere efforts to put into effect the recommendations of the Kennedy Report and the CARE Memorandum. Small group living and eating arrangements are taking effect. Small, private bedrooms, in which family members live together, help to preserve the all important family connection. The elder children are thus readily available to give support to younger siblings, and the youngsters know that help is near from the older children. The staffs are obviously keenly interested in the welfare of the children charged to their care. Staff are in constant contact with the family in the home community, and I was impressed with the depth of their knowledge about home dynamics. I can see no reason why the group homes could not cater for both sexes. That said, the question still remains, why are these children in group homes? In only one case was a thorough pre-placement assessment done, with psychiatrist's report recommending group home placement for a fixed time to provide needed controls. This treatment could just as well, I feel, have been provided in the child's home community. One of the problem areas discovered, and one of the reasons why older children are placed residentially, is lack of ongoing casework services being available to foster home parents. With such help, foster parents could be aided in dealing with the child's onset of adolescence (many manifestations of which are quite normal) while keeping him in the home....If at all possible, children should be allowed frequent visits to the natural family to both keep alive the family connection and to avoid over-identification with the institution which, in severe cases, may cause children to run back to the security they know, rather than try to get on in a new living arrangement...New foster parents should be recruited by arrangements being made more attractive to potential foster home parents and, of course, counselling should be available to such persons recruited.²³⁹

4.282 In a separate submission replying to O'Flaherty's report, the Manager of St Joseph's Residential Home in Lower Salthill, Br DE Drohan, made the following observations on the reasons why the children were in residential care:

²³⁷ Submission to the Task Force on Child Care Services from Sr Lucy Bruton, Convent of Our Lady of Mercy, Lower Sean MacDermott Street, Dublin 1, 10th December 1974. Department of Health C.4.01.03 Task Force Submissions Vol 1.

²³⁸ Recommendations and suggestions from the Social Workers of Our Lady's Hospital for Sick Children, Dublin 12 to the Task Force on Child Care Services, 12th December 1974. Department of Health C.4.01.03 Task Force Submissions Vol 1.

²³⁹ Summary of study of children in residential care in Western Health Board region by R O'Flaherty, August 1974 submitted to the Task Force on Child Care Services. Department of Health C.4.01.03 Task Force Submissions Vol 1.

The family structures and environment from which these children come from cannot supply the physical, emotional and psychological needs of the child. Most of the parents are very inadequate. Relationships between the parents are shallow and in some cases they are only co-existing. The relationship between the children and the parents before coming into residential care was often shallow and of little therapeutic value. This should have been very clear to Mr. Flaherty. We fail to see why it was necessary to ask this question. We can state that the group residential setting has helped improve the child/parent relationship. It is true that if long term case work backed up with in-depth social services had been given to these families there is the possibility that some of the children would not have come into residential care. But the hard fact must be faced that many of these parents are so damaged psychologically that they cannot give their children the love, concern, security and support that they need....We agree that every effort must be made to maintain the contact between the child and his parents. The parents should be allowed to visit the child frequently in the residential setting. Also the child should be allowed to visit his natural family frequently. The decision for this must rest with the professional child care worker after consulting other interested agencies. Serious 'Stress' can be put on the child who visits a home where the parents are suffering from psychiatric problems or where there are alcoholic parents / or a parent. This 'stress' can cause much disturbance to the child and retard the residential group home therapeutic programme. This is a point often missed by social workers.²⁴⁰

4.283 The Manager of the other Residential Home in the Western Health Board, St Ann's Residential Home, Lenaboy, Taylor's Hill, Sr M Veronica Walsh also commented on the report, noting:

I fail to see how these children could be provided for in their own community even if special Education facilities were available as in Renmore. In most cases these children were emotionally disturbed prior to their admission and would require trained personnel to cater for their needs. I am not ruling out foster homes. There are exceptions but trained personnel are rarely found in such homes. We have personal experience in breakdown of foster homes, which leaves the children with a double rejection.²⁴¹

4.284 The aforementioned Joint Committee of Women's Societies and Social Workers also sent a detailed submission to the Task Force, noting:

In the past, children have been too readily removed from their families. We are convinced that the appointment of a sufficient number of trained social workers would, quite often, prevent this happening. They, with their special skills, would detect some of the beginnings of family breakdown. With this in mind we have often recommended that school attendance officers should be trained social workers...we do not agree, however, that Residential Homes (Industrial Schools) should be broken up into self-contained units, as this only perpetuates the old institutional environment. The Joint Committee of Women's Societies would oppose the spending of State funds in this make-do manner. We want something better for our children...We must cease to institutionalise our children. We recommend in order of preference: Fosterage, chosen and supervised by properly qualified Children's Officers, and payment for services rendered by Foster Parents should relate to such payments now made to institutions....Single houses, in various Housing Estates should be made available when enough foster homes cannot be found. This kind of placement is especially valuable when children of one family are taken into care. Cost must not be made an excuse for this kind of placement.²⁴²

²⁴⁰ Comments and suggestions re/ Mr Flaherty's Report by DE Drohan, 7th November 1974. Department of Health C.4.01.03 Task Force Submissions Vol 1.

²⁴¹ Response to Report by Mr Flaherty, 17th November 1974. Department of Health C.4.01.03 Task Force Submissions Vol 1.

²⁴² Recommendations to the 'Task Force'.....re. Child Care Services from the Joint Committee of Women's Societies and Social Workers, 5th December 1974. Department of Health C.4.01.03 Task Force Submissions Vol 1.

4.285 On the issue of juvenile justice, the Committee reiterated:

our demand that the age of criminal responsibility should be raised to, at least, 12 years. We repeat also that changes must be made in the Court for children. We would suggest the Magistrates type of Court similar to the one used in England, but the Chairman must be qualified to deal with difficult children, and magistrates should be chosen from a Panel chosen from people with a wide experience of their problem. Free legal Aid should be readily available, and there must be an increase in the number of Probation Officers throughout the Republic.²⁴³

4.286 They also suggested an amendment to the Children Act 1908, as they argued:

Managers of such schools should not have the power, given in the Children's Act 1908, to transfer a child to another School without the Court's sanction. The date stated for leaving should be strictly adhered to, and not as at present when girls have remained in convents for long periods until they have become unfit for re-emergence into society.²⁴⁴

4.287 The voluntary organisation, *Children First*²⁴⁵, suggested that:

The whole area of fosterage and residential care should be re-examined. Subject to proper regulations for supervision and inspection [both pre-and post-placement], fosterage, both short and long term, should be more widely encouraged. In cases where Residential Homes are the most satisfactory solution, the recommendations of the Kennedy Report should be implemented: Individual houses should be provided for 7-9 children of different ages and sexes cared for by a trained house mother and house father [the latter having, also a normal job].²⁴⁶

4.288 The Manager of St Joseph's, Tivoli Road, Dun Laoghaire,²⁴⁷ highlighted the importance of teachers and argued:

Teachers in Primary Schools should be reminded that they are the ones who are in the best position to detect possible home problems. Neglect at home shows itself at school in sleepiness, non-attention, lack of concentration, homework badly done etc. Problems thus detected should be made known to the Community Social Worker.²⁴⁸

4.289 On the suitability of placements, the manager suggested that:

If children have to be put into care, it is very important that they should be put in the most suitable home. The amount of contact with the family which is desirable should be taken into account. Very often admissions are made on the criterion 'wherever there is a vacancy' [While proximity to the home and surroundings of the child might be held as the ideal, there are times when the opposite is best for all]. The Referral Agency should

²⁴³ Ibid.

²⁴⁴ Ibid.

²⁴⁵ 'Children First' was founded in May 1974 and gave priority to the following aims: to ensure that each child whose interests would best be served by adoption should be eligible for adoption; to work for improvements in the practice of adoption placement so that an adopted child can be guaranteed, as far as is possible, a secure and loving home; to provide information, help and advice to prospective adoptive parents and to adoptive parents; and to provide a forum for discussion of adoption and of possible improvements in adoption; to encourage research and to promote a greater awareness of the value and merits of adoption.

²⁴⁶ Submission from 'Children First' to the Task Force on Child Care Services. Department of Health C.4.01.03 Task Force Submissions Vol 1.

²⁴⁷ St Joseph's Tivoli Road, Dun Laoghaire, County Dublin was managed by the Daughters of the Sacred Heart of Mary. It was established in 1860 and was certified, from 1st April 1964, for the reception of children under section 55 of the Health Act 1955.

²⁴⁸ Submission from Sr Maureen Hallissey, Manager, St Joseph's, Tivoli Road, Dun Laoghaire to the Task Force on Child Care Services. Department of Health C.4.01.03 Task Force Submissions Vol 1.

be able to protect the Residential Home from having to hand back innocent children to irresponsible parents who come and take them at whim.²⁴⁹

4.290 In addition, she argued that:

A full Report on each child to be sent by the Referral Agency to the Residential Home. A decision made as to who the Social Worker is, who is responsible for the child being admitted. It is important that the Social Worker visit the child regularly. In the event of a change, the child should be told, and the new Social Worker taking over should be introduced by the one who is leaving. In regard to above, it is important that the Social Worker understand her role. She is the link between the child's past and present, and she should support the child and help him to accept the fact of being 'in care'.²⁵⁰

4.291 The Irish Society for the Prevention of Cruelty to Children in its submission noted that section 14 of the Children Act 1908, which related to begging, was being ignored and stated:

We realise the futility of fining Itinerants as a deterrent, and it is a matter of concern to us, that, between the well-meaning efforts of the public who keep on giving money when approached, and the lenient 'we have got to be the Travellers Friend' attitude of Itinerant Settlement Committees Social Workers, many children are exposed to cold and wet conditions.²⁵¹

4.292 For children in care, they recommended that there should be:

a Statutory obligation to review every three months the progress of any Child in Care whether committed through the Courts, or admitted Voluntarily by a Home or through the Health Board, whether short or long term. By progress, we mean the child's physical, emotional, education and social well-being. Case Conferences should take place within the Homes so that caring Staff can be involved. We deplore the present system whereby Religious Staff in Residential care are often poorly qualified, unpaid and expected to work long hours under conditions of stress without adequate support or information. Offenders and non-offenders should not be mixed. Short term and long term should not be mixed. The only categories which should be mixed are sex, age and family structure. Residential care should be seen as therapeutic to alleviate emotional, physical, and psychological damage. Damage during developmental years may have resulted from inadequate parenting, poor housing and environmental deficiencies. All these homes will need properly trained Child Care Staff with Director: preferably, we feel who should not be a religious. The Homes need a Social Worker of their own, to act both inside the Unit with Staff and Children, and to liaise with outside Social Workers. We feel this is better than an outside Social Worker who is unable to support the Caring Staff, who indeed may make them feel 'threatened' and cannot be aware of the internal day to day stresses. The turnover of External Social Workers is high and, most important, some children in care may be neglected completely if there is no inside Social Worker.²⁵²

4.293 The system of inspecting children's homes also required rethinking, their submission argued:

The present system whereby the best toys and linen are brought out in anticipation of the visit from 'The Department' is futile. We feel that regular visiting of Children's Homes by a qualified Social Worker who would do more than inspect the beds and have tea in the parlour. Administration Staff in Residential Care have many problems which could be

²⁴⁹ Ibid.

²⁵⁰ Ibid.

²⁵¹ Submission to the Task Force from the ISPC Social Workers. Department of Health C.4.01.03 Task Force Submissions Vol 1.

²⁵² Submission to the Task Force from the ISPC Social Workers. Department of Health C.4.01.03 Task Force Submissions Vol 1.

ironed out if a sympathetic trained person visited regularly and spent perhaps a day or two getting the real feel of the home.²⁵³

4.294 The Finglas Children's Centre in their submission provided information on a sample of 442 boys who had been referred to the Centre by the Courts for assessment during the period 14.01.1972 to 1.07.1974 and noted that:

Inadequate parental support emerges as a salient contributory factor in the case of almost every boy who has been sent to the Centre for Assessment...While allowing for the fact that 43 percent of our boys were from economically depressed central city areas (predominantly Postal Area 1) and that 67 percent of them came from families in which there were at least seven children, (the contributory factors) are closely associated with a very distinctive feature of the children referred by the Courts for assessment, namely, physical diminutiveness.²⁵⁴

Interim Report of the Task Force on Child Care Services

4.295 The Final Report of the Task Force was submitted to the Minister for Health in September 1980 and published in 1981 but, within a year of its establishment, the Task Force issued an interim report stating that they had been able to 'isolate a number of the more glaring gaps in our existing range of services – gaps which we strongly feel should be filled as a matter of great urgency'.²⁵⁵ The *Interim Report of the Task Force on Child Care Services* was presented to the Minister on 19th September 1975 and was published on 18th November 1975. In presenting their report, the Task Force outlined their modus operandi to date, which included reviewing the childcare system in various countries, including visits to Scotland and London, and discussing various issues with relevant experts in Ireland. However, they noted that 'a major difficulty we faced throughout the preparation of this Report is that the available Irish data is both partial and crude'.²⁵⁶ To in part remedy this situation, the Task Force, in collaboration with the Irish Association of Social Workers (IASW), conducted research on the extent of child deprivation in Ireland.²⁵⁷ The Interim Report made 14 main recommendations in all. They were:

- The proposed Council for the Education and Training of Social Services Personnel should be instituted as a matter of urgency and its first priority should be to decide on the training needs of residential child-care staff.
- Three Neighbourhood Youth projects should be initiated in the immediate future, one each in Dublin, Cork and Limerick.
- Urgent consideration should be given to the provision of small residential units for very young children who need short-term care apart from their families and for whom foster care is not appropriate.
- The existing buildings at St. Joseph's Special School, Clonmel should be replaced by a special school providing residential care for 60 boys who need care or control additional to that provided by their families and who have serious educational problems as well.
- Additional hostel accommodation should be provided in Dublin for 30 homeless boys aged from 14 years upwards.

²⁵³ Submission to the Task Force from the ISPC Social Workers. Department of Health C.4.01.03 Task Force Submissions Vol 1.

²⁵⁴ Memorandum submitted by the management committee of Finglas Children's Centre to Task Force on the Reform of Child Care Legislation and Services. Department of Health C.4.01.03 Task Force Submissions Vol 1.

²⁵⁵ Task Force on Child Care Services (1975) *Interim Report to the Tanaiste and Minister for Health*. Dublin: Stationery Office. p 6.

²⁵⁶ *Ibid.* p 6.

²⁵⁷ Butler, S (1975) *Report of IASW/Task Force Research project on Deprived Children*. September.

- A special residential centre should be provided in Dublin to cater for about 15 disturbed boys aged from 15 to 18 years.
- The proposed Special Residential Home at Warrenstown House, Co. Dublin should provide intensive care for 24 acutely emotionally deprived boys and girls.
- A special school should be established in the Dublin area to cater for 25 to 30 boys aged 12 to 16 years who cannot be coped with in existing residential institutions.
- A special residential centre should be provided in Dublin to cater for 12 severely disturbed girls aged about 14 to 18 years.
- A special school should be provided in the Dublin area for 25 girls aged from 12 to 17 years, who have shown themselves to be too difficult or disruptive for existing facilities.
- A residential assessment centre for 10 girls should be provided in Dublin in association with the special school mentioned above.
- Two new open residential centres should be provided in Dublin, each catering for about eight travelling children and providing a range of support services and day-care facilities for travelling families.
- A special residential centre should be provided in Dublin for a group of approximately 12 travelling children who have been identified as being in need of residential care in a centre which can provide means of containment in the first instance.
- Within the existing law, certain modifications should be introduced with a view to achieving some reduction in formality in dealing with children's cases in court.²⁵⁸

4.296 The Task Force reported that they were 'continuing our deliberations as rapidly as possible. Our task is a complex one, since there are no easy solutions to meeting the needs of deprived children. Our final report will be presented as soon as possible.'²⁵⁹ In a memo to Government it was argued that the Report should be published as a matter of urgency as '(a) Many of the recommendations contained in the Report are related to identified gaps in existing services which require to be filled as a matter of urgency (b) the Minister is under strong pressure from many sources dealing with the problem of Child Care to have the Report published.' Notwithstanding the desire of the Minister to publish the Report, it was emphasised 'that agreement to publication of the Report would not be taken as commitment to the recommendations and views which it contained'. Although the Departments of Education and Justice had no objection to the publication of the Report, the Department of Finance stated:

the Minister for Finance noting that the opinion that agreement to publication is not to be taken as a commitment to the recommendations or views contained in it is nevertheless concerned that publication of the report at this stage could lead to anticipation that the recommendations would be implemented at an early date. The Minister for Finance also wishes to remind the Government that in the prevailing financial and economic conditions no extra money can be provided in 1976 or for some time to come to implement any of the Report's recommendations unless such money is made available as a result of genuine reductions in other Government expenditures; that no matter what humanitarian reasons may require improvements in health and social services, they cannot be met without extra resources and such resources are not available.²⁶⁰

4.297 In addition to the reservations expressed by the Department of Finance, the Department of Education had a number of reservations about the recommendations. In relation to the issue of juvenile justice, Mr Ó Maitiú in a detailed memo on 15th December 1975 noted that the

²⁵⁸ Task Force on Child Care Services (1975) *Interim Report to the Tanaiste and Minister for Health*. Dublin: Stationery Office. pp 8-9.

²⁵⁹ *Ibid.* p 6.

²⁶⁰ National Archives, Department of An Taoiseach, Children: General File. Memorandum for the Government, Interim Report of the Task Force on Child Care Services, 10th October 1975.

Department of Education had in front of it, three different reports on the provision of facilities for young offenders, the first and second interim reports of the Interdepartmental Committee on Mentally Ill and Maladjusted Persons (The Henchy Reports) and the interim report of the Task Force on Child Care Services. Mr Ó Maitiú observed that:

The Henchy Committee was a committee of experts with particularly strong representation from the legal and medical professions. The Task Force is a committee with a somewhat more limited range of expertise than Henchy (It does not, for instance, include any psychiatrist). A difference of approach therefore is to be expected in the reports, apart altogether from the fact that each committee had different terms of reference. Henchy is concerned mainly with offenders and potential offenders, whereas the Task Force deals with deprived children in a wider sense. Nevertheless both reports adopt a compassionate, non-punitive, stance. Both concentrate on the needs of children rather than on the nature of any offence committed and both concede that a whole range of facilities is necessary to satisfy these needs.

4.298 In terms of responsibilities for the Department of Education, the services recommended by the Task Force 'are basically the same as those recommended by Henchy. These in turn are based on proposals formulated by this Department over two years ago to which the Department of Finance agreed in principle but which have been held up awaiting the Task Force Report. There are some important variations however, which will have to have to be carefully considered.' In terms of facilities for children, 'the only additional facility recommended by the Task Force as far as this Department is concerned is the closed unit for aggressive and disturbed itinerants. We had made no distinction between itinerants and ordinary children similarly disturbed.'

4.299 In relation to the specific recommendations of the Task Force, the Department of Education agreed that a Council for the Education and Training of Social Service Personnel was necessary; however in relation to the proposed establishment of Neighbourhood Youth Projects, the memo noted that this:

scheme was conceived by the special education section over two years ago and Finance sanction was received in principle for projects involving capital expenditure of about £100,000 in Dublin, Cork and Limerick. The Task Force agrees that the Cork project should go ahead under this Department, but recommends that the Dublin and Limerick projects be taken over by the Health Boards with less emphasis on formal education. This recommendation shows a complete lack of understanding of this Department's plans, since the whole purpose of the projects is to get away from formal education. The Centres are intended mainly for truants, with whom formal education has failed. The programme would be 'educational' in the very widest sense of the term but would also be therapeutic and recreational. It is intended that the local committees administering the Centres will be representative of the various disciplines involved – including the 'health' disciplines – as are the Boards of Lusk and Finglas. It does not make sense therefore to split administrative responsibility between the Departments – this kind of split has been condemned as one of the evils of the present system. I think therefore that the three projects should continue to be the responsibility of this Department.

4.300 In relation to St Joseph's Industrial School in Clonmel, Mr Ó Maitiú noted that:

plans for a new school with 100 places were at an advanced stage when the scheme had to be postponed until the Task Force reported. The Task Force recommends that the accommodation be reduced to 60. This reflects the views of the CARE lobby which

succeeded in reducing the accommodation in Lusk to 60 pupils also. As a result it is now a completely uneconomic unit to administer.²⁶¹

4.301 The recommendation for a special school for boys who could not be coped with in existing institutions was deemed to be a 'top priority' by Mr Ó Maitiú,

since in its absence nothing else can work. There should be no illusions about the type of boy it will cater for – the young gang leaders mainly from Dublin and Cork – who carry out vicious assaults, terrorise old people, steal cars, steal and wantonly damage public and private property. Since they will not be taken in Lusk or Finglas (or can easily abscond from these schools) they are effectively out of the reach of the law until they reach 16 years of age, when St. Patrick's Institution can take them. The proposed school will need to be very secure indeed and the staff will have to be carefully selected. To what extent education can help these boys is doubtful, but the effort must be made. Both Henchy and the Task Force agree that the accommodation should be provided for a maximum of 30 boys. The Task Force however visualises that this should be broken down into three different units – secure, intermediate and open respectively. While different degrees of security can be visualised it is hard to see how any part of the school can be 'open', especially as perimeter security will have to be maintained. Obviously this will have to be teased out before detailed planning takes place. One solution might be to provide the unit on the land which the Department already owns at Lusk, with Lusk itself serving as the open unit. This is likely to be objected to very strongly by the Oblates. In any case, any 'secure' unit will have to be under lay management since all the religious orders have indicated that they are no longer prepared to undertake responsibility for the custodial care of children.

4.302 With regard to the Special School for girls under 17, Mr Ó Maitiú was in agreement with the recommendation of the Task Force, subject to the same reservations as was the case in relation to the equivalent unit for boys and also agreed that an assessment centre was required for girls, which would also provide remand facilities.

The Interim Report and traveller children

4.303 In relation to the proposed closed centre for traveller children, Mr Ó Maitiú observed that

apparently the only reason the Department is being given responsibility for this is that under existing legislation the Minister for Education is the only Minister who can keep children under detention in secure custody. However it is difficult to see how any worthwhile education can be provided in such a centre and how such violent and anti-social children as these are known to be could be handled in such a small complex for 24 hours a day. As far as the education of travellers is concerned, the Department's policy has been strongly in favour of integration in ordinary schools and to set up a separate school for itinerant offenders will breach this long established practice. It is not clear why the needs of these children cannot be met within the closed centres recommended at 2.0.8 and 2.0.10 and very strong reasons would have to be advanced for the duplication of expenditure which would follow if a separate centre were set up for the travelling children.

4.304 Mr Ó Maitiú went on to make the following comments in relation to this issue:

²⁶¹ In a separate memo, O Gilin, the Department of Education representative on the Task Force outlined the process by which the figure of 60 was arrived at: '(1) as a figure as high as 100 is redolent of old, unreformed child care, and cannot be swallowed – on principle; being a school, there is some recognition of the fact that the modern child care – preferred type of number such as 20 or 30 is altogether unrealistic in the circumstances; (3) so let's split the difference and arrive at 60 or so (At any rate, don't let's try to see if the a figure like 100 is not irrevocably attached to old style institutionalism.'

The Department is getting the really dirty end of the stick – the ‘toughies’ whom no-one else can handle. The religious orders will not take on the closed schools so we will have to administer them directly with no expertise in this type of situation. Statutorily, however, we cannot escape this responsibility.

4.305 The provision of residential care for traveller children had earlier been discussed in the Department of Education in April 1975, and each Residential Home and Special School was contacted in order to ascertain the number of ‘itinerant’ children in care on 17th April of that year. The returns from the homes and schools showed there to be 104 ‘itinerant’ children in care (84 in Residential Homes and 20 in Special Schools), which approximated to 8 percent of the total number of children in residential care.²⁶² On 30th April 1975, a meeting was held in the Department of Education to discuss ‘accommodation for ‘itinerant’ children in need of residential care.’ The meeting was attended by representatives from the Department of Education, Health, Local Government, Justice and the Dublin Itinerant Settlement Committee. The Department of Education outlined the existing services for such children and noted that there were insufficient places for such children in the Dublin area and the children tended to abscond at the earliest opportunity. The meeting noted: ‘It appears that the problem has arisen in an acute form only since the families began to move in to the Dublin area, attracted by the rich pickings of a prosperous city.’ The representative from the Itinerant Settlement Committee,²⁶³ Mr Victor Bewley, was of the view that there were 30-35 young itinerants in the Dublin area in need of residential care, but that a ‘high proportion of these would require secure care as they will not stay in open settings. A number of these children by now are extremely hostile and vindictive and very little can be done with them.’ He also informed that meeting that the Committee had obtained the use of Collinstown House in Clondalkin to accommodate itinerant children. The Department of Education informed the meeting that if the Itinerant Settlement Committee could obtain suitable premises, it would be prepared to seek the sanction of the Department of Finance to assist with the capital expenditure and they would pay the approved capitation grant for any children referred by the Courts. However, the representative

²⁶² The application of the relevant provisions of the Children Act 1908 and the School Attendance Act 1926 to traveller children was earlier discussed by the Commission on Itinerancy. Established in 1960 and reporting in 1963, the Commission reported that ‘From enquiries made by the Department of Education, there were in September 1960, only 160 itinerant children on the school rolls throughout the country, of whom 114 were said to be regular attenders. These figures must be contrasted with the census figures, which showed that there were 1,642 children between the ages of 6 and 14 years in itinerant families in December 1960, and 1,472 children in this age group in June 1961. It is clear that almost no itinerant children attend school. The reasons for this, the Commission explained, was that ‘it appears to have been decided by the Department of Education that it is impossible to deal effectively with the non-attendance of the children of itinerants at school under the existing law laid down in the Children Acts and the School Attendance Acts because, inter alia, of their quick passage from place to place and the requirement that it is necessary that a parent be convicted on a second and subsequent offence before a child can be committed to an industrial school for non-attendance at school.’....‘Section 118 of the Children Act, 1908, provides for the imposition of penalties on persons who habitually wander from place to place and thereby prevent children from receiving education. The Commission were unable to obtain information regarding the number of children of itinerant parents who had been committed to industrial schools for non-attendance at school’. The Commission concluded by stating they ‘fear that little if anything can be done in the immediate future for the education of the children of those itinerants who continuously wander. A solution on the lines contemplated by Section 21 of the School Attendance Bill, 1942, might be attempted, but in the view of the Commission such measures would be far too drastic. In present circumstances, it is economically impossible for most itinerant families to remain in one district for the period of the school year. The application of such provisions could only result in most itinerant children being taken from their families and placed in institutions. Itinerants are very attached to their children and the evil social consequences and the suffering which must follow would far outweigh the ‘advantages’ of an education imposed in such conditions with its lasting legacy of bitterness. Indeed such a ‘solution’ of the itinerant problem generally has been suggested to the Commission – not with a view to education as such but based on the belief that a separation of parents and children would result in the children growing up outside the itinerant life and that thus in one generation the itinerants as a class would disappear.’ Commission on Itinerancy (1963) *Report*. Dublin: Stationery Office. p 64. For a more recent overview of traveller children in care, see O’Higgins, K (1993) ‘Surviving Separation: Traveller Children in Substitute Care’ in Ferguson, H, Gilligan, R and Torode, R (eds) *Surviving Childhood Adversity: Issues for Policy and Practice*. Dublin: Social Studies Press.

²⁶³ Itinerant Settlement Committees were established in every local authority area in 1969 following a recommendation in the Commission on Itinerancy. For further information, see Crowley, UM (2005) Liberal Rule through Non-Liberal Means: The Attempted Settlement of Irish Travellers (1955-1975). *Irish Geography*, 38, 2, 128-50.

from the Committee stated that they had neither the time nor the resources to undertake this work, but that the Committee would be prepared to participate in the management of such a unit.

4.306 On 7th May 1975, the Parliamentary Secretary at the Department of Education, John Bruton, wrote to Larry McMahon, TD (Chair, Sub-Committee on Settlement of Travellers) and the Minister for Local Government, James Tully, TD to outline his concerns in relation to traveller children. In his letter, he noted:

... it would seem that some priority would need to be given to settlement of the real problem families, difficult though this may be. Otherwise the children will exact a terrible toll from society. Already it would seem that some of them at this stage are irredeemable.

4.307 The primary response to the needs of these traveller children was the establishment of Trudder House in Newtownmountkennedy, County Wicklow in 1975 by the Dublin Itinerant Settlement Committee.²⁶⁴ Trudder House was established following a fire in a Dublin bookshop, the APCK bookshop in Dawson Street, in January 1975, apparently started by traveller children who were sleeping rough at the rear of the shop. Eight boys, aged between 10 and 14, were charged with starting the fire along with other charges. The case highlighted the lack of facilities for such children and Trudder House was the eventual outcome.²⁶⁵

Organisation of childcare services

4.308 More generally in relation to the recommendations of the Interim Report, Mr Ó Maitiú observed:

the staffing situation will not permit us to handle any projects beyond those we are dealing with already. If there is a serious prospect that money will be made available, then we can assess the staff requirements more exactly. In particular we will need (a) a least one Assistant Principal Officer full-time. The present arrangement under which we nominally have Mr. Gillen's Services on a half-time basis is ludicrous. It is now over a year since he was loaned to the Task Force for a job that was supposed to last three months; (b) Full-time architectural assistance will also be required (at present we have an Architect on a part-time basis for two days a week); (c) professional child care advisor. Recruitment of this officer is in hands but it is understood that the man selected will not be available before 2 February, 1976. (d) the existing law with all its illogicalities will still have to be contended with. As a result of the recent High Court case it now appears that a child guilty of many offences cannot be detained for more than a year unless convicted by a judge and jury. How could a secure centre be effective in their case? Obviously the legal position in such cases will now have to be clarified.

4.309 On 6th March 1976, Mr Ó Maitiú formally wrote to the Department of Health outlining the response of the Department of Education to the Interim Report of the Task Force. The letter clearly outlined the role of the Department of Education in the provision of services to children:

I am to state that it should be clearly understood in this connection that the Minister for Education is prepared to shed his responsibility in connection with the proposals in the Task Force which are essentially educational in character. While he appreciates the very thorough and careful way in which the Task Force has investigated the issues involved, he would not necessarily agree with the details of every recommendation, particularly as

²⁶⁴ A residential home for Traveller girls, Derralossary House, in County Wicklow was opened a decade later.

²⁶⁵ Trudder House closed in April 1995 and residents were moved to a new centre in Clondalkin, Co Dublin. This followed a series of allegations of child sexual abuse in the home. Trudder House was reopened in 1996 as a High Support Unit and renamed Newtown House. More generally, Helleiner argues that, '[w]hile direct experiences of institutionalization and frequent threats of removal were certainly part of Traveller childhood, there is, to date, no evidence of a systematic state policy of intervention in the case of Traveller children.' Helleiner, J (1998) 'For the protection of the children: The politics of minority childhood in Ireland'. *Anthropological Quarterly*, 71, 2, 56. See also Breathnach, A (2006) *Becoming Conspicuous: Irish Travellers, Society and the State, 1922-1970*. Dublin: UCD Press, pp 81-2 for a similar analysis.

there is an acknowledged conflict between certain of these recommendations and those of the Interdepartmental Committee on the Treatment of Mentally Ill and Maladjusted Young Offenders, chaired by Judge Henchy. In deciding these points of conflict, due weight must be given to both sets of recommendations.

4.310 In relation to the neighbourhood youth projects, the letter stated that the Department of Education did 'not consider it appropriate that the administration of any of these services should be allocated to regional health boards' and that the Department did not support any plan to reduce the number of places in St Joseph's Clonmel. The Department was prepared to accept responsibility for the two Special Schools for disruptive children, but in relation to traveller children, the letter stated:

It is the Minister's firm policy that, as far as possible, the education of traveller children should be integrated with that of ordinary children.²⁶⁶ Furthermore, there are at present over 100 travelling children in care in existing residential homes and special schools who have been integrated successfully with the other children. The Minister feels therefore that the question of providing a separate unit for the more difficult travelling children needs to be reconsidered. Given the nature and purpose of the two special schools proposed for disruptive boys and girls, he considers that any travelling children requiring special care could be adequately catered for in these schools, thus avoiding the stigma involved in a separate unit and the duplication of expensive facilities. In addition, the Minister believes that it would be difficult to provide effective security in a building of this type and that it is likely to encounter bitter opposition from local residents at the planning stage.

4.311 To move things forward, the letter also suggested 'that the best way of doing this would be to set up a formal co-ordinating committee representative of the two Departments and of the Department of Justice on the lines already operated in regard to facilities for handicapped children'.

4.312 This was agreed to by the Department of Health and the inaugural meeting of the Implementation Committee took place on 8th October 1976. In relation to the first recommendation of the Interim Task Force Report; the establishment of a Council for the Education and Training of Social Services personnel; the meeting agreed to establish a Manpower Committee, with the Department of Health having a lead role working in liaison with the National Council for Educational Awards and the Higher Educational Authority. On the second recommendation: the establishment of neighbourhood youth projects; it was agreed that the initial resources would be put into the Cork project and that the other projects would learn from their experience and with lead responsibility residing with the Department of Education. With regard to the third recommendation, the provision of accommodation for children on a short-term basis, it was agreed to expand the number of places available at Madonna House, but it was noted the 'question of money being available is the only problem'. The fourth recommendation: the replacement of St Joseph's School in Clonmel, was deferred until both Departments could agree on the size of the School.

4.313 In addition, the meeting noted that the cost of replacing St Joseph's would be in the region of £1 million and economic considerations would have to be taken into account.

4.314 A further meeting took place on 13th October 1976 at which it was agreed to defer a decision on the issues regarding St Joseph's Special School in Clonmel. In relation to the recommendation of

²⁶⁶ This policy was developed in the late 1960s in a report produced by a Committee in the Department of Education to review educational facilities for the children of itinerants largely in response to the aforementioned Commission on Itinerancy, which reported in 1963. The Report stated that 'The general aim in regard to itinerants is to integrate them with the community, and the Department accepts that educational policy in regard to their children must envisage their full integration in ordinary classes in ordinary schools. The degree to which such integration can take place will vary with circumstances and time, and implementation of the policy, to some extent at least, may have to keep in step with progress made towards the general integration of itinerants with the community.' (An Roinn Oideachais, *The Provision of Educational Facilities for the Children of Itinerants* – reprinted in vol 5 of *Oideas*, the academic journal of the Department of Education and Science.)

the Interim Report that additional hostel accommodation be provided for homeless boys in Dublin, the Committee agreed that 'a further effort should be made to confirm with the Eastern Health Board the extent of the problem and the best way of meeting it'. On the issue of the provision of accommodation for seriously disturbed boys and girls, it was decided that it would be 'advantageous to arrange a discussion at which both the community care and psychiatric interests would be present'. In early 1977, a memorandum for Government was prepared to outline the proposed implementation programme arising from the Interim Report of the Task Force on Child Care Services. The memo noted that a number of developments had occurred since the publication of the interim report that addressed some of the recommendations contained in it, including the provision of an open residential centre for traveller children at Trudder House, in Newtownmountkennedy managed by the Dublin Itinerant Settlement Committee and the provision of additional accommodation for children at Madonna House in Blackrock, County Dublin.

4.315 In relation to the provision of a Special Secure School for boys, the memo noted that:

the provision of this type of accommodation is regarded as urgent. Experience in this country is similar to that elsewhere: there is a small group of disruptive boys who are persistently and seriously delinquent and whom none of the existing institutions can cope with. Accommodation in a secure setting is required to meet the problem posed by them. The fact that such accommodation is not available enables these boys to flout the law with total impunity and leads others to follow their examples.

4.316 The memo also suggested that building a closed unit, situated beside Scoil Ard Mhuire in Oberstown, might be more economical than providing a completely new school, but that:

the Oblate Fathers, who administer the school are quite adamant that they will not be involved in a custodial care situation. It would appear, therefore, that a closed school, whether built at Lusk or elsewhere, would have to be administered directly by the Department of Education.

4.317 The provision of a Special School for girls who 'proved themselves too difficult for existing facilities' was outlined. The memo stated:

the school in question would principally be for girls who appear before the courts for offences and would correspond to the schools for boys at Finglas, Lusk and Clonmel. While the number of girls who commit offences are very small in comparison with those of boys, there is no such residential school at all for girls. Accordingly the provision of this school is also regarded as urgent. It is proposed that the centre for the residential assessment of girls for the courts would be associated with this school as in the case of boys at Finglas. The school and assessment centre would have to be administered directly by the Department of Education as the religious orders at present caring for girls have intimated that they do not wish to be involved in a custodial school.

4.318 The recommendation of the Interim Report that additional accommodation for homeless boys²⁶⁷ was required was called into question, as the memo outlined that

with a view to confirming the extent of this problem and the extent to which it could be dealt with through available facilities, the Eastern Health Board were asked to consult with the various agencies already providing these facilities. As a result, some doubt has arisen as to the exact numbers to be catered for. It has been found that the numbers fluctuate. Some of those who appear to be homeless are not, in fact, so. They sleep rough for a few nights and then go back to their respective homes, only to be replaced by others, who in turn follow the same pattern. Some of the children who were thought to be homeless are itinerants and roam about at night until their parents come to collect them. Of those who were identified as positively homeless there were a number who would not in any event be suitable or amenable to normal hostel accommodation, even if there was a place which

would take them. The problem as now understood might most appropriately be dealt with on the following basis: – (a) by the provision of a ‘casual’ hostel facility by the Eastern Health Board; (b) provision of the special secure school for boys; (c) making better use of existing hostel facilities; (d) making further progress with the steps being taken already to deal with the problem of itinerants.

4.319 By the time of the publication of the Interim Report of the Task Force on Child Care Services was published, the broad principles that were to inform child welfare policy for the next 20 years or so, particularly in relation to alternative care, were largely established. However, a number of difficulties remained in relation to the provision of secure accommodation for young people, the function and purpose of the juvenile justice system and overall Ministerial and Departmental responsibility for the childcare system. The numbers of children in residential care were continuously declining and foster care (particularly with the establishment of the Fostering Resource Group, a dedicated team of social workers in the Eastern Health Board in 1977),²⁶⁸ increasingly became the favoured means of the meeting the needs of children for whom alternative care was required.

Section 4: Implementation, 1976-2001

4.320 1970s, a range of implementation difficulties were emerging at a local level. One issue highlighted, but not fully resolved in earlier discussions, was the realisation that the relationship between Central Government and Residential Homes was altering. The regional health boards were developing childcare services and recruiting social work staff, and the number of trained lay childcare staff in residential care was growing following the establishment of a training course in Kilkenny in 1971. In addition, shorter in-service courses were established in Dublin, Cork and

²⁶⁷ With the gradual demise of the Industrial Schools, homeless children became more visible on the streets of Dublin, and a number of voluntary agencies responded to their needs. In 1966 the Los Angeles Society was established following a survey conducted by a number of voluntary agencies which estimated that as many as 150 boys were sleeping rough in Dublin. The Society, after spending a year on various fund-raising projects, set up its first hostel for homeless boys at 26 Arran Quay. In 1968, arising from the same movement which had led to the establishment of the Los Angeles Society, a group of people with a common belief in the need for the provision of hostel accommodation, especially for homeless girls in Dublin, formed the Homeless Girls Society and set about trying to raise sufficient funds to establish such an intervention. Sherrard House in the North Inner City opened in 1970. A limited after-care service was also available in Dublin for those children exiting the Industrial School system. Our Lady’s Hostel for Boys at 64-65 Eccles Street, operating under the patronage of the Archbishop of Dublin, opened in 1963. Known as the Catholic Boys Home, and managed by a committee of the Society of St Vincent de Paul, it targeted boys aged between 15 and 19 years. In September 1973, the newly established Simon Ireland produced a report on unattached youth in Dublin. The report noted that while a number of general hostels accommodated young people under the age of 25, only seven hostels existed specifically for what were termed unattached youths (generally aged 14 to 20). For young males, three hostels were identified, with a capacity of 52 beds. One of the hostels catered primarily for young persons in breach of the criminal law and the remaining two were described a catering for ‘young boys from a variety of backgrounds – illegitimate, broken homes, orphanages, alcoholic parents etc’. However, neither home had the capacity to accept ‘casuals’ i.e. emergency placements. A further four hostels provided accommodation for 60 young girls, with 10 of them designated for emergency purposes. On 16th February 1976, An Coisde Cuspóiri Cíteann (The General Purposes Standing Committee of Dublin City Council) requested that ‘a report be prepared by our Community and Environment Department on the problem of children who are begging or sleeping rough’ (1976:1). The report was duly presented to the Committee in December of the same year. Distinguishing between traveller and non-traveller children who were sleeping rough, the report argued that the ‘nearest consensus regarding figures we have been able to secure from agencies involved in the problem is that the number of children sleeping rough on any one night is likely to be measured in tens rather than hundreds’. In the same year as An Coisde Cuspóiri Cíteann requested a report on children sleeping rough, a new lay voluntary organisation was established to attempt to meet the needs of children, particularly boys, who were sleeping rough and not accessing appropriate emergency accommodation. HOPE was founded in October 1975 by a German social worker who, when visiting Dublin, was struck by the number of children sleeping rough. A public meeting was held on 29th September 1976 to outline their objectives of obtaining both funding and a premises to allow them to develop ‘an open house project – a place where young people could come to get food, shelter and friendship’. However, they experienced considerable difficulty and it was only on 21st March 1977 that HOPE was in a position to open a hostel at 42 Harcourt Street, Dublin 2.

²⁶⁸ See Gilligan, R (1997) ‘Ireland’ in Colton, M and Williams, M (eds) (1997) *The World of Foster Care – An International Sourcebook on Foster Family Care Systems*. Aldershot: Arena.

Waterford and later in a number of Institutes of Technology.²⁶⁹ The professionalisation of social work and childcare staff was placing a strain on the Religious Managers of the Homes and many of the structures for recruitment, staffing levels and pay had not always fully reflected these changes or as Mr Ó Maitiú had put it 'naturally enough, these people are demanding the rate for the job'. A further issue was the provision of secure accommodation for children deemed to be 'uncontrollable' in open institutions, which although highlighted by both the Henchy Committee and the Interim Report of the Task Force, remained unresolved.

Staff recruitment and the death of HT²⁷⁰

4.321 The death of 9-year-old HT in the Royal British Hotel in Princess Street Edinburgh on 3rd October 1977 brought about a review of the recruitment of residential child managers and staff. HT, from the North Inner City of Dublin, was placed in the care of the Irish Sisters of Charity in Madonna House on 5th June 1974 along with a number of his siblings. HT remained in Madonna House until 1st September 1976, when his mother removed him and two of his siblings. A further sibling was removed on 24th December. The children were allowed to remain at home under the supervision of Eastern Health Board social workers. On 3rd February 1977 it was decided that HT and two of his siblings be returned to Madonna House. On the basis that the placement was now likely to be a long-term one, it was decided to transfer the children to St Kyran's Residential Home, Rathdrum County Wicklow on 5th September 1977. One of the staff members in Madonna House was John Dwyer, originally from Wales, who had been interviewed for a post of trainee child care worker in Madonna House in September 1976, responding to an advertisement for female care assistants. Dwyer, who had spent 10 years with the De la Salle Brothers in England and had trained with them as a teacher before arriving in Ireland, commenced employment in Madonna House in September 1976. From an early stage, Dwyer took a particular interest in HT with the result that the Manager, Sr Carmel, warned him about his over-involvement with the child. Dwyer accompanied HT and a number of his siblings when they moved from Madonna House to St Kyran's in Rathdrum. On Friday, 16th September Dwyer brought one of the siblings from St Augustine's in Blackrock to St Kyrans. He then departed from St Kyran's with HT. The following day, Dwyer and HT boarded a flight to London and subsequently went to Scotland. In a hotel in Edinburgh, Dwyer drowned HT in a bath and then attempted suicide, but survived.²⁷¹

4.322 On 1st November 1977, Mr O'Dwyer in the Department of Health highlighted in a memo to Mr O'Rourke, and the Secretary of the Department that while he did not believe that there was any justification for a public enquiry into the death of HT:

The circumstances revealed in this case do focus attention on a number of issues in relation to residential care. It raises again the question of the extent to which the State should supervise the provision of residential care for children. It draws attention to the need to (a) quickly conclude discussions with the Conference of Major Religious Superiors regarding the appropriate staffing levels of the homes and the further training needs of existing child care workers; (b) further examine the qualifications and training of residential care staff, particularly those who have managerial or supervisory responsibilities; (c) review and if necessary, tighten up the procedures to be followed where children are allowed to be outside the homes; (e) lay down specific guidelines to be followed in establishing numbers of children present each night and the procedures to be put into operation where a child is missing from a home, including the arrangements for notification to the Gardaí.

²⁶⁹ For further information on the training of child care workers, see O'Connor, P (1992) 'The Professionalisation of Care Work in Ireland: An Unlikely Development'. *Children and Society*, 6, 3, 250-66 and Crimmens, D (1998) 'Training for Residential Child Care Workers in Europe: Comparing Approaches in the Netherlands, Ireland and the United Kingdom'. *Social Work Education*, 17, 3, 309-20.

²⁷⁰ All information in this section is contained in Department of Health and Children – C.10.03.05.

²⁷¹ This incident formed the basis of the book, *Lamb* by Bernard McLaverty and the subsequent film of the same name.

4.323 He went on to note:

It was decided early this year to adhere to the capitation system of financing, pending decisions on the future arrangements generally for the administration of child care. It was also felt that the nature of the care to be given could best be done by the present voluntary organisations with minimal interference from statutory authorities. That point of view is, in my opinion, still valid, but only in a situation where we have ensured that the managerial and staffing arrangements are adequate both in quantity and quality.

4.324 On 25th January 1978, Mr O'Dwyer submitted a more detailed report to Mr O'Rourke, and the Secretary of the Department on the implications of the death of HT. In the note he outlined the terms of reference of a review of the case:

The Minister directed the officers of the Department should review the circumstances surrounding the abduction and subsequent murder of [HT] to identify any changes or improvements that should take place in the management, staffing, training and administrative procedures in children's residential homes.

4.325 Following meetings with various officers in the Eastern Health Board, the Department of Education, the Manager of Madonna House at that time, Sr Carmel Anthony, and the Manager of St Kyrans, Sr Xaveria, Mr O'Dwyer wrote:

I would be optimistic about getting a very positive response from the managers of the homes and the Conference of Major Religious Superiors in bringing about changes and improvements in the existing procedures. Until the middle of 1977, the authorities were very much concerned with financial problems but they are now reasonably satisfied with the capitation rate, provided it is adjusted annually to take account of inflation and approved developments in the service.

4.326 On the relationship between the statutory bodies and the Managers of the Homes, Mr O'Dwyer observed:

The review of this particular case and the discussions which have been going on with the Conference of Major Religious Superiors during 1977 highlight the following issues: At present, managers as assigned by the head of the Order concerned without consultation with either the Department of Education or the health board. The nun or brother concerned may or may not have previous experience of child care. Some are drawn from the nursing and teaching professions. They may in turn and, in some cases at very short notice, be reassigned to either other duties or to another home. This may also happen in relation to religious staff at a lower level. This state of affairs was never very desirable but was probably more acceptable when most of the staffs in the homes were religious and when the provision of residential care for children had not been professionalized here the introduction of many more trained lay staff and the generally more difficult type of child now being placed in residential care has significantly changed the demands on and expectations of managers.

4.327 Mr O'Dwyer also noted that no formal training for managers existed, although the Department of Education did provide a course for managers until 1977. On this issue, Mr O'Dwyer recommended that:

discussions take place with the Conference of Major Religious Superiors to agree on future minimal qualifications and experience of managers of residential homes; Where the Order cannot find a suitable person, the post be advertised and filled by open competitions; Arrangements be made to meet the further training needs of existing managers; Pending decisions of the re-organisation of child care, the child care advisors of the Departments of Education and Health be consulted about any proposed new appointment of a manager and that one of them be on any interview board established to

fill a manager post; agreement be reached on the future arrangements which will apply for the assignment and transfer of other religious staffs.

4.328 Mr O'Dwyer further noted that:

One of the more worthwhile points which emerge from the review was the need to clarify and emphasise the level at which and the way in which social workers responsible for the child in the community should relate to the authorities of the home. While they would obviously have casual contacts with all the staff dealing with the child, the formal relationship should be with the manager of the home, and with her agreement (which would normally be automatic,) with the person in charge of the group in which the child lives. As between the social worker and the appropriate person within the home, there is an absolute necessity for a complete exchange of information on any matter affecting the child. If either the social worker or the child care worker is in possession of information which could be relevant to the child, then each is under an obligation to tell the other, irrespective of any expectations of confidentiality which a third party may have as the original source of the information. (In the HT case, it would appear that the authorities of the home were not aware that John Dwyer had ambitions of becoming a foster parent to the child. He had confided this hope to the social worker dealing with the children). It is considered that this matter should be discussed with the Programme managers, Community care, and that appropriate guidelines be worked out between representatives of the health boards and the authorities of the homes.

4.329 Mr O'Dwyer highlighted the recent substantial changes that had taken place in the functions of Managers of Residential Homes, including the shift towards group homes, the decline in the number of religious working in the Homes and the growth in trained lay staff. He further observed that the children entering residential care were somewhat more disturbed than in the past. The Managers now had to deal with trained social workers, employed either by the health boards or other voluntary agencies. Mr O'Dwyer went on to suggest that:

It is not clear that the implications of these changes have been fully recognised by all the managers. No significant initiative has been taken to help the managers cope with these changes and to look at the kind of training and support that they might now require. There are now more opportunities for problems arising in relation to selection, discipline, doubts about personal responsibility as between the manager and the person in charge of each group home, tension between the manager and the staff about salaries and other working conditions and, in general, a situation which demands more management skills than were perhaps required some years ago. During our discussions on the (HT) case, it was clear that occasions will arise when the manager will need to have access to specialist psychological and or other professional help on a ready basis.

4.330 He went on to recommend that

Discussions should take place with the Conference of Major Religious Superiors to (a) discuss and agree the key functions of managers of residential homes (b) identify the kinds of professional support and advice that would appear to be required by managers; (c) agree on the arrangements which might be made to meet these needs.

4.331 Mr O'Dwyer than outlined the procedures that were in operation when John Dwyer was recruited.

John Dwyer was interviewed by Sister Carmel and accepted as a trainee. Within a short period of joining her staff, he was assessed by a psychologist and found to be suitable for admission to the training course at Cathal Brugha Street. The arrangements for selection in the case of trainees vary from home to home but, in general, the candidates are normally interviewed by a suitably constituted board and references obtained from their previous employers or, where they have not been previously employed, from the

persons nominated by them as referees. There are no definite guidelines at the moment in relation to the assessment of trainees. Generally speaking, most of the trainees have worked in a home for two years before they are sent on the training course and during the period of two years, if they are found unsuitable, their employment is discontinued. However, in some instances, because trainees have joined a union on starting work and because appropriate procedures have not been followed, it has not been always easy for the managers of homes to terminate the employment. There is, therefore, the possibility of managers taking the easy way out and not confronting those who may not be entirely suitable.

4.332 He concluded:

This is clearly an area on which there should be uniformity of approach and very definite arrangements for ensuring that those who are to become child care workers are suitable for the job. We have already been discussing this matter with the Conference of Major Religious Superiors and it has been agreed that there should be a training period of 2 years, during which the trainee would, in effect, be on probation. The matter has not yet been discussed with the union but we have emphasised to the Conference that it is essential to retain the maximum period during which a person can be assessed. As a corollary, there must be a proper assessment procedure and an early warning system which gives the trainee full information on how he or she is viewed by a manager.

4.333 Mr O'Dwyer then outlined a series of recommendations in relation to future staff recruitment:

It is recommended that agreement be reached with the Conference of Major Religious Superiors that the following procedures will in future apply to selection and assessment:- A person seeking employment as a child care worker, whether as a trainee or an experienced worker, will be interviewed by a panel consisting of the manager of the home, suitably professionally qualified person and a third person who can provide a competent objective view of the suitability of the candidate. The candidate's written testimonials will be fully checked out and the manager of the home will make personal contact with the previous employers or those nominated as referees. A police report on the person's suitability will be obtained; The person will be asked to undergo a full medical examination and the medical report should include a psychiatric history; During the two year period in which the trainee will be on probation, there will be an agreed assessment process, on the lines already in use in the special schools at Lusk and Finglas, and there will be a system of open reporting which will involve the manager of the home discussing the regular assessment with the person concerned. If at any stage during the two years the person is deemed unsuitable, the manager will terminate his or her employment.

4.334 On the responsibility of the Eastern Health Board, Mr O'Dwyer noted:

In the case of children, such as (HT), who are committed to the care of the health board, the health board is primarily responsible for controlling the location of the child at all times. Children committed by the courts to residential care are under the control of the manager of the home and the manager is not under any statutory obligation to consult with the Department of Education in relation to the child's movements. However, there is in practice a very close liaison between the child care advisor of the Department of Education and the various managers of the homes. Consequently, it is felt that in the interests of co-ordination and the pending the enactment of amending legislation, we should try to have the managers apply basically the same approach to all the children in their homes. Transfers of children from one home to another are not very frequent. However, where they do occur there is a need to phase the transfer over a period as to enable the children to gradually become used to their new surroundings and the staff to looking after them. It is also necessary to ensure that all records are transferred from one

home to another and that there is a proper briefing of the staff of the home receiving the children.

4.335 On 28th February 1978, the Department of Health wrote to the Rev Brendan Comiskey, the Secretary General of the Conference of Major Religious Superiors, outlining the recommendations following from the review into the death of HT. The letter outlined that the recommendations were discussed with the Department of Education and that both Departments wished procedures to apply to all children's homes. The letter did note that:

It is accepted that if the managers of the homes were to insist on a strict application of the statutory provisions, they need not necessarily comply with some of the suggestions which have been made. It would, however, be hoped that agreement would be reached on procedures which would apply to all children, pending the enactment of the legislation which is expected to follow on the report of the Task Force on Child Care Services.

4.336 Fr Comiskey passed the correspondence on to the Chairman of the Resident Managers Association, Br Dermot Drohan, who stated that he had 'a good look at it and I honestly cannot disagree with any of the terms laid out in the report. To me it is simply asking us to sit up and have a good look at ourselves.' Two meetings were held by the Resident Managers in Dublin at Goldenbridge on 13th and 21st June 1978 to discuss the implications of the review. Fr McGonagle in his covering letter highlighted that:

During our two meetings there was much soul searching and a strong endeavour to face up to the demands daily arising in an ever-changing situation from the social point of view and attitudes towards Church involvement and Religious participation in our own particular field of caring. There was also present a very strong preparedness to accept that things are not going to get any easier for us in the future but hopefully a better service would evolve to the benefit of all – children in care, care-workers, management.

4.337 On 31st June 1978, Fr Comiskey wrote to Mr O'Dwyer and suggested that the Executive of the Child Care Managers meet with representatives from the Department of Health and the Department of Education. Having suggested a number of dates, Fr Comiskey went on to state that:

The Managers Executive has brought it to my attention that the Health Boards received the same document / letter prior to any discussion with, or reply from, them. They are deeply disturbed over this, as are their major superiors, and we would like this and a number of other points cleared up before proceeding any further with discussions on the document.

4.338 Mr O'Dwyer responded on 30th June stating:

I am sorry to hear that your Superiors are concerned about the circulation of the document to the Programme Managers, Community Care, under Health Boards. First of all, this document has been circulated to them for information only. Secondly, there are a number of points raised which will require the co-operation of the health boards if they are to be implemented. Finally, we feel that it would be very desirable and necessary to have officers of the health boards involved in the discussions. You will appreciate that they are playing an ever increasing role in child care and the decisions which may emerge from our discussions are likely to affect them very much in the future.

4.339 A meeting between the various parties was arranged for 5th September 1978, and arising from that meeting, Mr O'Dwyer reported:

The group have made very little progress in tackling the issues arising from my letter of 28 February 1978 and the meeting which took place on 28 July. They had only briefly and loosely discussed their ideas about the training of managers and about the role of social workers within and without the homes. There is very little prospect of their making

progress unless they get a lot of help or some additional element is injected into their deliberations.

4.340 In relation to the role of social workers, Mr O'Dwyer reported that:

A very confused discussion took place with regard to social workers. The managers seem to feel, not all of them for reasons that were clear to us, that they should have a social worker attached to each home. In the event, it was suggested to them that they should prepare a document setting out what is wrong with the present arrangements, what would be the role and function of the social worker attached to the home and what changes need to be made in the present position if they are to receive a resident social worker. The officers representing the Departments and the health boards indicated that they would be opposed to the introduction of residential social workers. A lot of dissatisfaction is apparently arising because of the turnover of social workers under health boards.

4.341 In November 1979, guidelines on the recruitment of child care workers were issued by the Resident managers Association, the Department of Health and the Department of Education. The guidelines outlined that:

Those working in Residential Care must realize that the children they are caring for are not their own. They often are rejected, deprived, disturbed and insecure children. These children need all the parental care they can get but they also need professional, skilled people to help them work through insecurity towards full personal development. Residential work needs people with tremendous physical, mental and spiritual vitality. The person who is to become a residential care worker must be able to work with people in an intimate way. He or she should have a deep understanding of human nature and the needs of individuals, together with a genuine affection for deprived children. The work demands the highest level of training available. A child care worker is expected to use every opportunity to improve his or her skills in working with deprived children. Those wishing to train for a career in residential child care must work for at least a year in a residential home. Following successful completion of this year, the child care worker will be required to undertake formal training, which may involve attendance at day release or full-time courses at a training centre.

4.342 The qualities required by a childcare worker were also outlined and stated that:

Those wishing to work with deprived children must be mature, stable and warm hearted adults, with a good and stable background. The worker must be able to communicate with others and must operate as a member of the team. He/she must understand and accept the philosophy of the establishment as a whole and be prepared to play his/her role as a fully responsible member. One of the most obvious skills in residential care is to be able to offer a warm and secure relationship to children. The child care worker must be able to organise the activities of a group of children, and show creativity in making the most constructive use of childrens' leisure time. Skills in sewing, cooking, crafts and music are very useful as much of the day-to-day routine is taken up with looking after the physical needs of the children, washing clothes, cooking dinner and playing with the children. Applicants must have a good standard of education and a sound religious set of values.

4.343 As of December 1979, 474 staff were employed in residential care centres for deprived children. Half were under the age of 30 and while 31 percent had a diploma in childcare or other childcare qualification, nearly half had no relevant qualification. At this time, childcare training was provided in the School of Education, Kilkenny which opened in 1972, and provided a full-time year-long course for 20 students, but closed in 1981. The Dublin College of Catering at Cathal Brugha St offered a child care course from 1974 for 20 students per annum and Sligo Regional Technical College offered a course in childcare from 1979, primarily to train prison officers working in

The inner city has many problems, such as inadequate housing, high levels of unemployment and the need for special and remedial classes in our schools and extra youth facilities. These must be tackled but we accept that all of them cannot be solved immediately. We are encouraged by the efforts of Tenants Associations, Dublin Corporation and voluntary bodies to help our young people. The immediate danger, however, is the uncontrollable lawlessness of youths under sixteen years of age, who rob, terrorise and destroy property with complete disregard for human life.²⁷³ These gangs are small in number, for most of the parents of this parish rear responsible, law-abiding families, often against extraordinary difficulties. The ultimate sanction for their contempt of the law at present is a lecture from a District Justice, after which the offenders must be realised to continue their law breaking. Most of them will not remain voluntarily in open children, or youth, centres. As you know, there is no custodial care for such law-breakers. We understand that Ireland is the only country in the E.E.C. in this unique position. In extreme cases where parental control has irretrievably broken down, it is unfortunately, at times, the only solution. Many of them have serious personal problems and for the sake of their own development, they urgently need – and have the right to expect – enlightened custodial care...Immediate emergency legislation introducing enlightened custodial care for young offenders under 16 years of age is urgently required to allay the fears of our parishioners, to cater for the needs of the youths concerned and to restore law and order.²⁷⁴

4.346 A reply was received on 14th June 1977, which outlined that arrangements for the provision of secure accommodation for both boys and girls was receiving urgent attention from the Department of Education. A background note on the issue of secure accommodation, prepared for the Minister for Justice, outlined that:

When the new special school at Lusk for boys referred by the Courts was being planned in 1972 in replacement of the reformatory at Daingean, the Department of Education envisaged the inclusion of a measure of secure provision in one of the units being built. This proposal was opposed both by members of the Oblate Order (who conducted the school at Daingean and now conducts that at Lusk) and by outside elements associated with the CARE organisation. It was stated that the religious did not wish to find themselves cast in the role of gaolers...The School as planned, therefore, incorporated minimal provisions in the way of physical security and it became evident, soon after the school opened in early 1974, that it was incapable of catering for the disruptive type of boy in many cases.²⁷⁵

4.347 On 8th September 1977, Mr Tunney, the Parliamentary Secretary to the Minister for Education, announced that 'A specialised project team has now been set up to plan the new secure special schools for young offenders in the under 16 groups as recommended by the Henchy Committee

²⁷³ These children were colloquially known as the Buggy Malones. The origins of the name are described in an interview conducted by Farrelly in late 1980s. 'I wasn't a Buggy myself but the people I used to hang around with were like C.N. he was the main man because he was one of the first from the area to go up town and do bank snatches. He used get hundreds and he was looked on as a big man – the Buggy Malone. One summer eight or nine of them were heading off to Spain bringing their mothers and all with them. The cops got a hold of the story and the Press printed it. 'These are the Buggy Malone's Heading off to Spain'. The name Buggy Malone came about because of the film that was going on in town at the time. It happened to clash with what was going on in the Inner City and the crime that was happening. If the media hadn't of interfered I think things would probably have slackened off much quicker. But with the media hype every night in the papers everyone began thinking that they were heroes and that they could do anything. C.N would still be mentioned 10 years later as a Buggy Malone. People began to live in fear of the Bugsey's because of the name they had in the media. But when I look back at it now people shouldn't have been afraid. They lived there and they weren't going to harm anybody.' Farrelly, J (1989) *Crime, Custody and Community: Juvenile Justice and Crime with particular relevance to Sean McDermott Street*. Dublin: Voluntary and Statutory Bodies. p 120.

²⁷⁴ D/Justice – 2007/116/617.

²⁷⁵ D/Justice – 2007/116/617.

on the Mentally Ill and Maladjusted and the Task Force on Child Care Services.²⁷⁶ The first meeting of the Project Team on Secure Units was held in the Department of Education on 9th September 1977. The chairman

referred to the Government's gave concern about the lack of facilities for coping with a small group of unmanageable young offenders. The matter had already been reported upon by the Henchy Committee and by the Task Force on Child Care Services and the decision to provide special units was in accordance with the recommendations of these bodies. (The Chairman also reminded members of the team of the requirements in regard to confidentiality in relation to the operation of the team.)

4.348 The team agreed that secure accommodation was required for between 25-30 boys and 15 for girls. The options laid before the project team were to construct a new building that would provide the secure accommodation required, convert an existing building or use a temporary building pending the availability of either the first or second option. It was agreed members of the team would visit secure units in Northern Ireland; to contact the Rev Fr Comiskey, Secretary of the Conference of Major Religious Superiors, to see if any religious Congregation had a suitable building available and to acquire from the Office of Public Works a list of possible buildings.

4.349 The second meeting of the team took place at Scoil Ard Mhuire on 13th September. The possibility of locating the proposed secure unit in Dundrum, where, the meeting was informed, the Department of Health were proposing to open a secure unit for 15 sociopaths between the ages of 12-15 was discussed as was the possibility reopening Daingean. At the third meeting of the team held on 29th September 1977, a report was given on the visit to Northern Ireland and:

It was mentioned confidentially that as a result of intensification of after care activities in the near future the Department of Justice might be able to supply vacant accommodation for, say, 15 boys in St. Patrick's if the laws were altered to allow children in the 14-16 age group to be placed there. By and large the team was against placing children of such a young age in such an environment.

4.350 In relation to reopening the former reformatory in Daingean, Fr MacGonagle, the former Manager, stated, 'that while he would not favour it he felt that the newer part of the building there could be made reasonably suitable for such a unit provided the older part was demolished'. At the fourth meeting of the group, held on 12th October 1977, it was reported 'to make it usable would be expensive; that the renovations would probably take more time than could be considered for a short-term solution, and that it could not be considered for a long term solution'. The committee agreed that while they 'would not be very happy with using Daingean as a secure unit, it might be as well to keep it in mind in case nothing better was found'. The chairman, Mr Ó Maitiú, who had excused himself at the beginning of the meeting as he was meeting the Minister for Justice, Mr Collins and Mr Tunney, the Parliamentary Secretary to the Minister for Education, returned to the meeting after the discussion on Daingean had concluded. The minutes record that:

He was accompanied by R. Mac Conchradha, P.O. in the Department of Justice, who is now to serve on the Team at the request of the Minister for Justice and the Parliamentary Secretary to the Minister for Education. Both Mr. Collins and Mr. Tunney want the whole question of the Secure Unit for Boys treated as one of the utmost urgency – in fact, the

²⁷⁶ The team were Mr Pdraig Ó Maitiú, Principal Officer, Department of Education, Chairman; Mr Michael O Mordha, Chief Inspector, Department of Education, Mr Tomas Ó Gilin, Assistant Principal Officer, Department of Education; Mr Noel Montayne, Senior Architect, Department of Education; Mr Graham Granville, Child Care Advisor, Department of Education; Mr Patrick Hastings, Assistant Principal Officer, Department of Finance; Mr Michael Curran, Assistant Principal Architect, Office of Public Works; Mr John Hurley, Assistant Principal Officer, Department of Health; Ms Kay Kinsella, Senior Welfare Officer, Department of Justice; Rev William McGonagle, OMI, Director Scoil Ard Mhuire; Rev Br Austin, FSC, Director, Finglas Children's Centre; Rev Senan Pierce IC, Resident manager, St Joseph's School, Ferryhouse, Clonmel, Sr Lucy Bruton, Convent of Our Lady of Charity. Sean McDermott St, Dr Brian O'Connell, Medical Director, Northgate Clinic, Hendon, London.

Team is asked to take a decision within a fortnight so that an appropriate memorandum may be submitted to the Government.

4.351 The chairman then asked Mr Mac Conchradha to address the meeting, who, the minutes record: explained that his Department was recruiting a cadre of welfare officers who would be used to give intensive supervision to certain delinquents between 16 and 21 who could thus be released from custody. It was proposed to use, as an interim measure, the space made available in St. Patrick's Institution or in an adjoining building in the North Circular Road complex to house intractable delinquents in the 12-16 years range. Until a long-term solution is finalised, those children will have to endure a prison regime. There is no alternative. His Minister proposes to paint a realistic picture to the public but can only do so if at the same time he shows that the long-term solution is being actively pursued. Hence the urgency. As no other site was available and as the acquisition of a site would take a considerable time, the Ministers were strongly of the view that the new school should be built on an unused portion of the present Oberstown Site.

4.352 In response with which Sr Bruton agreed, Fr McGonagle outlined that: while he appreciated the convenience of using the land at Lusk, he was completely against the Committee's making a 'crisis' decision. A new building would interfere with the present site and with the continued development of Ard Scoil Mhuire as envisaged by its Board of management. A fortnight was much too short a time to make a decision, the results of which would stay with us for many years.

4.353 At the fifth meeting of the team on 20th October 1977, Mac Conchradha gave a progress report and informed the meeting that rather than using St Patrick's Institution, it was now proposed to use the old infirmary, which would require extensive renovation. The minutes record that after this briefing:

G. Granville, expressing his worry at what was being proposed, said that securing children in a place like St. Patrick's had little to offer in terms of child care and could cause considerable damage; Fr. Pierce also expressed his opposition to what had been done and said it was not the purpose for which the Team had been set up.

4.354 At the sixth meeting of the team on 2nd November 1977,

R. MacConchradha stated that he had since reported to the Minister for Justice on difficulties attached to the proposal to use St. Patrick's Institution as an interim measure. As a result it was now proposed that Loughan House, Co. Cavan, an open institution for juvenile offenders aged 16-21 could be used...The distance was a problem to be met and this would be against its use as a permanent solution. The project team generally welcomed the revised proposal.

4.355 At the seventh meeting of the team held on 16th November 1977, Mr Ó Gilín reported on his trip to the secure unit at Redbanks in Lancashire and informed the team that the authorities there considered 30 children the ideal number for a secure unit. The team also discussed an item which had appeared in the *Sunday Independent* reported a 'bitter row behind the scenes' in relation to the deliberations of the team. Mr Ó Maitiú stated, 'that such a report was inaccurate, must be treated as conjecture but it did emphasise the need for care in discussing the affairs of the Team'. At the next meeting on 30th November 1977:

Reference was made to various letters and press reports concerning the Committee's activities. The letters seem to cast doubt on the qualification of the members, and a letter was sent to the Daily Independent pointing out what their qualifications were but this had not been published. In reference to the letter from Mrs. M. Harding P.R.O, Irish

Association of Social Workers, Sister Lucey said that its contents could not be regarded as I.A.S.W. policy because I.A.S.W. policy had not yet been defined.

4.356 The meeting also noted that the Department of Justice were in the process of recruiting 320 additional prison officers and that the staff of Loughan House would be drawn primarily from this group. Mr Ó Maitiú reported, that on the instruction of the Minister for Education, sanction had been sought from the Department of Finance to fund the construction of a unit for 40 boys. At the ninth meeting of the team on 10th January 1978 the members were informed that Loughan House had ceased operating for 16-21-year-olds and that staff training for the new function commenced. At the next meeting on 13th February 1978:

The question of adverse publicity about the Loughan House Project was then discussed and it was agreed that various organisations who had indulged in criticism (CARE, IASW etc.) had been given a great deal of information about the project and that there was no excuse for the inaccuracies in their statements.

4.357 The remaining meetings were then largely concerned with outlining the detailed requirements for the new secure unit to be built adjacent to Scoil Ard Mhuire and discussing whether the unit could cater for both boys and girls. At a meeting of a sub-committee of the team to discuss accommodation for girls on 24th April 1978, it was agreed that:

- (1) at present it would be well not to press ahead with a two-sex secure school but that options should be left open for the future;
- (2) what was required was a secure unit for 15 girls and an assessment unit for eight with provision for assessment on a daily basis as well as on a residential basis. The school could be planned in such a way that a further secure unit for 10 could be added if necessary;
- (3) it would be as well not to use the site at Lusk for the girls school as it might turn the area into a delinquent ghetto;
- (4) the school should be as near as possible to the city. To this end it was decided to explore the possibilities of obtaining land at St Loman's, Blanchardstown Hospital, or St John of God's Stillorgan. Mr O Mordha undertook to have the Dublin Corporation contacted to see if they might have 5-10 acres of land available. It was also agreed that the Conference of Major Religious Superiors should be written to on the matter.

4.358 Despite substantial criticisms from a range of childcare organisations, pending the opening of a purpose-built unit in Oberstown, it was agreed that Loughan House, in Blacklion, County Cavan, would be certified as a Reformatory School for 12- to 16-year-old males and be managed by the Department of Justice and staffed by prison officers. Critics included the Prisoners Rights Organisation, who conducted a survey of 50 12–16-year-olds in the North Inner City which concluded that:

92 percent have or have had a brother or father in prison and 94 per cent believe that they themselves will end up in prison. The threat of prison is always present for these youngsters. Yet it does not deter them. When the morale of a community is broken and it has become unstable through lack of financial opportunities and social security the internal sanctions in the community which are largely manifested through parental control cease to operate. External sanctions, largely manifested in the criminal justice system, will not substitute. When people live in such disadvantaged circumstances the deterrent effect of prison exists only in the mind of the penologist. Loughan House can have no deterrent effect for these youngsters.²⁷⁷

²⁷⁷ Prisoners Rights Organisation (1978) *A Survey of Fifty 12-16 year old Male Offenders from the Sean McDermott Street-Summerhill area of Dublin's Inner City*. Dublin: PRO. p 2.

4.359 Others such as Fr Fergal O'Connor who operated a hostel for homeless girls in the North Inner City of Dublin were reported as arguing 'if Loughan House was considered part of an overall system for children in trouble, and if boys were only sent there for a short time and on the advice of people who worked with them, it would be a useful institution'.²⁷⁸ However, the majority of child welfare organisations issued a statement outlining their opposition to the proposal to open Loughan House and for the Government 'to review their plans and adopt a more enlightened approach to the treatment of young offenders'.²⁷⁹ Loughan House opened in October 1978 and the first pupil admitted on 27th October 1978, a 14-year-old from Dublin,²⁸⁰ and closed in March 1983 when Trinity House opened.²⁸¹

Division of responsibility for childcare services

4.360 In early 1978 the issue of administrative responsibility for childcare services was raised in the Department of Education. Mr Ó Gilín, on 9th February, in a detailed memo to Mr Ó Maitiú, noted the Task Force on Child Care Services had effectively stopped meeting in January 1977. The Minister for Health, Mr Haughey TD, decided to ask it to complete its work and appointed Judge Sean Butler of the High Court as Chairman in December 1977, replacing Mr Flor O'Mahony who had stepped down in April 1977. Mr Ó Gilín noted that:

The task force has therefore now resumed work and, as a first objective, has set itself to produce a draft report on the question of administrative responsibility. It is considered that, at the present juncture, this will be a matter on which a decision can be made fairly quickly. As, in addition, it is one of the main issues on which the Task Force has to report, a decision on this matter is of major importance. For this reason, it is sought in this memorandum to confirm if earlier Departmental policy is unchanged in this regard. In particular, it is desired to establish the relevance to this matter of proposal no. 5 in the section of the Fianna Fail manifesto on 'youth and youth employment'. The proposal is to the effect that a 'Children's Service Authority' be established 'with responsibility for deprived children or those at risk by the provision of the necessary medical and education services.

4.361 Mr Ó Gilín outlined that in relation to administrative responsibility for childcare services:

The modus operandi adopted under the new chairman is to assign topics, which will form sections of the final report, to individual members to prepare memoranda on drafts. In

²⁷⁸ Irish Times, 25th February 1978.

²⁷⁹ Irish Times, 18th April 1978. The child welfare agencies that signed the statement were: CARE; Children First; the Irish Association of Democratic Lawyers; The Irish Association of Social Workers; the Irish Council of Civil Liberties; the Labour Women's National Council; the Political Social Workers Group; the Prisoners Rights' Organisation; the Psychological Society of Ireland; the Royal College of Psychiatrists (Child Psychiatry Section); the Social Work Education Consultative Council; Simon; the Women's Political Association; the Irish Association for the Prevention of Cruelty to Children; Women's Aid; Contact; the National Federation of Youth Clubs; Hope; the Mental Health Association of Ireland; Cherish; Voluntary Service International and the Union of Students in Ireland. See also for example, CARE (1978) *Who Wants a Children's Prison in Ireland*. Dublin: Care; Burke, H, Carney, C and Cook, G (1981) *Youth and Justice: Young Offenders in Ireland*. Dublin: Turoe Press and Cook, G and Richardson, V (eds) (1981) *Juvenile Justice at the Crossroads*. Dublin: Department of Social Administration, UCD.

²⁸⁰ Brennock, in an article in *Magill Magazine* on 21st March 1985 provided a description of the initial inmates of Loughan House, noting that 'all of them had large numbers of criminal convictions. All had experienced other reform schools and had absconded from them time and time again. All were socially deprived, most of them were described as emotionally immature. Some came in having been living rough around Dublin and were infested with lice and skin diseases. Some had contracted venereal disease.' Having tracked down the initial 20 inmates of Loughan house, Brennock showed that 'all of the first twenty inmates of Loughan house served further prison sentences. Several are addicted to heroin. One was shot dead by a detective during an attempted armed raid on the B&I terminal on North Wall. One was killed crashing a stolen care.' Brennock, M (1985) *Temporary Solutions*. *Magill*, 21st March 1984. pp 35-7.

²⁸¹ Stewart, G and Tutt, N (1987) *Children in Custody*. Aldershot: Avebury. p 74. This book was the outcome from a 'Study Group on Children in Custody' funded by the Carnegie UK and Joseph Rowntree Memorial Trusts which explored the situation in England and Wales, Scotland, Northern Ireland and the Republic of Ireland. The members of the study group from the Republic of Ireland were Professor Mary McAleese from Trinity College Dublin and Mr Seamus Ó Cinnéide from St Patrick's College, Maynooth.

accordance with this arrangement, a memorandum on administrative responsibility has been submitted by one of the non-civil servant members and is at present under discussion. The memorandum assumes that responsibility for child care services will in general be assigned, under the Department of Health, to the health boards and the memorandum is mainly concerned with how this assignment should be discharged within the health board structure.

4.362 The memo prepared on administrative reform proposed four alternatives:

- (1) existing directors of Community Care, advised by child care advisors attached to the programme manager's office; or
- (2) two kinds of director of community care, one having responsibility for health services, the other for social services and the latter being assigned the child care responsibility as part of his remit; or
- (3) three kinds of director of community care, having responsibilities respectively for health services, social services and child care services; or
- (4) a (fourth) programme manager, for child care exclusively. There is a simple logic to this, namely, beginning in (1) with minimal interference with the present structures and moving, via (2) and (3), to a major addition, in (4), to the existing structures. In fact, logically, there is another possibility between (3) and (4), that of a programme manager for social services including child care and something on these lines has now been suggested in an amendment by two members.

4.363 However, Mr Ó Gilín reported that:

The Department of Health representative on the Task Force has opposed specific administrative structures for child care on the grounds that such would run counter to the direction of the present development of our health services....If, alone of all social services, child care were to have a separate administration, there would quickly come similar demands from other areas (e.g. community services for the old, the mentally-handicapped etc.). This would flatly contradict the integrated structure of health boards as set up under the 1970 Health Act. The advocates on the Task Force of some kind of specific child care administration fully realise the weight of the foregoing objection to their position. However, they argue as follows. Firstly and basically, they believe a separate structure is the only way of ensuring that child care will receive the attention it needs. Even the old and mentally-handicapped have votes and they are represented by powerful lobbies of friends and of parents. Deprived children, with generally inadequate parents and no friends, are the most defenceless group in the community. Secondly, it is claimed that community care, in the health board context, has, historically meant health care in the first instance and that the personal social service component is the junior, and fairly youthful, partner.

4.364 Mr Ó Gilín then asked what effect the proposal in the Fianna Fail manifesto would have on the deliberations of the Task Force, noting that 'if the advocates of a specific child care authority in the Task Force were aware of the manifesto proposal, they would make good use of it, to the chagrin of the Department of Health'. In relation to residential childcare, he highlighted two substantial changes in the nature of such provision since the publication of the Kennedy Report in 1970:

The first of these (already underway at the time of the report but now virtually complete) arises out of the change from the traditional industrial school (where the school was on the premises) to the present residential home, where the children go outside to schools in the local community. Applying the Kennedy Report recommendations to this situation, the Department of Health (or the health boards) should take over the homes completely, as they are now child care, and not educational (except in a very general sense)

institutions. The residual education function should be discharged through advising the Inspectors (as it is now about to be done) on paying particular attention to the educational needs of children from the homes where they are found on the rolls of local national schools. The second development has been that, while at the time of the Kennedy Report the great majority of the children were committed through the courts (and were thus this Department's responsibility under existing legislation), the position now is that the majority of the present population of the homes is placed there, and paid for by the health boards. In a few short years, this will be the case with almost all the residential home population. The two factors above are, together, almost unanswerable grounds for transferring administrative responsibility for the homes to the Department of Health. This has been our policy and it is presumed no change is contemplated.

4.365 However, he went on to argue that 'the position of the special schools is different'. The proposal from the Kennedy Report that the Department of Education provide the educational input to the schools and the Department of Health manage the residential element in Mr Ó Gilín's view 'would be detrimental to the achievement of the school's objectives and thus of the welfare of the children'. However, he noted that he thought that proposals would be put forward to transfer the Special Schools to the Department of Health, the grounds being that:

if there is to be a children's authority in any form, then this authority should have control over the full range of facilities (which would include special schools) for deprived children. Thus a child may, for a time need family support (home help) or social worker supervision. At a later time he may need placement in residential care (residential home or special school), following which there may be a further period of after-care under supervision. This kind of continuity of care, it will be argued, can only be effectively achieved if the care authority itself is responsible for the full range of services.

4.366 The alternative view, according to Mr Ó Gilín was that:

special schools are principally schools, albeit of a particular kind. It is not simply the case the education happens (for convenience, as it were, or for other fortuitous reasons) to take place on the premises. Rather is the educational programme part of the essential basic purpose of the institution. There is a danger here that some people may see a degree of antipathy between education and care here. These children (young offenders) are generally educational failures to date and some see an education-oriented programme as an effort to administer further doses of medicine which has proved ineffective hitherto. Thus they would wish to make care basic, with education a secondary function. However, the mere existence of schools of this sort has been brought into question elsewhere, notably in Britain (though also on the Continent and in the U.S.A.). Research has shown that the schools are not effective in 'curing' delinquency and that they often succeed in further labelling children to the detriment of both children and society. If such schools are to be justified at all, it is only by taking the view that (1) there are certain children whose actions lead to society to refuse further tolerance to their being left in the community, (2) these children are either a danger to themselves or to others or have not got an effective family to control them, (3) the special schools can provide them with a degree of (a) care and (b) education, through specially designed programmes, which they would otherwise not get and which, while not in all cases succeeding in 'curing' their delinquency entirely, can effect major improvements in their educational levels and personality structure and thus future social behaviour, this conception of the role of the special school has seemed to point in the direction of its being primarily a residential school with a specialised programme. As such, it should come under the administrative aegis of the Department of Education....It has been the intention therefore to press, at the Task Force, to have the special schools excluded from any proposed unification of services under the Department

of Health. A direction is sought if this is to continue to be our policy. It is recommended that, for the reasons set out above, our policy should remain unchanged.

4.367 Following this memo, Mr Ó Maitiú drafted a note for the Minister on 15th February 1978. In relation to residential care, he noted:

as far as non-delinquent children are concerned, the position is that the vast majority are now being taken into care via the Health Boards. This Department's involvement in administering these homes is a complete anachronism. I agree therefore that the policy position already taken up by this Department should be maintained i.e. that administrative responsibility should be transferred to the Department of Health. The question of administrative responsibility for the special schools for young offenders is not so simple.

4.368 He was of the view that:

the CARE representatives on the Task Force will undoubtedly press very hard to have the service transferred to the Department of Health. That Department may not be all that anxious to take it on – our experience is that none of the health boards or voluntary organisations want to have anything to do with young delinquents. The Department of Justice has never been anxious to take over the service and has only agreed to run Loughan House as a temporary expedient.'

4.369 However, he was of the view:

that this service should be located in the Department of Education, even though the task is a thankless one and liable to misrepresentation in the media and elsewhere. I consider that this approach is consistent with the Department's general policy that the Department or one of its agencies should administer all educational services, no matter where they are located. Similar arguments apply to the Youth Encounter Projects which provide the same type of programme as in the special schools with the children continuing to live at home. Furthermore, the Youth Service is actively involved in these projects at local level and at central level participates in the control of the projects and gives financial support. In this area of intermediate treatment there is scope for many more projects and for a multiplicity of approaches. There is no reason therefore why the Department of Health Neighbourhood Youth projects with their strong emphasis on social and community work – should not also proceed. (Incidentally the initiative for this type of project came from this Department, long before the Task Force was ever thought of).

International Year of the Child

4.370 1979 was designated International Year of the Child by the United Nations General Assembly and a national steering committee was established in June 1978. The Association of Workers with Children in Care (AWCC) organised a conference in Trinity College Dublin to mark the event. Organised by the AWCC and FICE – the International Federation of Educative Communities and chaired by Br DE Drohan, the conference was entitled 'The Right to be Brought Up in a Spirit of Peace and Universal Brotherhood'. On 24th June 1978, Br TL Furlong, the National Chair of the AWCC wrote to the Taoiseach, Mr Lynch, inviting him to both open and close the conference. He outlined that 1979 was designated International Year of the Child and stated:

The Irish Association of Workers with Children in Care, to mark this historic occasion are organising, in conjunction with the international child care organisation FICE an international conference in Dublin from 2nd July to 6th July 1979. The fact that Dublin has been chosen for this unique conference is a tribute to the high standard of child care in Ireland and is also a great honour.

4.371 Mr Haughey, as Minister for Health at that time, wrote to Mr Lynch on 20th October 1979 stating, 'given the association's relatively minor status when compared to other organisations in this country, I would like to advise that an Uachtarain and yourself should decline the invitation to the conference'.²⁸² Mr Haughey himself opened the conference in July 1979.

Task Force on Child Care Services

4.372 The *Final Report of the Task Force on Child Care Services* was published on 7th April 1981, having been presented to the Minister for Health the previous September. In the middle of 1980, when all hope of an agreed report disappeared, the then Taoiseach (Mr Haughey) directed the Task Force to submit its final report forthwith without proceeding to prepare a Children Bill as required by their terms of reference.²⁸³ In September 1980, the Task Force submitted its Final Report²⁸⁴ which ran to nearly 450 pages, contained a main report, a supplemental report and a number of reservations by members.²⁸⁵ The Task Force acknowledged 'the tremendous work done for children over the years by voluntary bodies'²⁸⁶ and argued that:

the most striking feature of the child care scene in Ireland was the alarming complacency and indifference of both the general public and various government departments and statutory bodies responsible for the welfare of children. This state of affairs illustrated clearly the use by a society of residential establishments to divest itself of responsibility for deprived children and delinquent children.²⁸⁷

4.373 In reviewing the administration of childcare services in Ireland, the Report reflected on the division of responsibility between the Departments of Health, Education and Justice and observed that the

²⁸² D/Taoiseach 2008-148-585. International Year of the Child.

²⁸³ The Department of Education had signalled its unhappiness at its representation on the Task Force, with Mr Donnchadh F O Ceallachain, the Runai Cunta in the Department of Education writing to Dr JA Robins, Assistant Secretary in the Department of Health on 20th August 1980. In the letter, Mr O'Ceallachain noted that 'Mr T Ó Gilín was, as you are aware, this Department's representative on the Task Force from 1974. Following his promotion to the position of Principal officer in charge of the Post-Primary Building Unit proposals for his replacement on the Task Force by his successors in the Special Education Section, Mr M O Failbhe and Mr S O Droighneain respectively were notified to you on 20th September 1979 and 4th December 1979. I understand that, nevertheless, documentation concerning the work of the Task Force has continued to come to Mr Ó Gilín and that this Department has been represented at meetings of the Task Force since Mr O Gilin's withdrawal. Mr O Droighneain has now retired from the service as indicated to you in our letter of 1st July, 1980 and the question of nominating a replacement has been left in abeyance pending clarification of the position of your Department. On 11th August Mr Ó Gilín received notification of an all day meeting of the Task Force for Friday, 15th August and an intimation that a draft of the final report was scheduled to be placed before the Minister for Health by the end of August. Copies of various chapters of Draft No 3 of the final report of the Task Force were appended. You will appreciate that this position which has developed regarding representation has caused this Department considerable difficulty in considering the final stages of the report and it raises the question as to whether it would be appropriate for Mr Ó Gilín or any other representative of the Department to be a signatory to the final draft of the report, even with expressed reservations. In connection with such reservations the position of the Department regarding the transfer of administrative responsibility for special schools and for school attendance services has already been conveyed to you and the Task Force.'

²⁸⁴ At the meeting of the Task Force on 15th August which discussed the 3rd Draft of the Final Report, it was agreed that if 'the report was to be submitted to the Minister in its present form, it should be accompanied by a letter to the effect that it was not considered suitable for publication.'

²⁸⁵ Keenan has argued that: 'By the time the Task Force was published in 1981, a number of factors had come into play which were to seriously restrict progress on the updating of the child care system for a decade. They included three governments within a period of 18 months and, of greater significance, the fact that by the early 1980s the Irish economy was in serious difficulty. The development and expansion of the child care system was not considered viable at this time although it should be acknowledged that it was recognised as a priority which should be planned for in the expectation that the economy would eventually improve. The fact that the Task Force Report itself presented difficulties should also be acknowledged. Undoubtedly a most important report, which continues to be largely relevant, in the seven years it took from beginning to end much of the momentum which led to its establishment in the first place was dissipated. Furthermore it consisted of both a majority and a supplementary report, the latter written by those members of the Task Force who were not civil servants.' Keenan, O (1997) *Child Welfare in Robins, J (ed) Reflections on Health: Commemorating Fifty Years of the Department of Health, 1947-1997*. Dublin: Department of Health. pp 65-6.

²⁸⁶ Task Force on Child Care Services (1980) *Final Report*. Dublin: Stationery Office. p 4.

²⁸⁷ *Ibid* p 182.

'division did not, in the main, result from any allocation or rationalisation of child care functions but rather evolved haphazardly in the sense that the services tended to come within the general control of the government department which succeeded the original agency in which the particular service originated'.²⁸⁸ The Report acknowledged that this division 'resulted in an unsatisfactory situation from the point of view of effective planning and co-ordination of resources'²⁸⁹ and that 'the absence of co-ordinated planning at departmental level in turn is reflected in the manner of delivery of services at a local level'.²⁹⁰

4.374 Following a review of earlier recommendations in relation to administrative responsibility for child welfare services, the Task Force concluded: 'We are satisfied that what is needed as a prerequisite to the most effective planning, development and delivery of services for deprived children is that these services should be unified under one government department as far as possible and that child care services should be integrated with family support services.' The Report then recommended that the Department of Health should be that Department that would have responsibility for:

The implementation of the statutory provisions contained in a Children Act concerned with the welfare and protection of children, including the making of regulations, orders or rules to be provided in that Act; The development of the child care expertise necessary for formulation of policy, based on practical experience, professional knowledge and relevant research and information; The identification of children's needs and the provision of services, including preventative services, designed to meet these needs in consultation, as necessary and appropriate, with other Government Departments, with child care authorities and other bodies providing services at local level' The making of organisational arrangements for the delivery at local level of the services for which it is responsible in accordance with statutory provisions and in line with defined policy guidelines; The monitoring and evaluation of the services for which it has responsibility.²⁹¹

4.375 Responsibility for the delivery of childcare services at a local level, the Report recommended, should be provided by an authority to be known as the Child Care Authority (CCA) and functions of the CCA would include establishing the need for services, providing services to meet these needs, preventative work, liaising with other public bodies to ensure that the interests of children and families are adequately reflected in their policies, implementing policy on family welfare services, including childcare services, and drawing together and developing all available resources concerned with the welfare of children in its area to ensure that these resources are maximised. The Task Force recommended that health boards be designated as child care authorities and that the boards perform the functions of the CCA. However, in doing this, the Report recommended that the CCA be a separate legal entity with specific statutory functions and that child care services, alongside family support services be a separate body of services, in particular separate from more general health services.

4.376 The authors of the supplementary report to the Task Force, Mr Ó Cinnéide and Ms O'Daly, however, although agreeing with the other members of the Task Force that the Department of Health and the health boards should be given responsibility for the provision of childcare, went on to state that 'We are not in agreement with our colleagues views that the existing administrative structures *are adequate*'(emphasis in original).²⁹² At Departmental level, they recommended that the existing childcare division be strengthened by providing the division with additional administrative and professional resources, but otherwise they saw no substantial problem with the existing structure. However, in terms of allocating responsibility to the regional health boards,

²⁸⁸ Ibid p 85.

²⁸⁹ Ibid. p 85.

²⁹⁰ Ibid. p 87.

²⁹¹ Ibid. p 88.

²⁹² Ibid. p 382.

they argued that ‘the allocation to them of entirely new responsibilities, does in our view present considerable problems’. They went on to claim that:

In short we believe that the health boards as they are at present organised could not carry out these responsibilities. We have concluded that the health boards, if they are to become Child Care Authorities, would need to be reorganised to some extent. It is on this basis that we have supported the recommendation that they should become Child Care Authorities.

4.377 The rationale for this was that:

Firstly, if the health boards become Child Care Authorities they will have greatly expanded responsibilities, most of which have not previously been carried out within the public service. Secondly, the assumption of these responsibilities will require a new orientation or strategy of service; the development and recruitment of highly motivated specialist personnel; additional funds and good planning and management. Thirdly, the present administrative structures of the boards, and in particular the Community care programmes, were designed in conditions which were entirely different from those that exist today, not to talk of those which will exist if the Task Force recommendations are accepted; the Community Care Programme’s structure is seen to be ill-adapted for welfare services even in present conditions. When we relate these three sets of considerations we are forced to the conclusion that certain new structures are necessary within the health boards.²⁹³

4.378 The Report was scrutinised in the Department of Education prior to publication and Mr Ó Maitiú drafted a lengthy response to the report dated 12th November 1980. He commented initially on the lack of agreement between the members and observed:

Given the diverse composition of the Task Force, one could hardly expect unanimity of view on all aspects of the subject studied. Nevertheless, the extent of disagreement is somewhat surprising. There is one main report, one minority report (claimed by its authors, Mr. S. O Cinnéide and Miss N.O’Daly, of CARE, as a supplemental Report), and four sets of reservations from (a) Mr. K. O’Grady, Department of Justice, (b) Mr. Tomas O Gilín, Department of Education, (c) Mr. John Hurley, Department of Health and (d) Mr. M. Russell, Office of the Attorney General. It is obvious, therefore, that in reforming the Child Care system in this country, the Government will have to choose between a number of different solutions. Since the Department of Health will have the lead role in this reform, it is very likely to push the alternatives which best suit its own interests, and great vigilance will be needed to ensure that the interests of this Department do not suffer.

4.379 On the recommendation that child welfare services should be unified under one Department and this should be the Department of Health, he commented that:

This recommendation is unanimous and is in accord with this Department’s thinking. It is in the implementation of the proposal that disagreement occurs. A majority of the Task Force recommends that, in addition to the services for which it is already responsible, the Department of Health should take over (a) school attendance services; (b) advisory and some supervisory services for the Courts; (c) Community Youth Services and (d) residential services, including existing residential homes, special schools and hostels. In his reservations, this Department’s representative opposed (c), partially opposed (d) and reserved his position on (a). He was supported on (d) by the Department of Justice representative.

²⁹³ Ibid. pp 382-3.

4.380 He went on to state:

We have long ago agreed that the residential homes at present administered by us should go to the Department of Health, this Department retaining responsibility for the education of children. On the other hand, we have held the view that the Special Schools at Lusk, Finglas and Clonmel are educational establishments and should remain under the control of this Department. The arguments for and against are given in (i) the Report, and (ii) Mr. O Gilin's and Mr O'Grady's reservations. I must say that, if a Child Care Authority is set up, I can see some validity in the administration of the schools going to them, although this Department should retain responsibility for the educational programme, as in the Residential Schools for the handicapped.

4.381 One of the reasons for the departure from the view held over the previous decade that the responsibility for the Special Schools be maintained by the Department of Education was that:

At the moment, the Health Boards tend to repudiate all responsibility for delinquents and from discussions with them, I gather they would not be at all averse to leaving delinquents with us. I'm not too sure that we should let them off the hook in this way. The operation of the schools for delinquents has given many headaches and there have been problems with children, with staff, with the Religious Orders and with local residents. While a fair degree of success has been achieved with the younger boys in Finglas and Clonmel, the outcome in the case of the older boys at Lusk has been very dubious. Apart from the high rate of absconding, all too often we hear of past-pupils finishing up in Loughan House or St. Patrick's. The new secure school at Lusk will replace Loughan House and will involve the Department in running what is, in effect, a juvenile prison, without a religious Order to cushion it from day-to-day problems.

4.382 For Mr Ó Maitiú, the consequences of the Department of Education retaining the Special Schools would be to 'saddle itself, of course, with the very worst children – particularly the very violent and difficult 14-16-year-olds who are not amendable to any discipline. They will be a place of last resort for children which the Child Care Authority cannot handle or does not want to handle.' He argued that:

The Health Boards have considerable expertise in running residential institutions. I feel that a solution on Kennedy lines would enable them to exercise this expertise in the case of special schools, while, at the same time, this Department would bring the benefit of its own expertise to the educational programme. It would be a better solution than the system in Britain where both the care and educational programme are under the Department of Health and Social Security, with not too satisfactory results. I would suggest, therefore, that the Department should now consider a compromise on Kennedy lines. If we adamant about retaining the Youth Service) as I think we should be, we might perhaps concede that the Health Boards should have School Attendance and that there should be a compromise as suggested in regard to the special schools.

4.383 Mr Ó Maitiú was of the view that:

certain members of the Task Force are convinced that 'there is no such thing as a bad boy', that very few are really delinquent, and that most of their problems with the law are the fault of their families and society rather than of the children themselves. The effect of the Task Force recommendations would be to cut down drastically on the number of residential placements for delinquents. This is the argument that the CARE people have persisted in since the early 1970's, in spite of all the evidence of their senses. At the same time, the Courts and the Gardaí have kept up a constant agitation for more places to which children coming before them can be sent. It was because the situation had become so desperate that the Minister for Justice had to open Loughan House. The number of residential places has, in fact, been drastically reduced over the past 10 years – Daingean

has been closed, together with Letterfrack and Marlboro' House – and, in my opinion, the number of places remaining – less than 200 for the entire country – is barely adequate to cater for the needs of the Courts. Youth Encounter and Neighbourhood Youth projects are doing a lot for the less serious offenders. However, for the more serious offenders and for those who live in impossible home conditions, residential care is still necessary. Community residential centres are no answer since they are conducted in a social work milieu, the children need a great deal more than care, and anyway the children will not stay in them.

4.384 He concluded that:

In the circumstances, I recommend that the Department support the minority view of Mr. O Gilin, i.e. that this Department cannot agree to any reduction in the number of residential places for delinquent children until alternative services on the lines envisaged in the report have been provided and are seen to be at least as effective as the present Special Schools.

4.385 On the issue of residential facilities for girls, he noted that:

The Task Force recommends that facilities for girls should be provided for within the mainstream of residential provision recommended by them, but that the existing units for teenage girls should continue their work in the interim period. The existing voluntary training units are conducted by two religious Orders and the absence of controversy in regard to facilities for girls shows that they are doing a good job, which I doubt if the Health Boards could better.

4.386 In dealing with this issue, he recommended that:

reform in this aspect of child-care should consist in giving the existing centres sufficient resources to enable them to carry out their very dedicated work more effectively. The Task Force has changed its mind on a closed school for girls, and now states that the school recommended in its interim report should not be proceeded with. There was a certain problem, a few years ago with a number of very difficult girls who could not be contained in the existing centres. This problem seems to have subsided somewhat. There will be the odd girl who will not stay in an open centre and who needs containment – for her own protection, as much as anything else. While a separate closed school may not be necessary (and would be extremely expensive to run) – some provision for containment may be required – preferably by special arrangement in one of the existing centres, or in association with it.

4.387 Mr Ó Maitiú concluded by observing that:

The general effect of the implementation of the Task Force Report will be to increase State involvement in all aspects of child-care and to regionalise this involvement in the Health Boards. Up to now, child-care has been seen as the responsibility of the parents themselves, supported by their various Church Authorities who have operated residential establishments of various kinds for children who, for one reason or another, had no parents to look after them. The State's role has been limited to providing financial support and a certain degree of supervision. In the past, a change such as is now proposed, would have been looked upon with suspicion by the Churches. However, the fall in vocations has meant that for some years now, the work at the coal face is being done by lay people as

much as by religious, so that the position of the Churches is not as strong as it used to be.²⁹⁴

4.388 On the issue of juvenile justice, the Task Force was fundamentally split.²⁹⁵ Although oversimplifying the debate, the issue of the age of criminal responsibility in part encapsulates the split. The majority of the Task Force recommended that the age of criminal responsibility be left at 7, on the basis that they saw ‘an advantage in retaining a low age of criminal responsibility on the grounds inter alia that the commission of offences will lead in many instances to helpful intervention in the case of young children who might not otherwise receive it’.²⁹⁶ More generally, the majority were of the view that when a child admitted an offence or the offence was proven, the principles that should inform the court should aim to:

(a) Secure for the child such care, guidance, education, training and correction as will conduce to the welfare of the child and the public interest, (b) retain or promote relationships between the child and his parents and his family as far as possible, (c) avoid sending the child to a custodial institution unless there is no acceptable alternative that will satisfy his needs or afford society a reasonable protection.²⁹⁷

4.389 The supplementary report produced by Mr Ó Cinnéide and Ms O’Daly argued that the recommendations by the majority of the Task Force did not involve any significant change on the existing system of juvenile justice and on the basis that it ‘was laid down over seventy years ago and, given the developments in knowledge and in public attitudes since then, it is retrograde to retain it’.²⁹⁸ They argued that the age of criminal responsibility should be raised to 15, and that interventions by the State should be based on a number of assumptions. They were:

that by and large parents want to look after their children well, to provide them with the care and education and discipline that they need; that if parents are unable to do this they are likely to avail of any helpful services which are provided to facilitate them; that the need for the state to intervene in a coercive way into the ordinary family will, and should, arise only in exceptional cases; that the state’s intervention should in general be a helpful one, concerned only with the welfare of the child and the family; that compulsory or coercive measures in respect of a child which are not solely helpful and concerned with his welfare should be clearly seen as such and should be invoked only in even more exceptional cases.²⁹⁹

²⁹⁴ The Inspectorate within the Department of Education concurred with Ó Maitiú stating that they ‘share his frustration at the lack of clarity in many of the issues raised and the extent of disagreement on many of the recommendations. These point to the complexity of the situation and the virtually total lack of empirical evidence on the efficacy of the various approaches to child care. The recommendation that one Department (Health) should have a lead role in the administration of child care services is sensible. That Department, however, would need to establish a system for monitoring the quality of the services it will administer. Its record in monitoring caring services for the mentally handicapped leaves a lot to be desired.’

²⁹⁵ This was acknowledged in the supplementary report which outlined that ‘Of all the issues which fell within the Task Force’s terms of reference and which are covered in our Main Report, the most contentious, and one which took up most of our time in discussion, was the issue of how child offenders should be dealt with by the law. Very comprehensive papers on this and related topics were prepared by members of the Task Force in 1975 and 1976 and they were discussed in detail at the time. From then on there were repeated and extensive discussions covering everything from basic principles to practical details of how a new system of juvenile justice would operate. Some of these renewed discussions were necessitated by the changes in the membership of the Task Force. At no time was there general agreement on what the Task Force’s recommendations should be. In the end the discussion and recommendations which appear in chapter 18 of the Main Report were decided on in the last week before a complete draft of that report was approved.’ Task Force on Child Care Services (1981) *Final Report*. Dublin: Stationery Office. p 240.

²⁹⁶ Task Force on Child Care Services (1981) *Final Report*. Dublin: Stationery Office. p 232.

²⁹⁷ *Ibid.* p 252.

²⁹⁸ *Ibid.* p 341.

²⁹⁹ *Ibid.* p 370.

4.390 In the same year that the Task Force submitted its final report to the Minister for Health, the *Report of the Commission of Enquiry into the Irish Penal System*³⁰⁰ was published. In relation to juvenile justice they argued that:

Our low minimum age of criminal responsibility i.e., seven, the lowest incidentally in Europe, ensures that the trivial activities of little children come under censorious scrutiny of the criminal justice system. For many offenders, whether male or female, their criminal careers begin with early experience of reformatories or industrial schools precipitated by truancy from school or home, or family breakdown. Here again factors like differential police deployment can seriously affect the likelihood of a particular child becoming identified as deviant. The child in the bleak inner city, lacking private amenities, like gardens or playrooms or simply space, carries his activities onto the streets where he is in full public view. His scope for 'safe' deviancy is limited. Parents may not have money to steal or property to deface. His controls are few and he is highly visible particularly if, as there tends to be, there is a high level of police deployment in the area. There was an incredible pathos about the submission which began 'When I was seven I was sent to Clonmel by Justice Kennedy. I was in it for nine years'.³⁰¹

4.391 Despite these critical observations on the juvenile justice system, some commentators highlighted that significant changes were occurring within the system. Osborough, for example, contrasted 'the casual approach, displays of judicial independence and a lack of guidelines on important subsidiary issues' as evidence of a lack of formalism and an absence of a 'system' that characterised criminal justice practice in Ireland for a considerable period after independence. By the late 1970s, however, he argued:

the characteristic mark of the Irish criminal justice system is the growth of system and the growth of formalism. Nowhere is this more obvious than in the procedures for dealing with juvenile offenders. At every level there has in recent years occurred some critical development which can certainly be regarded as the antithesis of the casual, the haphazard and the informal. More care is taken, more officials are involved, there are more standards, more procedure; there is both more 'system' and more 'law'.³⁰²

4.392 The debate that took place in relation to juvenile justice during the 1970s in Ireland, culminating in the Final Report of the Task Force, was essentially between two competing models of juvenile justice, a 'welfare model' which was the one broadly supported by the NGOs and the members of CARE on the Task Force, and a 'justice model' which was the one broadly supported by the majority of the members of the Task Force.

Response to Task Force by the Department of Health

4.393 In September 1981, a memo was circulated which outlined the response of the Department of Health to the Task Force on Child Care Services. The memo stated:

The Minister for Health accepts the general principles of the Report and is anxious that the initial steps should now be taken in regard to the implementation of these specific aspects of the Report and its supplementary recommendations that are acceptable to her. Some of the recommendations relate to areas of responsibility, which are already those of the Minister for Health. These are now being considered in association with the health

³⁰⁰ Chaired by Sean Mac Bride, other members included Michael D Higgins, Gemma Hussey, Michael Keating, Dr Mary McAleese, Patrick Mc Entee, Dr Michael Mac Greil, Muireann O'Briain and Una O'Higgins O'Malley. The self-stated rationale for the enquiry was the 'failure to date on the part of the State to have instituted such an enquiry'. The report stated that 'it was as a result of such neglect that the PRO (Prisoners Rights Organisation) invited the members, selected from a wide range of social, political, legal and academic backgrounds, to constitute themselves as a Commission for the purpose stated.

³⁰¹ Report of the Commission of Enquiry into the Irish Penal System (1980) *Report*. Dublin: Report of the Commission of Enquiry into the Irish Penal System. p 30.

³⁰² Osborough, WN (1979) Irish Juvenile Justice: System and Formalism. *Administration*, 27, 4, p 497.

boards and voluntary agencies concerned. Where the improvement of existing services is necessary this is a matter that will be considered by the Minister in the light of available financial resources if additional funding is involved. In so far as changes in the law will be necessary appropriate provision will be made in the Heads of the Children Bill, now being drafted, which will come before the Government at a later date. However, there is a number of important functions now the responsibility of either the Department of Justice or the Department of Education which in the light of the Report and the earlier Government decision of October 1973 should, in the Minister for Health's view now be transferred to her department. The Minister is seeking approval in principle to their transfer to her Department so that necessary discussions about transfer can be instituted with the Departments concerned (including the important issue of implications for existing staff) and also to enable appropriate provisions to be made in the Heads of the Bill.

4.394 The rationale for many of these changes was that:

In recent years, there has been a major swing away from the practice of compulsory placement in residential care through court committal in favour of voluntary placement through the health boards. This has resulted in the present situation where the great majority of the children in residential homes are now the responsibility of the health boards, although the Minister for Education retains responsibility for most of the homes themselves. In 1976, the Department of Education formally recorded its agreement with the Kennedy Report recommendation and since then, the Department of Health has taken the lead role in developing overall policy and programmes in residential care, including questions of finance and staffing. However the formal transfer of responsibilities for residential homes to the Department of Health has not yet taken place and the Minister for Health now seeks government approval to this being done so that her Department's role in relation to these homes will be clarified and in order that necessary statutory provisions can be included in the Heads of Bill.

4.395 In relation to the Special Schools, while noting the objection of the Department of Education of their transfer, nonetheless,

The Minister for Health considers that unification of responsibility is particularly desirable in the area of residential care. In accordance with the main tenor of the Task Force Report, the special schools should be seen as being mainly concerned with child care rather than with education as they are at present... The Minister for Health accepts the majority view of the Task Force that special schools are appropriate for integration into the general body of child care services under her Department. These would include the new secure unit at Lusk to replace Loughan House.

4.396 The Task Force also recommended that the existing school attendance committees should be discontinued and that school attendance officers should be transferred to the health boards and the memo noted that:

The Minister for Health is in agreement with the proposed transfer of functions and of personnel as recommended and seeks the agreement of the Government to the inclusion of the necessary legislative provisions in the Heads of the Children Bill now being drafted.

4.397 In relation to adoption, the majority of the Task Force recommended that this be the subject of a separate study. But the 'health representative recommended that adoption should form an essential part of the amalgam of child and family care services and that responsibility should be transferred to the Minister for Health'. The memo also claimed that this proposal had the support of a range of voluntary agencies and that as such 'the Minister for Health proposes that responsibility for the Adoption Board and other aspects of the adoption machinery should be transferred to her Department from the Department of Justice. In relation to the Probation and

Welfare Service, the memo noted that the members of the Task Force were divided on the role of the service in relation to young offenders. However, the memo concluded that:

While appreciating that the service has developed very rapidly over the past few years and now has an administrative structure and favourable career prospects, the Minister is of the opinion that a supervisory role such as is envisaged for the health boards would be seen as a progressive measure and would be more compatible with the underlying philosophies of the Task Force Report which calls for community-based services, with a reduction in emphasis on specialised services and direct involvement with the courts for some categories of children. While it is accepted that the proposed transfer of functions will present problems in terms of maintaining existing conditions of work for existing staff, these problems are not insurmountable and will, of course, require considerable discussion between the Departments of Health and Justice and the staff interests concerned before any transfers take place.

4.398 Finally the memo noted that:

a particularly important section of the report relates to the juvenile justice system. In view of the Minister for Health's overall responsibility for the well-being of deprived children she would be anxious that both Departments would be seen to act simultaneously and in harmony in the matter of desirable legislative and administrative changes in this area. The Department of Justice has already indicated its view that legislative changes relating to the juvenile courts might be provided for in the proposed Children Bill thus making the Bill a comprehensive one in relation to child welfare. The Minister for Health accepts this suggestion and assumes that the assistance of officers of the Department of Justice will be available in regard to the preliminary and subsequent processing of the Bill.

4.399 The Resident Managers Association (RMA) responded to the Task Force by broadly endorsing their recommendations in relation to residential care. A key issue for them was that:

Staff turn-over is at a totally unacceptable level in child care. Finding the causes of this and remedying them is regarded as one the primary tasks of child care policy makers. It is felt that inadequate salary and the absence of career structures are major causes but not so clearly evident is the lack of training and development of skills to cope with stressful and conflict situations.

4.400 The RMA also noted:

references in the report to the services provided in the past and at present by religious orders tend to be both complimentary and confusing. For example, 15.7.6.³⁰³ This paragraph, as written, implies that religious are cloistered, naïve people whose lack of personal development precludes their being able to contribute to the development of the child. We think (and hope!) that this is a misinformed view. In terms of past experience and the present demands and expectations of religious in child care, it is unrealistic to think that they would or could continue to be responsible and accountable, if their involvement is to be as peripheral as the statement would seem to suggest.

³⁰³ Equally, for children with no permanent family relationships, the continuity of relationships with staff is so vital that the work should not be undertaken unless this continuity can be provided. The religious orders who, at present, run such centres appear to be in a particularly good position to ensure this necessary continuity. While the lay staff working in the centres can be expected to change, this is much less likely where members of religious orders are concerned. It would not be necessary for them to undertake all the work with the children, or even to take the primary responsibility for running the centre. Indeed, this would probably be neither feasible from the Orders' point of view nor desirable from the children's. Children in such centres need to relate to care staff of both sexes and with varied outside interests while the members of staff most competent to run the centre need not necessarily be a member of the religious order involved. Members of the Orders could, however, take part in the children's lives and care, either as full members of staff or otherwise, to the degree necessary to provide permanence and stability and to protect the children from the most damaging effects of the loss of stability. (1980: 191-2).

4.401 The Association of Workers with Children in Care (AWCC) also responded stating that the report 'must be welcomed by all working with children, particularly those nearest the most deprived in our society.'³⁰⁴ The AWCC looked specifically at four areas; the philosophy of the report; assessment and other concurrent needs; the organisational structures needed to administer the services and residential care. On the issue of administration, that stated that:

Those of us involved in child care, would wholeheartedly agree with the Task Force statement, emphasising that residential child care evolved haphazardly, and did not result from any rationalisation of child care functions or the direct allocation of resources. This resulted in separate administration systems having evolved in a piecemeal fashion, leading to an unsatisfactory situation from the point of view of effective planning and the co-ordination of resources. We feel that residential care has been particularly isolated, and is in a vulnerable position as new but not necessarily more effective services are developed, again independently rather than in an inter-related fashion.³⁰⁵

4.402 The Association also expressed concern with the proposed new administrative structure proposed by the Task Force and the increased bureaucracy that could stem from this. The submission noted that:

A unique position exists where so much of residential care is provided by voluntary homes. With increased financial aid the voluntary nature of such homes is being increasingly eroded and the service becoming bureaucratic in nature. The challenge to all concerned is to develop a situation where accountability exists alongside humanistic caring service, meeting needs as they emerge. Our loudest cry would be to retain Our Autonomy in a responsible fashion so as to be able to pioneer and innovate as the Task Force suggests. A lessening of bureaucratic structure enables services to re-evaluate and act more easily than that of large services with a top heavy administrative set up which is forced to simply behave with the rules.³⁰⁶

4.403 On the specific recommendations in relation to residential care, the Association stated that while they had some slight reservations, 'the chapter on Residential Care is a commendable one' and went on the outline that:

We would agree with the Report that as a result of Kennedy Report of 1970, significant innovations in terms of the physical structure of homes, training courses and the introduction of lay staff, had come about. That such changes evolved from this report reflects once again the pragmatism of our work and sense of responsibility of our workers, however the fact that the work developed during this period independent of all other services was a major limiting factor. As outlined in our comments on administration we plead loudly for our inclusion within a comprehensive plan, otherwise, even at present if we develop our service, it would result in us fighting a system which had not adapted appropriately. No service is capable of such a challenge because it absorbs the energies of the workers.³⁰⁷

4.404 In May 1981, a document was prepared by the Department of Health in relation to the implications of the Task Force Report on the training and deployment of child care workers. The document observed that:

the majority report of the Task Force on Child Care Services makes no specific recommendations on the training of child care workers apart from saying that its recommendations will require a considerable increase in the number of professional

³⁰⁴ The Association of Workers with Children in Care (1982) *The Task Force on Child Care Services – A Response*. Dublin: Association of Workers with Children in Care. p 1.

³⁰⁵ Ibid. p 12.

³⁰⁶ Ibid. p 17.

³⁰⁷ Ibid. p 18.

trained child care workers. However, the recommendations concerning increased specialisation and expertise in residential care and the employment of significant numbers of child care workers in the community have major implications for the training of child care workers. The supplementary report attached to the main report does consider the question of training in a little more depth. The supplementary report considers that child care workers in residential and day care and working with children in their own homes will constitute one of the most important resources of the child care system. The supplementary report places a major emphasis on the training of child care workers to work not only with children with serious problems but also with their families and in most residential and day centres, with the local community. The same report argues strongly that there is no valid reason for maintaining different levels of training for different forms of social work. It recommends that training for child care workers should be of an equal standard and an equal status of that of other social workers. They also suggest that the forms of training be brought together and the same qualifications be awarded.

4.405 Later that month, on 26th May 1981, a meeting was held in the Department of Education to discuss the Task Force Recommendations. At the meeting it was agreed that the Department of Health would be responsible for the introduction of a new Children Act and for setting up a statutory body for the registration of child care workers, but only in consultation with the Department of Education. The meeting had no objection to the transfer of Industrial Schools to the Department of Health, but not the Special Schools for 'deviant children'. Specifically, the meeting,

acknowledged that these schools cater for the most difficult sector of the child population and great expertise and financial resources are needed to provide proper services for them. The importance of education in the treatment programme was stressed. The possibility of agreeing to the transfer of responsibility for the residential care of the children to the Dept. of Health was discussed. Experience has shown, however, that two authorities looking after a problem area could lead to conflict. It was agreed that the children's interests would best be served if these schools were retained by the Dept. of Education i.e. both the care and education element.

4.406 On 18th September 1981, Mr Ó Ceallachain in a memo to the Minister for Education observed that the Department of Health were proposing the transfer of various functions from the Department of Education to Health and recommended that the Department agree to the transfer of the Industrial Schools, but in relation to the Special Schools (Reformatories):

the position recommended is that this Department enter a most serious reservation on the grounds that these establishments, providing as they do a structural programme of education, training and recreation with a view to rehabilitation belong more properly in the sphere of education and that moving them into the 'care' area would not be in the best interests of the pupils. While care functions do exist in these establishments and a caring atmosphere is cultivated this can be catered for adequately within the present responsibility structure through the format of management and services and the willingness to consult and co-ordinate as necessary with care authorities. Should the Government decide, however, to transfer this responsibility to the Minister for Health, the responsibility of the Minister for Education for all aspects of education within the establishment should be maintained.

4.407 With regard to school attendance services:

it is acknowledged that the present operation of the School Attendance Act is in need of radical modification but it could be contended that such a modified service is more appropriate to the Minister for Education who prescribes a minimum period of education for all children and should therefore have the authority and the means to ensure that this

prescription is met. It would therefore appear appropriate to enter a reservation on this matter as well.

4.408 The functions of the Special Schools were further elaborated on by the Deputy Chief Inspector who argued that:

The main thrust of the work in the Special Schools should be to rehabilitate the pupils and provide access to work as recreational outlets which will allow students to accommodate themselves to the current demands of society. While care and a caring attitude are important components in the regime in these schools, the underlying philosophy of the Department of Education is that children's attitudes can be changed by intervention and that there is little hope for their survival in the community unless they acquire the intellectual, emotional and social skills which a particular society demands. Our view is that such skills are best acquired through a highly structured, carefully sequenced and integrated programme of school and out-of-school experiences. We recognise that this conflicts with the underlying philosophy of many of the members of the Task Force, and we put it to the Government that the thinking of the Task Force in this regard is unsound. It would be the view of the Department of Education that any shortcomings in the Special School system to date were caused not because of the choice of Department which administered it but rather through lack of funding and lack of awareness in the public in relation to the quality and quantity of professional staff required in these establishments.

Replacing the Children Act 1908 (as amended)

4.409 The Department of Health in a memorandum to Government in relation to 'Proposals for comprehensive legislation to Extend and Up-date the Law in Relation to the Protection of Children' in December 1982, stated that the Task Force:

supported the earlier government decision of October 1974 that the main central responsibility for child care should rest with the Minister for Health. Dealing with the problem of children in need of care, the report stressed the importance and integrity of the family and insisted that there should be minimal intervention in it by the State. It rejected the notion of placing the child in institutional care and removing it from the family setting unless this was absolutely unavoidable.³⁰⁸

4.410 However, it went on to observe that:

notwithstanding the Government decision of 1974, the main responsibility for child care services has not yet been translated into legislation and the present legal responsibilities of the Minister for Health and the health boards in this area are quite limited. At present, there is no single statutory body with specific responsibility for meeting children's needs. To remedy this situation, it is proposed to give health boards new statutory powers and obligations to identify families with children in need and to provide whatever services are required to meet these needs.³⁰⁹

4.411 The broad changes proposed by the Children Bill 1982 were:

- the imposition on the health boards of clear cut responsibility for a wide range of childcare services;
- the creation of powers to regulate play groups, crèches, nursery schools etc.;
- the taking over of full responsibility for children's homes (formerly orphanages, Industrial Schools);
- the taking over of responsibility for children's special centres (formerly Reformatories);

³⁰⁸ Department of Health. C.1.01.03.6.

³⁰⁹ Ibid.

- the taking over of responsibility for the supervision of school attendance;
- increasing the age of criminal responsibility from 7 to 12 years with consequently greater responsibility falling on social work staff;
- the creation of special children's courts with greater participation by health boards;
- strengthening the powers of intervention where children are at risk; and
- control of sale of solvents.³¹⁰

4.412 In relation to school attendance, the memo argued that:

The Task Force was of the opinion that, since early and intransigent truancy has often been found to be associated with severe family and social problems, it is inappropriate that emphasis on such cases should rest primarily on school attendance. In many instances frequent absence from school might indicate, not just a problem child, but a family with a variety of problems to be solved. The members of the Task Force agreed accordingly that certain functions at present performed by School Attendance Officers in relation to the problem of school-children should be integrated with the child welfare service. This would envisage the abolition of the existing school attendance officers to the health boards. The Minister for Health is in agreement with the proposed transfer of certain functions and of personnel as recommended and seeks the agreement of Government to the necessary legislative provisions which are included in the scheme of the Bill.³¹¹

4.413 The memo did also note that:

The Minister for Education has expressed reservations regarding the proposed transfer of responsibility for School Attendance Services, and considers these services more appropriate to his responsibility as Minister for Education. As it rests with him to prescribe a minimum period of education for all children he feels that he should continue to have authority and have the means to ensure that this prescription is met. As the prescription of a minimum period of education for children is clearly the responsibility of the Minister for Education, the Minister for Health agrees that enforcement of the Acts by means of statutory warnings or prosecution of parents would remain the responsibility of the Minister for Education. The transfer of personnel is proposed as a means of developing the social work functions referred to in paragraph 12 and of ensuring close links between all schools and the health boards so that children experiencing difficulties which become identified at school can immediately receive attention.³¹²

4.414 In relation to residential care, the memo outlined that:

The Scheme of the Bill provides for a new system of residential care for deprived children, to be administered under the aegis of the Minister for Health and the Health Boards. This system will replace the reformatory and industrial schools system for which the Minister for Education is responsible at present. A government decision of 25th August 1982 gave approval in principle to the transfer from the Minister for Education to the Minister for Health of functions in relation to children's residential homes (formerly known as industrial schools) and the Scheme of the Bill provides for a similar transfer of responsibility for a number of special schools (formerly known as reformatories).³¹³

4.415 The memo acknowledged the reservations of the Department of Education in his regard stating:

The Department of Education has been consulted and has expressed serious reservations regarding the proposed transfer of responsibility in respect of special schools. It regards

³¹⁰ Ibid.

³¹¹ Ibid.

³¹² Ibid.

³¹³ Ibid.

these as establishments the prime purpose of which is educational and suggests that this purpose is reflected in the preponderance of the activity in the institutions arising from their programmes of rehabilitation and reform. It considers that any measures which would have the effect of removing these schools from the mainstream of education would not be in the interests of the children. In the Department's view, the care elements involved are being and can continue to be adequately catered for through the format of management and services available and through arrangements for consultation and co-ordination with care authorities.³¹⁴

4.416 Having duly acknowledged these reservations, the memo nonetheless argued:

the Minister for Health considers that unification of responsibility is particularly desirable in the area of residential care. In accordance with the general tenor of the Task Force Report, the special schools should be seen as being mainly concerned with child care rather than with education at present. There is no doubt that education must be a major element no matter which Minister is responsible for these centres, but the major factor in deciding on responsibility for the schools must be the fact that they cater for those children who are probably the most seriously deprived, both emotionally and socially and should, therefore, be the concern of the Department which will have the main responsibility in relation to the general welfare of deprived children. It is hardly necessary to point out that if one Minister has authority for all centres for deprived children, the organization, operation and effectiveness of the system as a whole will be facilitated. Such a transfer would also be desirable for the purposes of facilitating continuity of services to the child and its family, with particular reference to the input of social work in relation to the child while in the centre and the provision of continuing care which would be required after discharge.³¹⁵

4.417 In relation to St Joseph's Special School in Clonmel the memo stated:

The Department is not seeking a transfer of responsibility for St. Joseph's Special School, Clonmel but he considers that discussions might be held between his Department, the Department of Education and the authorities of the School before a final decision is taken regarding its future roles. The Minister now seeks government approval to the transfer of special schools to the Department of Health, as is provided for in the Scheme of the Bill.³¹⁶

4.418 On the issue of juvenile justice, the memo outlines the broad principles that informed thinking on the issue, claiming that the proposed new system contained 'elements of both the main Task Force Report and the Supplementary Report'. The memo went on to state:

the proposed system is based on the principle that arrangements made for children must be consistent with their dependent status, the principle that intervention in a child's life should be limited to what is necessary to ensure that the child's interests or the interests of others and the principle that children who need special help should also, as far as possible, have the same experience of growing up as is normal in their society (all of which principles were implicit in both the Main Report and the Supplementary Report).³¹⁷

4.419 The broad scheme for a new juvenile justice system was as follows:

- (a) If the state is to intervene in the life of a child on a compulsory basis, and interfere with the responsibility of his parent or guardian it should usually be with a view to helping the child; this intervention should be by order of a court to be made following care proceedings.

³¹⁴ Ibid.

³¹⁵ Ibid.

³¹⁶ Ibid.

³¹⁷ Ibid.

- (b) Care proceedings should be conducted by a newly constituted juvenile court, consisting of a specially trained district justice and two lay assessors.
- (c) The age of criminal responsibility should be raised to 12; persons under that age should not be subject to the criminal law i.e. they should not be prosecuted.
- (d) A new type of control proceedings should be instituted, under which children under 12 who are a threat to the public can be made the subject of a control order; control proceedings should be conducted before the juvenile court, in separate hearings.
- (e) In regard to children under 12 the Garda Síochána should be responsible for initiating Control Proceedings.
- (f) In the case of a child between 12 and 15, prosecution should continue to be an option, although no child in this age range should be convicted unless the justice is satisfied as to his criminal capacity.
- (g) Young persons between 15 and 17 years should be dealt with separately under the criminal law, as they are at present, with additional provisions to take account of their youth.³¹⁸

4.420 On the issue of the age of criminal responsibility, the Bill proposed the age be raised from 7 to 12 on the basis that:

the Minister considers that this represents a more reasonable level at which to draw the line between children who might be regarded as lacking in understanding of the criminality of their acts and those who might be regarded as having reached a sufficient degree of maturity to understand substantially the nature of their wrong doing. The Minister accepts that in view of the present extent of juvenile delinquency any extension in age may provoke a certain amount of controversy. He feels, however, that public indignation at the extent of crime should not be allowed to prevent a non-retributive approach to troublesome children whose background in many instances will be one of considerable psychological or physical deprivation.³¹⁹

4.421 For those children under the proposed age of criminal responsibility, the legislation included provision

for a new form of 'control proceedings' which will enable the State to intervene in the lives of such children, with the express purpose of affording necessary protection to others. In such extreme cases it would have to be a serious offence if committed by an adult, or that the child had committed an act or acts which caused (or were likely to cause) serious loss or damage to persons or property. The court would be empowered to make an order to ensure such minimal restraint or control as was necessary for the protection of the community.³²⁰

4.422 The background to the drafting of the Children Bill 1982 by the Department of Health lay in the Government decision of October 1974 to transfer the 'main responsibility' for childcare services to the Department of Health. In a memo to the Minister for Health in 1987, the background was outlined. Having outlined the recommendations of the Task Force on Child Care Services, the memo observed that:

The question of who was to take over responsibility for the new juvenile justice legislation was not settled at that time nor has it been since. This Department was prepared to co-ordinate the preparation of a comprehensive Children Bill with the juvenile justice aspects

³¹⁸ Ibid.

³¹⁹ Ibid.

³²⁰ Department of Health. C.1.01.03.5.

being drafted by the Department of Justice. The Department of Justice, on the other hand, held that it was up to the Department of Health to formulate the proposed bill in its entirety. Justice offered to comment on the proposals once they had been prepared but would take no part in their preparation. Faced with this attitude and under strong political pressure, the Department of Health attempted to prepare the outline of a comprehensive Children Bill, which would include provisions on the treatment of juvenile offenders, reform of the Children's Courts and the age of criminal responsibility. Without the assistance and expertise of the Department of Justice it proved an almost impossible task. However, just before the change in Government in December 1982, the Minister (Dr. Woods) directed the Department to circulate for comment to the other Departments involved the (as yet incomplete) Heads of a Children Bill.³²¹

4.423 With the change in Government, in February 1983, the new Minister directed that the heads of Bill were to be reviewed, particularly those aspects relating to juvenile justice. At this stage the Department of Justice had submitted its observations on the Bill, particularly in relation to juvenile justice, which ran to 38 pages and 'identified a number of serious flaws and weaknesses in the proposals'. The Department of Justice firstly observed:

In the context of juvenile justice, the Bill apparently provides for a 'welfare model'. In this model juvenile justice forms part of a more encompassing child care and protection system and it is interwoven with other more general services which the Heads would make available to children and young people. It also involves a high level of interference by the State's Social Services. Furthermore, it emphasises in the first place the needs of the child irrespective of the act committed or its seriousness; much attention is given to social and psychological conditions surrounding the offence and decisions are aimed at the individual needs and interests of the juvenile. What is generally accepted as the main alternative to this 'welfare model' in this area, namely, the 'justice model' emphasises the committed act, the responsibility of the juvenile himself, the punishment related to the offence and the guarantees of due process. The Minister for Justice, in responding to the proposals from the Department of Health, is not advocating one or other of those models as being preferable to the other but, he considers that it would be useful for Government to be aware of the international experiences in this area. As far as the Minister for Justice is aware, it has been the experience in Europe – particularly in Holland and in Britain – that where 'welfare models' of criminal justice have been operating the countries concerned are reverting in varying degrees to the 'justice model'.³²²

4.424 On the issue of Departmental responsibility for certain children, the Department of Justice noted that the memorandum:

stated, 'under the new legislation, it is proposed that committal to prison should not be an option in dealing with young persons (15-17 years old) although committals to other forms of institutional care will be possible'. The Minister would be concerned about where members of this age group are to be detained when charged or convicted of what in the case of an adult at any rate would be a criminal offence. The cumulative effect of the Heads seem to be that (a) 'unruly' children or young persons (12 to 17 years) on remand or convicted of particular serious offences and (b) convicted persons between the ages of 15 and 17 should be detained in such institutions (other than prisons) as may be 'designated' or 'directed' by the Minister for Justice. The Minister is assuming that the words 'designate' and 'direct' is intended to mean that the Minister for Justice should have responsibility for the actual day-to-day running of the institutions. The Minister for Justice, however, has the strongest objection (now that a fundamental revision of the whole area of juvenile justice is being undertaken) to the proposal that young person under 17 should

³²¹ Department of Health, Child Care Bill 1988 – Consultation with Govt Depts – C1.03.03.

³²² Ibid.

be committed to institutions under his control. The Government will be aware of the outcry from certain groups (some of whose views are reflected in the Task Force Report) when the Government, in 1978, decided that 12 to 16 year old boys should be held in Loughan House under the control of the Department of Justice. At that time the Minister for Justice agreed to make Loughan House available for that age group as a temporary arrangement until such time as the Department of Education would have the secure school at Lusk (Trinity House) ready. Trinity House is now almost ready and on transfer of the boys to it from Loughan House the latter will revert to general prison usage – for which, it is badly needed -around April, 1983. In the circumstances it is strange, to say the least, that a Bill whose guiding concern is for the care and welfare of the child should now be providing that children as young as 12 years of age should be committed to institutions (presumably similar to Loughan House) under the control of the Minister for Justice. Indeed, over 40 years ago – in the Children Act, 1941 – the age at which a youthful offender could be committed to a certified reformatory school under the control of the Minister for Education was raised from sixteen years to 17 years.³²³

4.425 The Department of Justice then outlined:

In the Minister's view, the appropriate age at which youthful offenders should be committed to institutions under his control should be 17 years. However, if the Government consider that 17 years is too high in this context, the Minister would hope that, at least, there would be general acceptance that it would be unthinkable that a new 'Children's Charter' should provide for the detention of anybody under 16 years of age in institutions under the control of the Minister for Justice. The proposal whereby a child or young person of unruly character could be committed to such an institution should, in the Minister's view, be rejected. Apart from the objections already stated which apply to all children and young persons, such a provision could easily develop into a means whereby agencies who would hold primary responsibility for the care of children and young people could opt out of their responsibility to these young people where they proved difficult to control. To summarise on this point, it is the Minister's view that nobody below 17 years should be detained in institutions under his control but that if the Government considers 17 too high, he would urge that the age should not be set as less than 16 years. Furthermore, he is of the view that persons under 17 or 16 years (as may be decided) should not be committed to such institutions on the ground that they are unruly. They should be detained in institutions run by caring agencies operating under the control of the Minister for Health or the Minister for Education and those agencies should be required to receive them and provide proper custodial facilities for them.³²⁴

4.426 When the Department of Justice was contacted by the Department of Health in relation to redrafting the section on juvenile justice, the Minister for Justice replied that:

his Department would continue to give whatever assistance was possible by way of commenting on texts and by participating at occasional meetings but made it clear that Justice was not prepared to take over the preparation of the juvenile justice aspects of the bill.³²⁵

4.427 The Department of Health, however, were of the view, that:

The preparation of new juvenile justice legislation is essentially a matter of refining and modifying criminal law and procedure as it affects children. Changes in the criminal law are entirely a matter for the Minister for Justice; similarly, changes in the role and procedures of the Gardaí and the Courts in relation to children are unlikely to take place

³²³ Ibid.

³²⁴ Ibid.

³²⁵ Ibid.

without the active support and involvement of the Minister for Justice and his Department. Having examined the matter over the last few months I am convinced that the input which this Department is skilled to make in reforming the juvenile justice system and the role which health boards could be expected to play in any new system is limited to: —

- (i) ensuring that the correct balance is maintained in the legislation between the protection of the public and the provision of care, support and rehabilitation to the young offender;
- (ii) identifying children at risk of getting into trouble with the law and making available services and facilities which would seek to stem the drift towards crime and vandalism;
- (iii) extending the range of options available to the courts by equipping health boards to provide counselling and remedial treatment programmes for young offenders who do not require custodial care.³²⁶

4.428 At this stage, the Department of Health concluded that any attempt to introduce a comprehensive bill to replace the Children Act 1908 and the various Health Acts would face considerable difficulties and instead it was agreed that separate legislation would deal with the core substantive areas of child welfare and protection, adoption and juvenile justice. This series of reforms were agreed by Government and in 1984 a formal announcement of this decision was outlined by the Government in its national plan, *Building on Reality, 1985-1987*. *Building on Reality* stated:

It is intended to introduce three Bills in relation to the care and protection of children. Much of the existing legislation in this area is now outdated and not sufficiently in keeping with current concepts in regard to the well-being of the child. The first of the new Bills is at an advanced stage of preparation and will provide a wide range of new measures as well as considerable up-dating of the Children Act, 1908, which is the basis of much of the existing law in regard to child care. This Bill will impose a clear obligation on health boards to promote the care and protection of children. It will inter alia; provide for the registration and control of day care services for children; make amendments to the present provision in relation to foster care and give greater protection to children; provide for the registration and supervision of children's homes; provide better and more flexible arrangements for taking children into care; include a range of new provisions aimed at protecting the child in regard to such matters as volatile substances; and provide protection for children in relation to pornography. The emphasis in the Bill will be on keeping the child in a family setting rather than in residential care....The Government is also committed to bringing forward revised measures in regard to juvenile justice. This will be the subject of a third Bill which is under examination at the moment.³²⁷

4.429 However, the Department of Health noted that:

The plan gave no indication as to which Minister or Department would prepare the third Bill. The Department understood from the Minister that it would be done by Justice while Justice apparently believed that Health were to do it. In the event, neither Department has taken any initiatives in relation to the juvenile justice bill. There the matter rests. There have been no further contacts between the two Departments in the matter, apart from occasional skirmishes about responsibility for answering Parliamentary Questions on the subject. The Department of Justice have availed of every possible opportunity to promote the idea that this Department is responsible for new juvenile justice legislation. Their repeated attempts to have inserted in the Child Care Bill a provision prohibiting the hanging of persons under 18 is a typical example of this campaign.

³²⁶ Ibid.

³²⁷ Government of Ireland (1984) *Building on Reality, 1985-1987*. Dublin: Stationery Office. pp 98-100.

4.430 As noted earlier in the paper, legislation was prepared on this basis and the Child Care Bill 1988 was enacted into law by President Mary Robinson on 10th July 1991, as the Child Care Act 1991. The Act superseded the Child (Care and Protection) Bill 1985, which was designed to update and extend the law relating to the care and protection of children.³²⁸ The second stage of the Bill was passed in the Dáil on 23rd January 1987 but had not progressed further by the time of the dissolution of the Dáil in January 1987. The Bill had also ran into difficulties when a Supreme Court judgement, in a case known as *KC and AC v An Bord Uchtála*, cast serious doubts over the constitutionality of two of the key elements; firstly, proposals to make it easier for children to be placed in health board care and, secondly, provisions which would have enabled the courts to grant custody rights to foster parents. A number of non-profit agencies in the area of child welfare were also critical of the Bill arguing that:

in the context of the debate on children's issues over the past two decades this Bill is seriously lacking and fails to address itself to some of the central issues which practitioners, policy makers and legislators have considered.³²⁹

4.431 In preparing new legislation to replace the Child (Care and Protection) Bill, it was noted that initially:

the Bill as welcomed by all the major groups involved in child care. Subsequently, however, it was subjected to severe criticism on two main fronts. On the one side were those who felt it did not go far enough to promote the welfare of children and, on the other, were those who felt that it posed a threat to parental rights and family autonomy.³³⁰

4.432 In drafting the replacement legislation, the Department of Health outlined that:

The main differences between the General Scheme and the Bill published by the previous Government are:

- (i) the distinction between 'children' (those up to 15 years) and 'young persons' (those from 15-17 years) has been dropped; all persons under 18 years are now defined as children
- (ii) the provisions regarding the supervision of child minding and children's residential homes have been revised so as to avoid unnecessary intervention in the operation of these services and to simplify the bureaucratic procedures involved.
- (iii) The provisions in regard to placing children in health board care have been reformulated primarily in the light of the constitutional considerations already referred to;

³²⁸ In his memoirs, Mr Barry Desmond, the Minister for Health at that time recalled: 'When I introduced the Children's (Care and Protection) Bill 1985, no less than 15 years had lapsed since the recommendation of the Committee on Reformatory and Industrial School Systems (the Kennedy Report) of 1970. From February 1983 to April 1985 I had worked unceasingly within the Department of Health in consultation with the departments of Finance, Justice, Education and Labour to have a comprehensive bill drafted. The observations of Justice alone ran to 35 pages. Between September and December 1984 we had innumerable consultations with Matt Russell of the Attorney General's office. It was an uphill battle every week. Matt used to admonish me: "Minister, your bill is like a ball of string. Pull a thread and it keeps on coming!". Without the intense efforts of Liam Flanagan, Dr Joe Robins, assistant secretary and Donal Devitt, principal officer, I doubt if the bill would have seen the light of day in 1985. The work of Augusta McCabe, the social work advisor to the childcare division of the department, was of enormous assistance.' Desmond, B (2000) *Finally and in Conclusion: A Political Memoir*. Dublin: New Island Books. p 276.

³²⁹ Barnardos, Campaign for the Care of Deprived Children, Campaign for the Development of Social Services, Cherish, Focus-Point, Federation of Services for the Unmarried Mother and their Children, Irish Association of Care Workers, Irish Pre-School Playgroup Association, Irish Society for the Protection of Cruelty to Children, Local Government and Public Service Union, World organisation for Early Childhood Education, Probation and Welfare Officers' Branch, Voluntary and Statutory Workers of the North Inner City, Irish Foster Care Association (1986) *Response to Children (Care and Protection) Bill 1985*. Dublin.

³³⁰ Department of Health, Child Care Bill 1988 – Consultation with Govt Depts – C1.03.03.

- (iv) Proposals which would have enabled foster parents to seek the custody of children in certain circumstances have been dropped because of doubts about their constitutionality and because child care interests were, on balance, opposed to them.

The introduction of new legislation in relation to child care services has been recommended by various official reports in recent years...Not all the proposals in these reports have been accepted but they have been nevertheless, a major influence in the preparation of the Scheme. Many of the recommendations in the reports were in the area of juvenile justice and the Minister considers that these should be dealt with in a separate juvenile justice bill which would, more appropriately, be the responsibility of the Minister for Justice.³³¹

4.433 On the matter of juvenile justice, the explanation given by the Department of Health for the approach of the Department of Justice to the issue was:

it was the Minister for Health who established the Task Force

- (i) it was the Minister for Health who asked the Task Force to prepare a new Children Bill which was, *inter alia*, to deal with young offenders;
- (ii) it was the Minister for Health that the Task Force submitted its report;
- (iii) following the disbandment of the Task Force, the task of preparing a new Children Bill, involving measures in relation to young offenders, devolved on the Minister for Health.³³²

4.434 However, the Department of Health took the view that the decision of October 1974 was not as unambiguous as the Department of Justice were indicating. The Department of Health took the view that:

The Government decision of October, 1974, allocated to the Minister for Health the main responsibility in relation to child care. It did not assign him the main responsibility in relation to children. It was never intended that Health should take over responsibility for each and every service and piece of legislation that affects children. (If that were the case, the Department of Education should by now, have been subsumed into Health). The contention that juvenile justice legislation 'belongs' to Health simply because it affects children defies any reasonable interpretation of the Government decision. (emphasis in original)³³³

4.435 The justification by the Department of Health for allocating to the Department of Justice responsibility for preparing new juvenile justice legislation was that firstly that the public mood for a welfarist approach had dissipated since the mid-1970s and secondly that since in its essence, the legislation was in the criminal justice domain, it was not appropriate for the Department of Health to be the lead Department. On the first point, the memo stated:

In 1974 the demand was for a shift to a welfare-oriented approach to juvenile offenders in which the health boards and social workers would play a lead role. Thirteen years later the social climate has changed dramatically. There has been an increase in crime and vandalism, much of it attributed to juveniles. In addition, the involvement of juveniles in such horrific cases as the Fairview Park murder and the killing of two youngsters in Ballyfermot in a so called 'joy-riding' incident has dampened enthusiasm for any relaxation of the law. The campaign for the raising of the age of criminal responsibility has lost much of its edge. In the situation in which we now find ourselves, the involvement of the

³³¹ Ibid.

³³² Ibid.

³³³ Ibid.

Department of Health in the preparation of new juvenile justice legislation is, to say the least, questionable, if not entirely inappropriate.³³⁴

4.436 On the second point, it stated that:

The preparation of a new juvenile justice bill is essentially a matter of refining and modifying criminal law and procedure as it affects children and bringing about changes in the methods and approaches of the Gardaí and the Courts in relation to young offenders. Can it seriously be argued that this does not fall fairly and squarely within the remit of the Minister for Justice and his Department?³³⁵

4.437 It was not until the early 1990s that responsibility was primarily allocated to the Department of Justice to prepare new juvenile justice legislation. At this stage, debates on formulating juvenile justice legislation on either 'welfare' or 'justice' principles were to a degree superseded by attempts to devise legislation on 'restorative' grounds.³³⁶ In December 1996, a Children Bill was published and the second stage was completed in the Dáil in February 1997. However, the Bill fell on the dissolution of the 27th Dáil, but in September 1997 it was restored to the order paper. In excess of 150 amendments to the Bill were put forward and, on this basis, it was agreed that a new Bill be prepared, the Children Bill 1999. This was eventually enacted as the Children Act 2001 as highlighted earlier in the paper.

Transfer of responsibility for children's residential homes from the Minister for Education to the Minister for Health and Funding Homes

4.438 In August 1982, a memorandum for Government was prepared on the transfer of responsibility for children's residential homes from the Minister for Education to the Minister for Health. In addition to seeking to transfer the homes, the decision also sought 'the allocation of the necessary funds to wipe out the accumulated deficits of these homes and to place them on a proper budgetary system'. The justification for the transfer to the Department of Health from the Department of Education was that:

- (i) the homes should now be regarded as child care establishments rather than educational. This is particularly so at present in the situation where, in all but two of the homes, the children attend outside schools, thereby reducing significantly the involvement of the Department of Education with the homes;
- (ii) the vast majority of the children in these homes are now the responsibility of the various health boards. The health boards pay for the children in the homes at the approved capitation rate and have the responsibility of providing supportive social work services for the children and their families as well as being responsible for the after-care of the children;
- (iii) the transfer of ministerial responsibility to the Minister for Health would be consistent with the objective of unifying, as far as possible, responsibility for the child care services under one Minister.

4.439 In addition, the memo noted:

The report of the Committee on Reformatory and Industrial Schools System (the Kennedy Report) recommended in 1970 that responsibility for children's residential homes should be transferred to the Minister for Health. In 1976 the Department of Education formally

³³⁴ Ibid.

³³⁵ Ibid.

³³⁶ A number of statutory reports including the National Youth Policy Committee (1984) *Final Report*. Dublin: Stationery Office; the Committee of Inquiry into the Penal System (1985) Report. Dublin: Stationery Office and Dáil Eireann (1992) *First Report of the Select Committee on Crime – Juvenile Crime – Its Causes and Its Remedies*. Dublin: Government of Ireland had all broadly endorsed a welfarist approach to juvenile justice.

recorded its agreement with the Kennedy Report recommendations. Since then the Department of Health has in fact taken the lead role in negotiating with the homes on matters of overall policy in the field of residential child care. More recently the Final Report of the Task Force on Child Care Services recommended the formal transfer of responsibility for these homes to the Minister for Health. The Department of Education, Finance and the Public Service have been consulted and they are in favour of such a transfer taking place.

4.440 However, before the transfers could take place, the memo highlighted the financial position of the homes and the necessity of solving that issue.

At present the homes are financed by way of a weekly capitation payment in respect of each child. The payment is made by the authority responsible for the placement of the child which, as already stated, means the health board in the vast majority of cases, the capitation rate is revised on an annual basis and fixed by order of the Minister for Education after consultation with the Minister for Health and the Minister for Finance. The Managers of the homes claim that in recent years capitation has tended to lag behind real increases in the cost of looking after children and that, as a result, a number of homes have accrued considerable deficits. The Minister for Health made funds available in last year's Supplementary Estimates to help clear these deficits. Notwithstanding this, and despite an increase since January 1982 from £54 to £68 in the weekly capitation rate, a number of homes have already this year indicated that they are in serious financial difficulty and anticipate considerable deficits by the end of the current year. The Managers of the homes have persistently expressed dissatisfaction with the capitation method of financing the homes and have requested that there should be an immediate transfer to a budget system of financing.

4.441 The justification for moving from a capitation system to a budget system was that it would give 'health boards greater control as regards the overall policies and afford the homes the benefit of the board's expertise in the management of resources with particular reference to staffing, their major cost factor'. It was estimated by the Department of Health that £1.5 million would be needed to wipe out the accumulated deficits of the residential homes as at 31st December 1982 and to achieve the objectives of clearing the deficits and transferring the homes:

The Minister for Health proposes that as a preliminary step to a formal transfer of responsibility for these homes a group of officers of the Departments of Education, Finance and Health should analyse the statements of accounts and estimates submitted by the homes, with a view to arriving at a firm figures for the wiping out of the accumulated deficits of the homes and of transferring from capitation to a budget system of financing. This proposal has the support of the Departments of Finance and Education. He further seeks a commitment from the Government that the necessary funds be made available to him by way of a special allocation to allow him act on the findings of the group. In that connection the Minister would also look critically, in association with the health boards, at the present manner of operation of each residential centre particularly with a view to ensuring that children suitable for fosterage or other community based types of care are not institutionalised. Department of Finance consider that it would be inappropriate for the Government to make any decisions on the future financing of these homes and liquidating their deficits until the proposed inter-departmental committee has completed its examination of the homes financial position. However, the Minister for Health would not be prepared to take over responsibility in a situation where he would be faced with demands for additional funds necessary to put the homes on a sound financial footing and where such funds were not made available to him.

4.442 On 25th August 1982 the Government:

- (1) agreed, in principle, that the functions in relation to children's residential homes should be transferred from the Minister for Education to the Minister for Health; and
- (2) decided that an Interdepartmental Committee comprising officials of the Department of Education, Finance, Health and Justice should be established to review the operation and financing of the homes.

4.443 In December 1983, following receipt of the report of the interdepartmental committee, a memo was sent to Government formally seeking to transfer children's homes from the Department of Education to the Department of Health.

Difficulties in implementation – transfer and finance

4.444 The decision to establish an interdepartmental committee and the deliberations that gave rise to it provide a useful example of the difficulty of implementation in the area of child welfare. The Kennedy Committee had recommended that the system of funding residential care move from a capitation system to a budget system and that responsibility for the administration of childcare be given to the Department of Health. However, this would not be finally agreed on and implemented until 1984 and involved the commissioning of a number of further reports, and the establishment of an inter-departmental committee, before formal agreement could be reached. The transfer of functions relating to Industrial Schools from the Minister for Education to the Minister for Health on 1st January 1984³³⁷ effectively centralised all statutory responsibilities for children's homes to the Department of Health. From that date the Department of Health assumed statutory responsibility for 24 Industrial Schools in addition to the 17 approved homes for which it already had responsibility under the Health Act 1953. The only residential facilities for children in care operating outside the aegis of the Minister for Health were the four Special Schools, which were controlled and funded by the Minister for Education. January 1984 also marked a major change in the funding of children's homes. Homes in the past were financed from a combination of public and private funds. Grants payable jointly by the State and local authorities in respect of the maintenance of children committed to certified Industrial Schools were provided for in the Children Act 1908. Grants took the form of a fixed sum per child per week – a capitation rate, with half the rate paid by the Minister for Education and half by the local authority. A school's income from these sources was supplemented by fund-raising. As the number of children committed by the courts to the homes declined, the number of children placed by the health boards increased. Health boards paid the full capitation rate for these children and also for children placed by them in Approved Homes. This system of payment ceased from 1st January 1984 and children's homes from that point were now funded directly on a budget basis by their local health board, following recommendations by a special inter-departmental committee established by the Minister for Health to examine the financing of all children's homes.

Financing residential childcare

4.445 On 23rd October 1974, Mr O Maitiú wrote to Mr Hensey in the Department of Health informing him that the Department of Education was studying the question of the financing of the residential homes and that discussions had taken place with the *Association of Workers in Child Care* in relation to recommendation 11 of the Kennedy Report. In his letter he stated that 'because an increasing proportion of the children in the homes are the responsibility of the health authorities and particularly in view of the recent Government decision on the role of the Minister for Health in regard to child care, we think we should not go further with the matter at this stage until we have consulted with your Department'. Ó Maitiú enclosed a detailed memorandum on the issue which reflected the Department's thinking at that time. The memo highlighted that:

³³⁷ SI No 358/1983: Education (Transfer of Departmental Administration and Ministerial Functions) Order 1983.

One of the points basic to the Kennedy Report recommendations was that children should be placed in, and retained in, residential care only when there was no suitable alternative. In this context, it was felt that a system of financing homes by capitation grant could encourage homes to try to retain children who should suitably be returned home or placed elsewhere under supervision.

4.446 In addition:

A further recommendation in the Kennedy Report in relation to the need to provide separately for works of a capital nature has been accepted and in the provision since 1971/72 of a capital sub-head for new buildings and since 1973/74 of a sub-head for grants towards the modernisation and adaptation of existing buildings (sub-heads E & H in Vote 32).

4.447 In relation to the system of capitation funding, the memo highlighted:

The capitation grant for children committed through the courts is paid in approximately equal shares by the Department of Education and the Co. Council or Co. Borough (except for children over 17 years of age, where the entire grant is paid by the Department). In recent years, to avoid the stigma of committal proceedings, the tendency has been to have the child referred to the home wherever possible by the Health Authority, under the provisions of section 55 of the Health Act, 1953. Health Authorities pay a capitation grant for the children for whom they are responsible equal to the total of the State grant plus local authority grant in the case of committed children. Voluntary cases are paid by their parents or relatives – the amounts contributed are usually nominal.

4.448 He highlighted that not only was the Department concerned with the method of payment, but that the homes themselves were unhappy with the system of financing as:

the money comes from so many sources and there is often delay in payment. From the administrative point of view the system is anomalous, wasteful and archaic. As the Government has decided that health charges will be transferred from the local rates to the central exchequer, the Health Authority grants will in future be borne directly by the Department of Health, whereas the grants for committed children will continue to be borne jointly by the Department of Education and the Co./Co. Borough Councils. There is much to be said for making all the grants a charge on central funds: this would involve releasing the councils from the obligations laid upon them by the Children Acts.

4.449 The Department was also under pressure to deal with the financing of the homes.

This pressure has come from two related sources. Firstly, it was also a major recommendation of the Kennedy Report that large institutional buildings should be subdivided into small self-contained units or, where new buildings were needed, these should be in the form of small group homes. This recommendation was accepted by the Department and funds for the conversion of old buildings and the erection of new ones have been made available by the Department of Finance since 1971. It was in fact already being implemented independently, so far as their sources would allow, by some of the homes. The effect of a move to small groups is, obviously, some sacrifice of the more economical functioning of the larger institutional structures, particularly as concerns staff numbers. The second source of pressure on the Department has been the decline in the number of religious available to staff the homes and the consequent employment by the conductors of lay people as staff in much greater numbers than before. Such lay people are not prepared to work for the salary rates which the capitation grant permits the conductors to offer them, nor are they prepared to enter a type of employment where salary rates and other conditions are not agreed on a general basis.

4.450 What made the situation particularly problematic was that:

The present rates of grant are not based on any rationally worked-out norms...grant increases since 1969 have aimed solely at maintaining the position attained at that time when the grant was somewhat arbitrarily doubled in face of growing public awareness of its hopeless inadequacy. The grant in most cases appears more than adequate to cover the cost of maintaining the children, but it is not adequate to cover as well the salaries of care staff and wages of domestic staff. Some homes show a small surplus on the year's working, but closer examination reveals that they have allowed no salaries (or only notional salaries) for religious staff engaged in full-time care work. On the other hand homes employing a majority of lay staff show heavy deficits, especially where male staff have to be employed to care for senior boys in homes conducted by nuns.

4.451 As a consequence, he argued:

there would be a great deal of difficulty, from an administrative point of view in converting entirely to a budget system, as recommended by the Kennedy Report. The information to hand suggests that it would be largely a futile exercise to have homes present estimates of expenditure in the absence of parameters which could be applied to the items in such expenditures. In these circumstances, the Department believes that there is no alternative for the present to continuing to pay grants in respect of non-pay expenditure on a capitation basis.

4.452 On the issue of staffing, he noted:

there are wide variations in levels of staffing. However, in this case, the Department does consider that some rational basis of staffing can be worked out. Moreover, it is relation to the setting up of a recognised framework of staff salaries that the most insistent pressure is coming on the implementation of the Kennedy recommendation about financing. In regard to staffing, it may be said that the information supplied by homes is not a reliable guide to appropriate levels of staffing in that a low staff cost is more likely to indicate an inadequate service than to reflect prudent economy. In very few cases could staffing be regarded as adequate by present day standards in other countries.

4.453 He further elaborated that:

In fact, the question of staffing could be regarded as the major weakness of the system as it is at present. New buildings and reconstruction grants are gradually bringing matters to a point where it will not be possible to allege that children are housed in poor accommodation. The authorities of the homes are solicitous in relation to the material well-being of the children in their care and it could not be denied that the children in these homes to-day are well-fed and adequately clothed and that they have proper medical services available. These are relatively tangible and measurable things, however. The real test of the quality of service provided by the homes lies in their success in fostering the personal development of the children. Many of these children come from broken homes and the painful experience of home life in these situations means that most of them carry some measure of emotional disturbance. The care of these children requires trained staff but, more importantly, adequate numbers of staff.

4.454 What was now required, he argued, was:

to determine appropriate pay rates. It is perhaps the most persistent source of complaint in regard to financing that recognised rates of pay do not exist and that religious engaged in the work are not paid. The modern concept of residential child care is that it is a professional task, calling for certain qualities and skills. The idea of substitute parenthood is outdated. Formerly many of the children in the homes were illegitimate or orphans and came into the home as babies. With the development of adoption and fosterage this is no

longer the case. Most children now coming into care have parents of their own and are in care because of a break-down in the natural home or of relationships within the home. Not only do they require the 'nurturing' care which parents normally provide; they also require remedial care relating in various degrees to the physical and mental damage which they have suffered in the home environment.

4.455 He further elaborated on the nature of children in residential care and the implications for child care workers.

Some of these children express their disturbance in many forms of antisocial behaviour, ranging from violent aggression to complete withdrawal. The remedial task of the residential care worker is to assist such children to overcome the trauma of their home experience, to adjust to the residential situation and, in spite of its inherent disadvantages, to attain therein their full potential as human beings. He must always have in mind that the child should be returned to his natural home as soon as it is feasible to do so – this involves close liaison with the Health Boards and other agencies working to rehabilitate the entire family. Residential child care, therefore is now developing as a distinct discipline, with different levels of expertise. It has some of the elements of the task of social worker, the teachers and the nurse, together with separate qualities of its own.

4.456 In 1975, the Department of Education commissioned a detailed analysis of the financing of residential homes, which was completed in February.³³⁸ The report concluded that

the present system of payments to homes from a variety of sources is administratively wasteful and places unnecessary burdens on the homes. Payments should be made, in present circumstances, only by the Department of Education which would subsequently recover the appropriate payments from the local authorities and the Department of Health.'

4.457 The report recommended that a budget system be put in place on the following grounds

- (a) It is administratively less expensive than direct payment of careworkers' salaries.
- (b) It gives the Department greater control over expenditure in the homes and consequently over policy-making in the homes - capitation grants give the homes greater freedom to develop and implement their own policies.
- (c) Capitation grants are being phased out as a system of financing by the Department of Health. If residential homes are made the responsibility of the Department of Health, the transfer of responsibility would be facilitated by the introduction of budget financing as soon as possible.
- (d) It can be operated to facilitate homes in providing a satisfactory superannuation scheme.

4.458 However, the Department of Education continued to favour the capitation scheme on the grounds that it gave the homes greater freedom to manage their own affairs and to decide their own priorities. The Department of Finance on the other hand, in correspondence with the Department of Education on 20th February 1976, favoured another option outlined in the report, a capitation grant, but the salaries paid directly by the Department of Education, with the proviso that no additional staff could be employed in the homes and that contributions by local authorities be maintained in the same proportion as the currently paid. The Department of Education were in broad agreement with the report, but noted that salaries should take cognisance of the fact that staff did not work a rigid 40-hour week and would have to work anti-social hours. On the issue of the Department of Education paying the staff salaries directly, the Department replied to the Department of Finance stating they were:

³³⁸ DE1P0118-097. McDonagh, K (1975) *The Financing of Residential Group Homes*. An Roinn Oideachais. McDonagh was a systems analyst in the Department of Education.

very doubtful about this. It would mean creating what would be to all intents a new cadre of public servants, paid directly by the State. Would your proposal that we pay these staff at their existing rates be workable? Some are paid nothing at all, some take notional salaries out of the grant, some are paid varying amounts, depending on what the particular home can afford. A few are being paid the rates for Lusk and Finglas, which we consider too high for the residential homes. If the State takes over, a claim for uniformity of remuneration will be irresistible and it will go for the highest level rather than the lowest. All the staff basically are doing the same job. With the State as paymaster these staffs would immediately become unionised and thereby gain immediate access to the Labour Court. We have been very disappointed at the rigid Union attitudes which have developed in Lusk and Finglas and which have led to demands which we consider grossly excessive....The Department is of the view that nothing should be done which would detract from the voluntary character of all these homes – whether they are financially supported by this Department, the Department of Health or a mixture of the two. The State should not interfere in this sensitive area any more than is necessary.

4.459 In addition to recommending a budget method of financing, the report recommended that the system of parental contributions, which applied to some children committed to the homes, be discontinued. The basis for this was that:

it is clear that contributions from parents make at best a trivial contribution to the financing of the homes and indeed it is quite likely that the contribution is a negative one. There is no financial justification for these contributions and on the other hand it involves the Department of Education and the Gardaí in debt collection which does little to enhance the public image of either party.

4.460 The Report envisaged two categories of Residential Homes – Category 1 homes to include Lusk, Finglas and Clonmel that functioned as Residential Special Schools. These homes were to cater for young offenders in need of special education as well as specialised psychological treatment. Category 2 homes were to include all other Residential Homes for which the Department of Education had responsibility. As a rule, the report envisaged that these children would attend primary or post primary schools outside the home. For the Category 2 homes, the report recommended that care staff be sanctioned for each home on the basis of a staff/ child ratio of 1:4 with the following grades of care staff recognised. Resident Manager with overall responsibility for the homes; senior House parent with responsibility for the group; house parent providing care expertise and ensuring that trained staff is present with the children at all times and assistant house parent to co-operate with the house parents. The report further recommended that an incremental salary scale should be provided for each rank of careworker.

4.461 In addition to the report commissioned by the Department of Education, the Association of Workers for Children in Care (AWCC) commissioned Robert J Kidney & Co Chartered Accountants in 1976 to identify the costs of maintaining children in care in 1975.³³⁹ The report concluded that the appropriate capitation rate was £40.90 per week, with the salaries for childcare workers equivalent to those paid to the childcare workers at the special schools for young offenders at Finglas and Lusk, and recommended a staffing ratio of 1:4. The AWCC in commenting on the report argued:

This capitation system was designed for a situation in which large numbers of children were being cared for in ‘institutional’ settings, mainly by religious workers for whom no salary provision was made. It is quite unsuited to present circumstances in which children are cared for in small, family type groups, within one complex, requiring inevitable duplication of some facilities and much greater staffing ratios. The considerable intake of

³³⁹ Kidney, RJ & Co (1976) ‘Cost of Maintaining Children in Care’.

staff in recent years has been almost entirely lay and these workers are entitled to a proper salary and career structure.

4.462 It went on to outline that:

Lengthy negotiations over two years have apparently failed to convince the Department of Education of the validity of our case. Increases in the capitation grant have been made from time to time, but little progress has been made on the basic issue of a salary scale for child care workers. In the meanwhile, these workers have become increasingly frustrated, and the religious managers of the homes are in the position where they cannot pay the most experienced of their workers even the minimum levels obtaining at Lusk and Finglas. Dedicated and trained staff, realising their prior obligation to the children, and unwilling to engage in industrial action, will be forced to leave the field for which the State has expended money in training them.

4.463 In response to both reports, the Department of Education noted its role in relation to residential childcare was very much in decline with the majority of children entering residential care via the regional health boards rather than the courts. As a consequence, while retaining administrative responsibility for the homes, they asserted that they had 'no control of input and no responsibility for many of the children in them. Planning, estimating etc. have been made extremely difficult and the whole thing is now an administrative nightmare.' On this basis, it was argued that

the difficulties which arise when administration is divided between Departments cannot be solved simply by co-operation between Departments and result in waste of both time and money...At working level the correct line would appear to be that residential homes should go to the Department of Health, but that, because of their specific educational role, the special residential schools for offenders should remain the responsibility of this Department.

4.464 On 23rd September 1976, the Parliamentary Secretary to the Minister for Education, Mr John Bruton, in correspondence to the Taoiseach, Mr Liam Cosgrave, summarised the discussions that had taken place in relation to the financing of the homes and crucially stated that:

I should refer to the fact that the Kennedy Report, in 1970, recommends that, in effect, the residential homes be transferred to the Department of Health. While this issue forms part of the remit of the Task Force on Child Care, I wish to state, at this point, that the Department of Education now wishes to formally record its agreement with the Kennedy Report recommendation particularly as the Government has since allocated the lead role in child care to the Minister for Health.

4.465 He also went on to say that:

my Department is reviewing the position of the residential child care course in Kilkenny. It may be that some of the pressure for salary scales – and particularly for what we would regard as unreasonable levels of salary – arises from the expectations generated among graduates of a professional training course. The question is whether the course, in its aims and content, is pitched at too high a level and whether a course of that level is required by our needs. Since the course caters for personnel in homes administered by the Department of Health as well as in those administered by this Department, we propose to consult with the Department of Health before arriving at any policy in this matter.

4.466 On 11th October 1976, the Taoiseach, Mr Cosgrave, received a letter from Sr M. Josephine, Superior General, Convent of the Mother of Mercy, Carysfort Park, Blackrock, County Dublin, where she sought an increase in the salaries to be paid to residential childcare workers, and stating that 'we respectfully remind you that we who belong to your own constituency in which one of our residential homes is situated (St Anne's, Booterstown), have a special claim on your

consideration and support'. The Taoiseach contacted Mr Bruton at the Department of Education who, in outlining the situation to the Taoiseach, stated:

The claim recently submitted by the Association of Workers for Children in Care would involve more than double the State expenditure on the homes, in real terms, in the first year alone. The whole thrust of the claim is related to staff salaries rather than the cost of maintaining the children. About 65 percent of the State expenditure under the A.W.C.C. proposals would be in respect of staff salaries. Frankly, I think these expectations are unrealistic, especially in the present circumstances. One point I must emphasise is that we are totally opposed to any question of salary scales for child care workers in these homes being the same as those of housemasters in Lusk and Finglas. The A.W.C.C. claims that both groups are doing substantially the same work. We disagree. The boys in Lusk and Finglas, referred for persistent delinquency, are significantly more difficult to manage than the vast majority in the homes. However, apart from this, the Lusk and Finglas scales were deliberately designed to relate the housemasters with the teachers with whom they have to work closely. The staff in the homes, on the other hand, are similar to other staff in institutions for children who work alongside nurses. The implications for the cost of health services of paying child care staff in homes higher salaries than nurses could be enormous.

4.467 On 2nd November 1976, the Department of Finance, in response to a series of representations to the Taoiseach seeking the provision of a salary scale for childcare workers and the general financing of the homes, outlined its position in a letter which stated:

..before any radical changes are made in the current arrangements for providing State aid for these homes, every effort must be made to rationalise the child care system by reducing the number of homes to reflect fully the dramatic fall in the number of children in care from about 2,900 to 1,200 over the past 10 years. While it is appreciated that this fall in numbers resulted in the closure of some homes and enabled desirable improvements to be brought about in the standard of care of those remaining, it seems clear that there is still scope for rationalisation to produce economies in staff numbers and administration generally which would help to ensure that the system as a whole operates at a minimum cost in terms of public funds. The Minister is not convinced that the small group concept would suffer from phasing out smaller homes in favour of utilising the capacity of the larger homes. In this context the analogy of high-density social housing may be cited to refute the view, put forward by the Department of Education, that only small buildings are suited to family-type units for children in care. As in the case of social housing, economic and budgetary factors must play a significant role in determining our system of child care.

4.468 On 19th November 1976, a further meeting took place between the Departments of Finance, Education and Health to discuss the funding of the homes. One of the issues raised was the disbursement of £150,000, a savings made in 1976, on the basis that additional expenditure was sought on the expectation that advances would have been made during the years in the financing of homes. However, on 14th December 1976, the Department of Finance wrote to the Department of Education stating that 'the making of special grants as proposed at this stage would be premature....and in the circumstances it is regretted that sanction as sought must be refused'.

4.469 On 4th March 1977, the Tanaiste and the Parliamentary Secretary to the Department of Education met with representatives from the Conference of Major Religious Superiors (CMRS)³⁴⁰ to further discuss the financing of the homes. At the meeting the Tanaiste informed the delegation that the capitation fee was to increase from £18 to £22 with effect from 1st January 1977 and that he had

³⁴⁰ They were Rev Fr B Comiskey; Sr Josephine, Sisters of Mercy; Br D Drohan, Christian Brothers; and Mr Doorley, of RJ Kidney and Co, Chartered Accountants.

established an inter-departmental group to examine the issue. The delegation from the CMRS outlined their disappointment at the level of the increase and highlighted that the report they had commissioned indicated that a rate of £40 was needed. On this basis, they felt they would have no option but to close a number of the homes and restrict further entries to the homes. The delegation highlighted:

the problem they faced in relation to the salaries of staff: they also mentioned a number of subsidiary matters which needed attention including the arrangements for making payments and the provision of medical care for the children in the homes. They saw it as a State responsibility to ensure that children in care were properly looked after. They accepted that there was necessarily a lot of delicacy about the relationship between the State and the Religious Organisations involved in the provision of care. It could be assumed, however, that if the present difficulties were overcome the Religious Orders would wish to continue to make the same contribution as they are now making.

4.470 The inter-departmental working group mentioned by the Tanaiste, was established by the Minister for Health in February 1977 with the following terms of reference:

Having regard to the analysis and recommendations made in the McDonagh and Kidney Reports, and to the decision in principle to adhere to the capitation system of financing, to (a) calculate a reasonable level of capitation payment at current prices; (b) recommend how such a rate, in real terms, might be introduced on a phased basis; (c) consider the implications of leaving salary determination for individual workers with the management of the homes; (d) make recommendations on the suggested next steps.

4.471 At a meeting of the inter-departmental group on 4th February, 1977 it was reported that the group accepted

that the major problem facing the residential homes was one of finance. Reference was made to the various representations which had been received in recent months expressing dissatisfaction with the level of financing of residential homes. The main contention in these representations was that the existing capitation grants are not sufficient to enable the payment of adequate remuneration to the staff employment in the homes. Mr. Matthews said that the salaries were as low as £16 per week and that persons in receipt of such low salaries had a legitimate grievance. The policy of group homes necessitated more staff notwithstanding that the overall number of children was decreasing. Another problem is that some of the religious orders are threatening to pull out of such work, and in any event the number of vocations had declined significantly in the last twenty years.

4.472 On the same day, the Tanaiste and Minister for Health held a meeting with representatives from the Council for Social Welfare³⁴¹ regarding the financing of Residential Homes. At the meeting the Council's representatives explained that there was considerable urgency attached to the provision of increased financial aid for the homes which otherwise, in many instances, would have to close because of the level of indebtedness. There was particular difficulty about the very low level of salaries that the homes were now paying to many of their staffs and the managements could no longer stand over this. The Tanaiste told the deputation that the capitation rate was being increased from £18 to £22 with effect from 1st January 1977 and that an inter-departmental working group was looking urgently at what further steps needed to be taken to overcome the immediate difficulties and that this group would report by 31st March, 1977. Members of the deputation also assured the Tanaiste that from the Hierarchy's point of view there would be no problem about such matters as staffing being more rigidly controlled than had hitherto been the case. The briefing note prepared by the Department of Health for this meeting provides an

³⁴¹ These were Drs Kavanagh and Birch, Sr Stanislaus and Miss Pauline Berwick.

overview of the thinking of key officials in the Department of Health at this time. The note firstly outlined the reasons for the request to meet. It outlined

- (a) The Council for Social Welfare is a Committee of the Catholic Bishops Conference. At its meeting in October last the Committee received a request from the Conference of Major Religious Superiors that the Hierarchy should approach the Government regarding the serious situation that is emerging in residential child care centres as a result of the lack of any salary structure for the child care staffs in those centres.
- (b) The Conference of Major Religious Superiors represents the Orders which are, inter alia, involved in the running of residential child care centres. Notwithstanding their approach through the Council for Social Welfare they wish to put their case direct to the effect that
 - (i) they have exhausted all options known to them in trying to keep the homes in operation and
 - (ii) the present capitation grant system is quite ineffective and that they are seeking a system of financing as outlined in the Kidney Report.'

4.473 The note then went on to highlight 'key points which may arise during discussions' and they were identified as:

- (i) What is the State's position in relation to these children? What role do the Orders (existing managements) see themselves playing in the future? The State must, ultimately, where the parents fail ensure that the children receive proper care. The Orders may wish (although there is not much evidence at present to suggest this) to make a significant contribution in this area as part of their vocational work: in order to retain autonomy and flexibility they may, if possible, wish to share the burden of financing at least part of the costs. At a minimum, they presumably intend to remain in the management of the homes, if the States support is seen in their terms to be reasonable. These are issues which might be explored during the meeting.
- (ii) Why are the Departments adhering to a capitation system of financing at this stage? After all nearly all 'Health Institutions' are now financed on a budget basis!
 - (a) it would probably be better, in the interests of the children involved, if the essential vocational nature of child care were retained and emphasised. This can best be done where there is a flexible approach between management and staff on conditions of work, leave arrangements, recruitment etc. and 'a code of best practice', rather than formally negotiated minimum national standards, is generally applied.
 - (b) A capitation system enables the managements to retain a reasonably autonomous and flexible approach to the running of their homes.
 - (c) Once a budget system is introduced, statutory involvement must occur on a wide range of management issues e.g. numbers and types of staff, salary levels, leave arrangements, recruitment and removal from office.
 - (d) A budget system will be considerably more expensive to the State, certainly in the long term. It could, within a relatively short time, lead to a doubling in real terms of existing costs.
 - (e) A longer term decision about a change in the method of financing could be better made when a number of possible alternative approaches to child care have been developed and explored. For example, a widening of the scope and level of support for fostering; the establishment of small domestic type homes with two house parents: or the wider use of homemakers could reduce the number of

children in residential care and make alternative systems of financing more attractive. These are the types of options that the Departments would hope to discuss with the managements when the immediate 'crisis' has been overcome.

4.474 The 15-page report of the Interdepartmental Working Group on Financing of Children's Residential Homes was completed on 24th March 1977 and suggested that a reasonable rate of capitation should be in the region of £28-30 per week. The Group also considered it prudent and desirable to examine alternative forms of care for children:

(a) with a view to developing more effective, efficient and acceptable forms of care; (b) in order to identify issues which may need to be agreed with the staffs concerned and could possibly be very significant in negotiations on future pay and conditions; (c) before the future staffing and structures in residential homes are examined in more detail. Alternatives to residential care might include use of homemakers and full-time helps to keep families together or support 'inadequate' parents; development of boarding out arrangements, with special training for foster parents of difficult or disturbed children; and development of small group homes in residential areas which could be run with part-time domestic help.³⁴²

4.475 The report recommended an early meeting with the Conference of Major Religious Superiors to acquaint them with their thinking and how best to resolve the pay issues in relation to residential care. The report also noted that 'in this connection, it is significant to note that the members of the hierarchy who met the Tanaiste on 4th March emphasised that increased controls on the homes would be acceptable to the Hierarchy'.

4.476 In a memorandum to Government from the Department of Health, dated 18th April 1977, it was noted that the CMRS was seeking a substantial increase in the capitation rate and 'in the absence of a favourable response, eight homes will be closed and further seventeen will refuse new admissions'. It noted that the Inter Departmental Group found that a capitation rate of between £28 and £30 per week was necessary and sought agreement to negotiate an increased capitation rate of not more than £30 per week. The Minister for Finance in his comments on the memorandum noted that State support for the homes increased from £0.8m in 1972-73 to an estimated £1.6m in 1977 and that he considered:

that £30 per child per week should be the absolute limit of the Government grant in the current circumstances and that the Conference of Major Religious Superiors should be firmly informed accordingly. In his view the Government should not in any circumstances concede to unreasonable demands from any quarter whether it be the Conference of Major Religious Superiors or a more humbly titled organisation. It should be quite feasible to place most, if not all, of the children concerned in good homes within the community, to the advantage of the children, if an allowance of a lesser amount than £30 was payable to each child. In this connection it is relevant to point out that the highest weekly allowance currently payable to foster parents by Health Boards is understood to be of the order of £10 per child.

4.477 The Minister for Health in response to the comments made by the Department of Finance noted that 'it would always be necessary to have some children in residential care and that this form of care will be relatively expensive'.

4.478 On 20th April and 11th May 1977 a series of meetings took place between the relevant Departments and the CMRS on the issue of financing the home and on 18th May 1977, a meeting took place between the CMRS and the Local Government and Public Services Union with representatives of the Departments of Health and Education in attendance. Following these

³⁴² Report of the Interdepartmental Working Group on Financing of Children's Residential Homes (1977).

meetings it was agreed that the capitation rate would be increased to £30 per child per week and that scales of pay and other conditions for child care staff would be recommended by the Union to their members. The Department of Health noted:

Notwithstanding the recommendation for a budget system, the Department of Education (which has administrative responsibility for the majority of the residential homes) still strongly favours the straight capitation system on the grounds that it gives the homes greater freedom to manage their own affairs and to decide their own priorities. They accept, however, the necessity to have the capitation rate adjusted regularly to allow for the effects of inflation and to provide reasonable remuneration for the staff, having regard to the nature of their work.

4.479 In September 1979, a further review of the financing of residential homes was undertaken, with terms of reference to:

carry out a study of the organisation, staffing and financing of homes providing residential care for children under the Ministers for Education and Health to establish: the existing financial position in each home, including the extent of the deficit, and to make recommendations on the appropriate arrangements to be made in event of a decision to finance the homes on a budget basis, including the appropriate level of staffing and other costs involved, procedures for the agreement of an annual budget through Health Boards and the phasing in of a budget system; and a realistic interim capitation made for 1980.

4.480 To aid their deliberations, the committee undertook a survey of the financing, staffing and organisation of the homes and replies were received from 38 homes catering for approximately 1,200 children. The committee found that the average cost of maintaining a child in residential care averaged £51.13 per child per week, albeit that wide variation was evident. The report also found that the estimated cumulative deficit in the homes was expected to be in the region of £1.5m. The committee agreed in principle that the financing of homes would transfer to a budget system when the resources permitted. To deal with the deficits, a system of capitation (deficiency payments) was established, totalling payments to the homes of £54,000 in 1980, £402,300 in 1981 and £777,700 in 1982. The cumbersome nature of payment was also highlighted.

Three Ministers are involved in the making of the necessary regulations. Adjustments in the level of payment are justified on historic costs e.g. increases in the cost of living index in the previous year and pay awards under National wage Agreements. Given the high level of inflation, this means that the homes are continuously in debt, and a number have considerable overdrafts. In addition, the present system where the home may receive payment from four different sources – the Departments of Education and Justice, local authorities and the health boards also lead to delay.

4.481 The Final Report of the Task Force on Child Care Services also contributed to the discussion stating:

The present capitation system of contributing to the financing of residential centres has been found unsatisfactory, particularly in the case of centres having relatively few children. We understand that consideration is already being given to the making of arrangements to have residential homes placed on a budget basis and we recommend that this system be extended to all centres as soon as possible.³⁴³

4.482 The Task Force concluded, in relation to the homes, that because responsibility rested with two Government Departments, while almost all the facilities are provided by voluntary bodies supported by State grants, no coherent systematic planning procedures existed for children in residential care. Accordingly they recommended that responsibility for all children's Residential

³⁴³ Task Force on Child Care Services (1980) *Final Report*. Dublin: Stationery Office. p 201.

Homes should be vested in the Minister for Health. The Task Force also recommended that, as far as possible, residential facilities should be situated near the homes of children who will require such care. They considered that different kinds of residential facilities were required to meet the differing needs of children and recommended that:

[each] area of the country, roughly coinciding with existing community care areas of the health boards, should have access to one identified residential centre located in or adjacent to the area. These centres, should be multi-purpose in nature in the sense that they should cater for the ordinary needs of the area through the provision of short-term or medium-care for children of all ages from the area.³⁴⁴

4.483 In addition the Task Force recommended that 'small community centres for about 4 or 6 children would be required' to cater for children with delinquent tendencies and for other children with serious personal problems who require intensive, personalised care. This was accepted by the Department of Health who stated they were:

examining, in consultation with the health boards, the feasibility of existing residential facilities adapting their structures and revising roles and objectives to facilitate development along these lines. The Minister's aim is to have under his aegis a comprehensive and inter-locking locally based child care system serving the needs of identified communities. Residential homes would be only one of the elements within this system with a very specifically defined, though complementary, role to play. Homes will fall into one of the categories..., each category being given clear objectives for the service they are providing. Homes will, it appears, tend to be small units, providing a defined service for a clearly identified client group. Indeed, the process of changing to the smaller family style residential unit is now well advanced although there remains a small number of homes still operating along old institutional lines. Plans are almost complete to replace three of these institutions with purpose built group homes in the immediate future.

4.484 Following the aforementioned Government decision of 13th August 1982, an inter-departmental committee comprising officials of the Department of Education, Finance, Health and Justice was established to review the operation and financing of the homes. The inaugural meeting of the Committee took place in the Department of Health on 17th December 1982 and subsequently met on 12 occasions. Following a detailed discussion at the inaugural meeting, the Committee adopted the following terms of reference:

- (1) to determine the financial system most appropriate to children's Residential Homes, based on an examination of their financial records and their perspective financial position;
- (2) to recommend appropriate transitional financial arrangements on transfer of responsibility for the 24 Residential Homes (former Industrial Schools) from the Minister for Education to the Department of Health;
- (3) to identify acceptable cost and other guidelines appropriate to monitoring and financing children's residential homes in the future.³⁴⁵

4.485 The final report of the Committee was completed in September 1983. It explored in detail the emergence of the capitation system of fund and the pros and cons of that system of funding. The increase in the capitation fee from the early 1970s is shown in Table 1.

³⁴⁴ Ibid. p 188

³⁴⁵ Inter-Departmental Committee on the Operation and Financing of Children's Residential Homes – Report to the Minister for Health, September 1983.

Table 1: Capitation Fee for Residential Homes, 1972-1982

	Central authority	Local authority	Total
01/07/1972			
01/04/1973	£5.70	£5.30	£11.00
01/04/1974	£6.50	£6.00	£12.50
01/01/1975	£7.80	£7.20	£15.00
01/01/1976	£9.00	£9.00	£18.00
01/01/1977	£11.00	£5.70	£16.70
01/02/1977	£15.00	£15.00	£30.00
01/02/1978	£16.25	£16.25	£32.50
01/03/1978	£17.00	£17.00	£34.00
01/03/1979	£19.25	£19.25	£38.50
01/06/1979	£20.50	£20.50	£41.00
01/03/1980	£23.25	£23.25	£46.50
01/01/1981	£27.00	£27.00	£54.00
01/01/1982	£34.00	£34.00	£68.00

4.486 The report also commented that:

The homes' current financial position under capitation is also a consequence of the manner in which the service is organised. Each home is independent and privately run and could have children maintained in it by any one of the eight health boards, or the local authorities and the Department of Education. The former industrial schools constitute the major element of residential capacity and statutory overall responsibility for their operations at present rests with the Minister for Education. However some 70 percent of children in them have been placed by the health boards. This has inevitably created a grey area as to which authority controls budgets, ultimately decides care standards and determines the client group to be served by the homes. It would appear that this, coupled with the development of the capitation deficiency payments system has given individual homes freedom to design their own care programmes without regard to any concept of overall care policy, standards or clear definition of the type of child to be served.

4.487 Ultimately, the Committee rejected the capitation method of financing Residential Homes and recommended 'the funding of residential homes by way of annual allocation, based on budgets agreed with the local health board for projected expenditure, and paid monthly in advance'. The Committee also noted that while the proposed transfer of responsibility for the homes from the Department of Education to the Department of Health was a welcome step in clarifying responsibility, this by itself would not be sufficient. It argued that:

It must be coupled with a clear statement of overall policy in relation to residential care services setting out the rationale for care of each client group intended to be served by the homes, standards of care to be provided, both in relation to accommodation and maintenance, and to the quality of the care input from staff. We have found no evidence of the existence of such a statement without which in our opinion the monitoring process cannot function.

4.488 On 25th October 1984, the Department of Finance wrote to the Department of Health agreeing with recommendations of the Committee.**4.489** A key recommendation of the Committee was that the Department of Health, 'as a matter of urgency formulate and promulgate service objectives in relation to the care of children to guide health board policy'. In late 1984, the Department of Health produced a detailed memo on the operation of residential care in Ireland as well as outlining a philosophy for the future operation of

residential care in Ireland.³⁴⁶ In relation to the operationalisation of the recently agreed budget system of funding, the memo reported that:

Responsibility for financial control of individual homes rests with an officer designated by the local health board's Finance Officer. They have reported coming up against a number of problems in implementing the budget system one being with homes' accountants and auditors. In the case of some homes Officers had serious doubts about their objectivity and hence the impartiality of the accounts submitted. Also, officers found that the homes' accountants were over-estimating pay and non-pay expenditure for 'bargaining' purposes. Discrepancies also appeared in the number of staff actually employed in the homes as against alleged complements returned at various stages to the Department. All this resulted in long delays before homes could be told of their budgets for 1984. Hopefully, most of this can be put down to teething problems and the mutual understanding arising out of this year's exercise should facilitate speedy agreement to budgets next year.³⁴⁷

4.490 The memo went to outline that within the 41 Residential Homes managed by the Department of Health, some 1,200 places were available, but that they were rarely full to capacity. More significantly, the memo noted the ongoing decline in the number of children in residential care, the primary reason for this being 'the Department's policy of trying to maintain children in their own family setting as long as possible or placing them in foster care instead of in a residential home'. The memo acknowledged that there would always be a need for residential care for certain categories of children, but that:

Based on past trends expansion in the number of residential places available in children's homes appears unwarranted. In fact, our view is that residential provision in children's homes should stabilise at something below 1000 places by the end of this decade. This will require a reduction in the size of some homes, which we hope can be achieved through our capital programme, and through the possible closure of some individual units.³⁴⁸

4.491 On the registration and mechanisms of entry to residential care, the memo reported that:

The new Child (Care and Protection) Bill will contain proposals to repeal the sections relating to industrial schools in the 1908 Children Act and those relating to the approval of homes in the Health Act 1953. These provisions will be replaced by a registration procedure, which will apply to all children's homes including homes, which are not subject to controls at present. (It should be mentioned that the only homes whose operations are currently subject to statutory regulation are the certified industrial schools. The 1953 Health Act simply requires the approving of homes for the bringing of children into care; it does not specify any requirements as to operations, standards etc). They will also contain provision for a new admissions to care procedure, and for the removal of the power of the courts to commit children directly to residential care. In future it is intended that all children in residential care be placed only after full assessment by the health boards' social work service. Mainly because of the recent decline in religious vocations, the bill will enable health boards to directly provide residential care for children. Generally speaking the provisions in the bill are broad and enabling. The important regulatory provisions and controls on the homes, their procedures, practices and inter-face with the health boards, will have to be dealt with in regulations under the new Act.³⁴⁹

4.492 The memo went to outline a philosophy for the use of residential care for children, which was to be issued to the regional health boards. The objective of residential care was:

³⁴⁶ Department of Health – Review of Children's residential homes, 1984-C.14.12.04.

³⁴⁷ Ibid.

³⁴⁸ Ibid.

³⁴⁹ Ibid.

to meet, in co-operation with other elements of the child care system (e.g. family support services, day care, fostering and adoption,) clearly defined deficiencies in the lives of certain children, for whom placement in a residential centre for a given period of time, is considered by professional opinion to be the best means of achieving their well being and security. These children will include those who: have been rejected; are being neglected or ill-treated; lack parental control; are sleeping rough or are involved in minor delinquencies; have a short-term crisis in their home e.g. illness of a parent. Residential care programmes should be designed to enable such children to return to family life as soon as possible given their needs, their family situation and other circumstances.

4.493 Children should only be given a long-term placement in residential care where:

it has been definitely established that the child has no effective family to which he can return and substitute family care such as adoption and foster-care is inappropriate or cannot be made available. The latter cases could include children who are in need of care and control, additional to that available within their own homes, which cannot be provided in the community or have problems such as acute emotional deprivation or severe disturbance. It might be emphasised, however, that your Board's child care services should be based on the principle that the family setting is the best one unless it is clear that the child's well-being demands otherwise. (emphasis in original).³⁵⁰

4.494 When admitted to residential care, the memo outlined that it:

should create the least amount of disruption in a child's life, consistent with his total needs. A facility should be as accessible as possible to the child's home. Where appropriate, every effort should be made to enable the child to retain a relationship with his family, especially where it is envisaged that he will return home in the short to medium term. Residential homes should provide for the child a stable, secure environment with a standard of living equivalent to the national average. The home's environment should be enriching and stimulating and compensate for whatever deprivation the child may be experiencing.

4.495 In April 1986, the Department of Health published a *Report on Health Services* covering the period 1983-86. On the funding of child care services, the report outlined that:

A new system whereby the local health board funds children's homes directly on the basis of agreed budgets was introduced on the 1st January, 1984 to replace the highly unsatisfactory capitation system in operation for over a hundred years. Homes had found that despite regular revisions, capitation rates tended to lag behind real increases in the cost of looking after children and did not take account of differing cost structures in the homes. As a result, by the end of 1983 some homes had accrued considerable deficits. These deficits, totalling almost £1 million were cleared in 1984 in conjunction with the introduction of the budget system. The new funding arrangement is sufficiently flexible to enable health boards to respond to the particular needs of each individual home having regard to its staffing and clientele. It also brings homes and boards into a much closer working relationship than before. This gives boards a useful opportunity to re-organise the residential sector on a regional basis, broadly on the lines recommended by the Task Force on Child care Services. Each health board is now considering residential provision for child care in its area and hopes to agree future roles and functions with each of the homes in the near future.³⁵¹

³⁵⁰ Department of Health – Review of Children's residential homes, 1984-C.14.12.04.

³⁵¹ Department of Health (1986) *Health Services, 1983-1986*. Dublin: Stationery Office. pp 70-1.

4.496 However, a short number of years later in 1989 the *Report of the Commission on Health Funding* concluded³⁵² that:

An issue of importance to child care services in recent years has been the role of residential homes, most of whom are operated by voluntary organisations. A small number are owned and operated by health boards. The homes have been funded directly by health boards on the basis of agreed budgets since 1984; this replaced an unsatisfactory capitation system. It has been submitted to us that some homes are over-selective in accepting placements, making it difficult to find accommodation for the more difficult cases. On the other hand, some of the voluntary organisations involved have submitted to us that they could not cope with children who would seriously disrupt the running of the home and cause strain to those already cared for there. It would therefore seem that the relationship between the homes and their funders should be changed. Both parties should negotiate to supply care for children who need it; the homes would become more accountable for the services they provide and the funders would make reasonably long-term contracts to ensure cover for the difficult as well as easier cases. We therefore recommend that Area General Managers should enter into formal contractual agreements with homes to ensure that the required range of care is available in each area. The homes would then be funded on the basis of an agreed level and type of service described in paragraph 17.37.³⁵³

4.497 In a review of the Special Schools operating under the auspices of the Department of Education, a review by the Comptroller and Auditor General in 1990 highlighted a number of areas of concern. The report noted that the capitation system of funding the schools had ceased in 1981 and the schools were now funded on the basis of an annual grant. The report observed:

It would be reasonable to suggest that the changeover to full financing by the State in 1981 should have led to greater involvement by the Department in the management and control of the schools but this is not the case. Specifically the Department did not:- (a) ensure that as full a service as the available resources were capable of providing was being provided; the schools were being funded on the basis that such a service would be provided. (b) take steps to ensure the introduction of procedures for the efficient running of the schools. (c) Regulate the schools or have an effective input into their admission and management policies. At the Finglas Children's Centre, the Board of Management on which the Department of Education and Justice are represented acts only in an advisory capacity while, in contrast, Trinity House Board of management has executive powers. At St. Joseph's there is no Board of Management as the religious order was unwilling to agree to the Department's request to have a Board of management appointed when the new funding arrangements were introduced in 1981. (d) Establish a coherent policy on manning levels in the schools and consider the impact on school staffing of the public service embargo on recruitment. Indeed, the Department itself broke the public service embargo on some occasions by approving new posts in the schools and on other occasions by retrospectively sanctioning appointments already made in the schools. (e) operate a budgetary system which would ensure that the annual financial needs of the schools were being properly assessed. (f) Monitor the schools' finances on an ongoing and regular basis. The absence of monitoring may have been a contributory factor to the scale of the Supplementary Estimate needed in 1990 to cover expenditure overruns by the schools. (g) ensure that adequate financial details were being provided in the monthly

³⁵² *Report of the Commission on Health Funding*. Dublin: Stationery Office. p 358.

³⁵³ Paragraph 17.27 stated: 'Those responsible for the management of services in each region should, with the involvement of the voluntary organizations, determine the services required to meet these guidelines both in respect of the needs in their area and the most effective provision of these services, through the use of the available voluntary and statutory services. The grant-aid to each voluntary organization in each area should be related to the provision of a specific agreed level and type of service; the inter-relationship in the field between statutory and voluntary workers (and between voluntary workers of different organizations) should be clearly set out; and there should be an agreed basis for the evaluation of each agency's contribution.'

school returns. The returns submitted to the Department give a detailed breakdown of non-pay costs but the information provided in relation to pay costs (approximately 70 percent of total costs) is totally inadequate e.g. additional costs relating to weekend duties and for relief work involving the engagement of temporary staff are not revealed in the returns. (h) finalise the execution of a Deed of Trust for St. Joseph's although it is aware since 1978 that such a deed is essential since the State has invested some £5 million in buildings and facilities. (The land at Clonmel is owned by the religious order). (i) carry out regular audits of systems and procedures in the schools.³⁵⁴

4.498 The Department of Education in their response to the Comptroller and Auditor General noted that such schools were traditionally managed by religious Congregations and that:

The system operated in a climate of trust necessary for the support of the difficult work involved and the Department, having regard to this feature, did not unduly interfere in the day to day running of the schools.

4.499 While acknowledging that an improved policy and budgetary framework was required for the schools, the Department stated that in their discussions with the Comptroller and Auditor General's office prior to the finalisation of the report, they had drawn attention to:

the complex nature of the child care area, the many factors which impact on the operation of the special schools, the delicacy of many aspects of our dealings with Orders which operate the schools on our behalf and our concern that the report constituted an over-simplification of the overall situation.

4.500 By mid-1980s, the majority of a declining number of children in residential care were in homes funded on a budget basis by the Department of Health and with the health boards having a role in the day-to-day operation of the service. The Department of Education had responsibility for a small number of schools for young people who entered care, primarily through the juvenile justice system, but also a small number who were placed in secure accommodation by the health boards. The Department of Education were reviewing their role in relation to the provision of secure care and by the end of the decade had concluded that they were not the appropriate Department to have this responsibility, but it was a further decade and a half before they finally relinquished responsibility for such centres. At the end of the 1980s, one experienced childcare worker gave his overview of the changes that had occurred in residential care in the previous 20 years:

Dramatic and sweeping changes have taken place in residential care over the past twenty years. Large institutions have been broken up, staffing ratios increased and staff training commenced. Residential care has become more child orientated with a greater understanding of children and their problems. Yet the old stigma remains. Residential care is often blamed for causing the very ills of society for which it is trying to treat.³⁵⁵

4.501 In addition, he highlighted that:

Increasingly allegations have been malpractice and abuse have been made against care workers. Recent experience of how these cases are investigated leave a lot to be desired. Both care workers and agencies are isolated, shunned and made to feel guilty until proven innocent. Many care workers are feeling very vulnerable and on a daily basis are analysing situations to reduce the risk factor. This is no way to work and it can only have an adverse effect on the children.³⁵⁶

³⁵⁴ Government of Ireland (1991) *Report of the Comptroller and Auditor General*. Dublin: Stationery Office. pp 97-8.

³⁵⁵ Mahony, P (1989) Residential Care Now. *Irish Social Worker*, 8, 1, p 13.

³⁵⁶ Ibid. p 13.

Secure accommodation for females

4.502 In the early 1990s, the Department of Education argued that the centres operated by them did not 'have the capacity, nor should they be expected to cater for the following situations: (a) youths whose primary difficulty stems from serious psychiatric problems which require intensive and ongoing attention. (b) youths whose behaviour is such as to place them in the category unruly/depraved. (c) youths in need of intensive therapy on foot of sexual problems.' In the case of categories (a) and (c), they argued that:

It is the firm view of the Department of Education that referral of serious psychiatric and sexually disturbed cases to centres for young offenders constitutes a serious and potentially very dangerous failing within the present system. What is required in such cases is the provision of a suitable dedicated and resourced facility which would focus on addressing the real needs of such people. It is the view of the Department of Education that responsibility for the provision of such facilities rests with the Department of Health. However, repeated attempts by the Department of Education to secure acceptance of responsibility for this area by the Department of Health, have proved unsuccessful.

4.503 The National Youth Policy Committee recommended that:

There has been a considerable improvement in recent years in the quality of the special residential schools for boys, but this has not been matched by any corresponding facilities for girls. We recommend early assessment of needs in this area to see whether, as has been suggested to us, a small secure facility for girls is required.³⁵⁷

4.504 The response by the Government to the Report was that 'a study will be undertaken by the Minister for Justice in consultation with the Minister for Education to determine the scope and type of facility necessary to deal adequately with the problem of young female offenders.'³⁵⁸ In September 1986, a study group was established with terms of reference 'to determine the scope and type of facility necessary to deal adequately with the problem of young female offenders and to furnish a report.'³⁵⁹ The Group, which reported in February 1988, noted that the only residential facility within the juvenile justice system for females was Cuan Mhuire Assessment Unit in Collins Avenue, Whitehall, Dublin 9, which was opened in 1984 to cater for young females between the ages of 10-16. The function of the centre was to allow the courts to remand young girls for a period of up to three weeks to facilitate an assessment of their needs. To assist the Group with their task, the *Probation and Welfare Service* and the Department of Education surveyed young female offenders under the age of 16 known to them between January 1985 and June 1986 in order to ascertain the need for residential care. The report stated that

from the information gathered it was clear that, in addition to an assessment unit, there was need for a facility that could provide adequate long-term care for a small group of young female offenders who were particularly difficult or troublesome and for whom none of the community based facilities, residential homes or hostels currently in existence would be able to provide the necessary service.

4.505 In relation to the girls entering Cuan Mhuire, the report noted that:

the majority of girls admitted....were referred by health boards because they appeared to be out of control or were at risk due to drug taking, solvent abuse, promiscuity or sleeping

³⁵⁷ National Youth Policy Committee (1984) Final Report. Dublin: Stationery Office. p 182.

³⁵⁸ Government of Ireland (1985) '*In Partnership with Youth*'... the National Youth Strategy. Dublin: Stationery Office. p 41.

³⁵⁹ The Scope and Type of Facility Necessary to Deal Adequately with the Problem of Young Female Offenders. The report group was chaired by Mr J Kirby from the Department of Justice, along with the principal probation and welfare officer, Mr M Tansey. Representing the Department of Education were Mr S MacGlennain and Miss M Ni Fhearghail and from the Garda Síochána, Inspector P Nolan. The secretary to the group was Mr D McCarthy from the Department of Justice.

rough. In about 10 to 12 of these cases, the assessment report on the girls recommended that they receive residential care in a well-structured, secure facility which staffed and equipped to deal with difficult and disruptive girls. At present, there is no such facility available to the health boards.

4.506 The Group contemplated the establishment of a separate facility for such females, but ultimately argued:

on economic grounds alone...it would appear that the best solution would be to have one facility which would cater for any girl who required special care, whether she be referred by the courts or by a health board. We are strengthened in this view by the fact that the needs of the girls for care and support would not differ significantly regardless of whether they were offenders or not and that their treatment and management would be very similar.

4.507 The Group concluded that there was a need for a facility which would incorporate a remand and assessment unit, a long-term unit and a secure unit, to collectively accommodate 25 girls with responsibility for the facility resting with the Department of Education. The year after the Study Group on Young Female Offenders reported, an Interdepartmental Committee on Crime was established, which reported in December 1989. The Department of Education, in their submission to the Interdepartmental Committee, argued:

..as it would be considered that children and young people committed by the Courts are primarily in need of care and education, places of detention, industrial schools and reformatory schools have come under the Minister for Education (Ministers and Secretaries Act 1924, fourth part of schedule). The Minister for Education considers that this situation should now be changed in relation to secure centres and that responsibility for such centres should be transferred to the Minister for Justice. There are a number of reasons for the Ministers view

(1) The fact that the Department of Education is not directly involved with the Courts, Gardai or Probation and Welfare Service impedes its ability to respond to needs.

(2) The Department of Education is not otherwise involved in the provision of security and does not have expertise in this area.

(3) Many of the difficulties the Department has experienced in operating centres involving an element of security derive from the basic and unavoidable orientation of staff towards care and education rather than custody.

(4) Because of their near-adult physique combined with unpredictable, explosive behaviour, young offenders in the 15/16 age group are among the most difficult of all offenders to handle; it is odd for the Department of Justice freed from responsibility for such a group.

(5) It is exceptional in European terms to find responsibility for secure provision for young offenders with an education Ministry. The reason in our circumstances appears to have been the fact that the earlier industrial and reformatory schools were conducted by religious orders.

4.508 This viewpoint marked a significant shift in official thinking in the Department of Education, signalling that their direct involvement in the managing and administration of Reformatory and Industrial Schools should cease and be transferred to Justice. However, as noted earlier, it was not until 2007 that the transfer suggested by Education formally took place. The Inter-departmental report outlined that:

The Group considers that the main problems in this area are, firstly, the fact that, other than the remand and assessment facilities at Cuan Mhuire, there are no residential places at all provided for young female offenders. Secondly, as regards male offenders, there

are insufficient number of residential places for the 14-16 years age bracket. Apart from being a problem in its own right, this also causes difficulties in that less troublesome offenders must be housed with the more disruptive type of offenders. In addition, there is the problem of male offenders, who have been placed in a secure centre, returning when they have served their term, direct to their communities without any opportunity of preparing in advance to adjust to normal life.

4.509 On this basis:

The Group has come to the conclusion that there is a need for (i) of the order of 70 additional places for young male offenders, principally in the 14-16 age bracket and (ii) of the order of 15 additional places for young female offenders (I.e. exclusive of the provision for girls at Cuan Mhuire); 3-5 of these places should be secure. In considering the question of the need for secure places for both male and female offenders, the Group is conscious of the fact that a secure centre, as well as providing places for particularly disruptive offenders, enables other schools in the system to operate under a less restricted regimes. Accordingly, the Group makes the following recommendations.

(a) Scoil Ard Mhuire, Lusk, should be re-opened as soon as possible as a Centre for 40 older [14-16 (17) years age group] male offenders – (legally as a reformatory)

(b) A half-way house hostel should be provided to cater for boys who have been in secure accommodation in Trinity House School before they return to their communities

(c) A facility is provided to cater for 23-25 young female offenders. (the Department of Education have indicated that such a facility should ideally be located on the Departments lands at Finglas Children's Centre-this would allow use to be made of existing assessment, dining and recreational facilities and of teaching staff already in place at the complex.

(d) Temporary facilities be provided as a matter of urgency for young female offenders pending the construction of the new accommodation at Finglas Children's Centre proposed at (c) above. (i.e. Lusk)

(e) The making available for young offenders of up to 40 additional (non-secure) places in Department of Education Centres as a result of the phasing out of the use of such places by 'Health' clients. ...The Department of Health accepts that use by Health Boards of these 40 places could be phased out over a period of time, thus freeing them for Court referrals. However, they emphasise that this can only be done in the context of the implementation of proposals to:

(1) provide an additional 42 residential specialised places for adolescents

(2) maintain and extend the development of a number of initiatives targeted at groups identified as being particularly at risk, viz. young homeless, young travellers and young substance abusers.

(3) Develop services for mentally ill adolescents.

4.510 Arising from the recommendations of this Group, the Oberstown Girls School, on the site of the now disused Scoil Ard Mhuire, was opened in March 1990 as a place of detention by the Minister of Justice, Equality and Law Reform to accommodate up to eight young persons on remand, replacing Cuan Mhuire. In September 1991 a second unit was opened which was certified as a Reformatory School by the Minister for Education and Science under the Children Act 1908 to accommodate up to seven young persons. However, this was only to be a temporary arrangement as it was intended to construct a new and larger facility for young females on the grounds adjoining the Finglas Children's Centre. The rationale for this expansion was in response to 'major public disquiet over the level of delinquency among young females and the apparent inadequacy of

custodial facilities to deal with the situation'.³⁶⁰ In this context, the Finglas site was selected as an urgent response was deemed to be required and 'the ready availability of a State owned site which was deemed suitable on the basis of expert advice, provided the best solution available in the time allowed'. However, it transpired that the demand for places at Oberstown did not materialise and as a consequence, the decision to develop the Finglas site was reviewed and in July 1992, the Department decided to drop the plan. The Oberstown Boys School was established in 1991 as recommended by the Inter-Departmental Group and is certified as a Reformatory School by the Department of Education and Science under the Children Act 1908. Ten of the beds are certified as places of detention by the Minister of Justice, Equality and Law Reform.

Conclusion

4.511 In the early 1990s, the Resident Managers Association and the Streetwise National Coalition³⁶¹ commissioned a report in respect of the dimensions, organisation and funding of residential child care in Ireland.³⁶² The report explored the key recommendations of the Kennedy Report and reported on the progress made. In relation to funding, the report, while noting the shift from a capitation system of funding to a budget system, nonetheless argued that:

The current system of funding for residential care varies enormously both within and between the residential sectors. There is evidence of little rationale in the current system of budgeting, which appears to be determined by tradition, individual negotiation by each home with the relevant government departments and agency, and the strength of the trade union. Funding has immense significance in determining the levels of staffing available to children, the quality of care and the necessary resources each individual child and young person requires.³⁶³

4.512 In relation to funding, the report noted that a ratio of level of one member of staff to every four children in residence was established as the norm following the publication of the Kennedy Report. However, the research reported noted:

this level of staffing is anomalous and is not adhered to within the services. Great variations have developed in the past twenty years both within and between the different residential sectors. These variations have been determined by tradition, individual negotiation, trade union negotiation and political expediency.³⁶⁴

4.513 On the issue of the integration and planning of services, the research noted that three Government Departments remained responsible for different aspects of the residential child care system and that this division:

causes confusion and a lack of cohesion and planning in residential care services. In consequence, residential care services have developed haphazardly, with certain sectors contracting and others expanding. It is also apparent from the research that there is a

³⁶⁰ Review of Custodial Provisions for Young Offenders.

³⁶¹ In March 1987, to mark the International Year of Shelter for the Homeless, a conference entitled 'Streetwise' was organised by Focus Point (Focus Point was established in 1985 in order to provide a range of innovative services to homeless households and operates today under the rubric of Focus Ireland) and UNICEF to highlight the situation of young homeless people both in Ireland and internationally. Following the conference, an umbrella body called the Streetwise National Coalition was established. Streetwise aimed to identify and draw attention to the needs of out-of-home young people for the purpose of improving policies and practice leading to the alleviation and elimination of youth homelessness in Ireland. Streetwise aimed to achieve these objectives by co-ordinating the efforts of individuals and agencies working with out-of-home young people, instigating relevant research projects, and collating relevant information. Streetwise operated until the mid-1990s.

³⁶² Streetwise National Coalition in collaboration with the Resident Managers Association. (1991) *At What Cost?: A Research Study on Residential Care for Children and Adolescents in Ireland*. Dublin: Focus Point. The author of this present report contributed to the drafting of this report.

³⁶³ Ibid. p 18.

³⁶⁴ Ibid. p 19.

lack of integration between the four separate residential categories -group homes, special schools, residential psychiatric units, adolescent units -in terms of policy, planning and service delivery.³⁶⁵

4.514 In 1993, Gilligan in a paper prepared for the Conference of Major Religious Superiors, the Catholic Social Service Conference and the Sacred Heart Home Trust identified a malaise among religious providers of child care services. He identified a number of contributory factors, including:

the low prestige of the field inside and outside the Church; the hurt and anxiety felt in the face of adverse publicity about past services; the scandals in this field which have publicly broken over the heads of religious in various places; the increasing complexity of the task and what seems to be experienced as the ever widening gulf between the level of competence available and that required by the task; the rising cost of providing services to the necessary standards and the shrinkage of financial and human resources available; the prospect of the erosion of the traditional autonomy of services provided by religious orders as the state system exacts greater accountability, partly as the prices of greater aid; unremitting pessimism about the value of residential care in many professional circles and the absence of a sufficiently well argued and influential counter view; the absence of a structure for independent and sympathetic professional advice to congregations or their representatives on negotiating with statutory authorities and researching needs and planning responses within their particular set of resources.³⁶⁶

4.515 A short number of years later, a further report on the organisation and structure of residential childcare in Ireland was published. Reflecting on the 25th anniversary of the publication of the *Committee of Enquiry into Reformatory and Industrial Schools' Systems*, the authors concluded that:

There have been major changes in child care since the publication in 1970 of the Kennedy Report...There is a new sense of professionalism about the service on the ground, new services have been developed and some other services have contracted. It is a matter of great concern, nevertheless, that many of the concerns highlighted in this research were identified in the Kennedy Report 25 years ago, and although substantial and far reaching changes have taken place in the system, many of the recommendations of that report since remain to be implemented.³⁶⁷

4.516 As noted in the introduction to this paper, it was not until 2007 that the policy recommendations articulated in a series of reports and other documents, particularly the *Kennedy Report* and the *Task Force on Child Care Services* were by and large, fully implemented. Of course, over that period new areas of concern have emerged that neither report fully engaged with or discussed. Nonetheless, in quantitative terms, less than 10 percent of children in care are now in residential care, and this is in spite of an increase in children entering care in recent years. This paper has not aimed to evaluate the system as it currently operates nor does it offer an explanation for the current configuration of services. Rather, it has attempted to outline and describe a selective series of events that have contributed to the current organisation of child welfare in Ireland. It is not comprehensive in its treatment of the child welfare system; rather it focused primarily on residential care. In doing so it hopes that by allowing the disparate viewpoints of civil servants, lobby groups, Church organisations and other commentators on the residential child care system to be outlined, it can form the basis for a more comprehensive understanding of this crucial area of intervention by the State and others in the lives of children and their families.

³⁶⁵ Ibid. p 20.

³⁶⁶ Gilligan, R (1989) *Child Care and Family Support: Choices for the Church*. Dublin: Conference of Major Religious Superiors. pp 3-4.

³⁶⁷ McCarthy, P, Kennedy, S and Matthews, C (1996) *Focus on Residential Child care in Ireland: 25 Years since the Kennedy Report*. Dublin: Focus Ireland. pp120-1.

Appendix 1: Department of Health. Children in Care of Health Authorities Circular No 23/70 15 July 1970

I am directed by the Minister for Health to state that he has had under review the services provided by Health Authorities for certain classes of children under Sections 55 and 56 of the Health Act, 1953 and the Children Acts, 1908-1957. The existing legislation relating to these children needs codification and extension to simplify it and bring into line with modern concepts of the help which a local authority should provide for children in need of care. A committee established by the Minister for Education, whose Report is expected to be available soon, is reviewing the institutional aspects of the services; examination of other aspects and the possible introduction of new legislation will be considered after publication of the Report.

In the interim, health authorities should review carefully the present services which they provide for deprived children and consider, in consultation with the staff concerned, what can be done to remedy any defects which may exist in these services. In deciding on the nature of care to be made available in any particular case, health authorities should be guided primarily by what is best for the child and financial considerations alone should not be the deciding factor as to the services to be provided. In cases where it is necessary to arrange for the placement of a child for adoption or in a foster home or in an approved school or institution, the parent (s) should be fully advised, impartially and objectively, of the implications and relative advantage of each such system.

Eligible classes of children

The classes of children eligible for boarding-out or maintenance in approved schools are set out in Section 55 of the Health Act, 1953. The Minister is aware that cases sometimes arise where assistance is required for children who do not come within the scope of that section, e.g. children whose mothers have gone into hospital or who have left home. In some such cases, health authorities have solved the temporary problems arising by making a contribution towards the cost of maintaining children in an appropriate home. In other cases it has been found desirable to afford assistance from public assistance funds, e.g. to supplement a family's income to enable them to provide a home help and thus avoid the admission of the children to an institution. The solution of problems of this nature will be much easier when the statutory power to provide a home help service under the Health Act, 1970 is implemented after the establishment of the Health Boards.

Voluntary Organisations

Throughout the country there are a number of voluntary institutions and organisations concerned with the care of children, e.g. orphanages, children's homes, and societies such as the ISPCC; local community councils also may become involved in problems relating to children. There should be close co-operation between health authorities and all these bodies, and to that end voluntary organisations should be made aware of the services which the health authority provides and encouraged to use them. Each health authority should arrange with the Irish Society for the Prevention of Cruelty to Children to consult with the health authority before initiating steps to have children committed to an Industrial School.

Children Placed in Approved Schools

Since the introduction of legal adoption there has been an appreciable decrease in the number of children who are boarded-out under the Health Acts but there has been an increase in the number of children accommodated in approved institutions. The Minister especially directs the attention of health authorities to Article 4 of the Boarding-Out of Children Regulations, 1954, which provides that the health authority shall not send a child to an approved school unless the child cannot suitably and adequately be assisted by being boarded-out. In some areas children are accepted

privately into institutions by authorities of those institutions and the health authority are subsequently requested to accept liability for their maintenance. This practice should be discouraged and health authorities should make it clear that only in the most exceptional circumstances will they accept liability for such children and only then on satisfying themselves that the child is not suitable for being boarded out or placed for adoption. The authorities of the institutions concerned should be advised to get in touch with the health authority before accepting a child directly into care, if application is made, or is likely to be made, at a later stage to the health authority for the maintenance of the child.

In Circular No 37/54 of 8 lúil 1954 health authorities were requested to provide that where a child is placed in a school in pursuance of Section 55 of the Health Act, 1953 the arrangement between the health authority and the manager of the school should include provision that the child may be visited at any reasonable time by an authorised officer of the health authority or of the Minister. Authorised officers of the health authority should visit children maintained in approved schools and institutions at regular intervals to ascertain if any of them are suitable for transfer to relatives or to foster homes.

Finding of Suitable Foster Homes

It is important to ensure that there are sufficient suitable foster homes in each health authority area to cater for all children who are suitable for boarding out and that no child is kept in a residential school or other approved institution because of a lack of suitable foster homes. Health authorities should therefore advertise regularly for persons who would be prepared to act as foster parents for boarded-out children and they might also ask staff engaged on district duties – e.g. public health nurses – to keep them informed of any persons in their district who might be interested in maintaining a board-out child. In the course of selecting foster homes health authorities might become aware of homes where the foster mother would have training or experience which would make her suitable for a child suffering from a defect which would normally preclude him from being boarded-out. In such cases, the Minister would have no objection to the payment of a maintenance rate in excess of the normal one to the foster parent concerned.

Maintenance Rates

The maintenance rate for children maintained in approved Industrial Schools was recently increased to £8.5s.0d. per week. The rate payable for the maintenance of board-out children (including the clothing allowance) has not been increased for some time in a number of health authorities. While rates should not be so high that they would encourage persons to accept boarded-out children purely for financial reasons, neither should they be so low as to inhibit prospective foster-parents from accepting children because it would impose a financial burden on them.

Unmarried Mothers

The facilities provided for unmarried mothers have been subject to criticism from time to time and it is clear that the public are not fully aware of the services provided by health authorities for such mothers. Accordingly, health authorities should make it known that they have staff who will deal in strictest confidence with any enquires relating to unmarried mothers and they will make any necessary arrangements. This information, together with the name and addresses of the staff concerned, should be brought to the notice of the public by such means as the health authority may decide and in particular to the notice of the clergy, doctors and nurses working in their area and organisations or persons concerned with her problem. Health authorities should keep in touch with the unmarried mother who has been admitted at their request to a special home and she should be made aware that their services are at her disposal after discharge from the special home. Should she decide to retain her child she should be given all appropriate assistance by the

health authority. Correspondence with unmarried mothers should be kept to a minimum and should be addressed to them in handwriting in plain stamped envelopes.

Appendix 2: Response by the Association of Resident Managers of Reformatory and Industrial Schools to the Kennedy Report.

Substitute Care 4.8

Residential care should be regarded in itself as a particular service. For children who require this service residential care is essential in many areas, and is often superior to broken family life, it should not be regarded as a last resort. However, the Association stresses that it should be resorted to when nothing more can be done for the family at home.

Buildings 4.7

The Association feels that there is a disproportionate emphasis on buildings in the Kennedy Report. In the case of existing buildings it is untrue to say that many of them were originally built for child care purposes. Some of these buildings have been very well adapted, and care should be taken to avoid wasteful building. In the case of new buildings and further adaptations of old ones the Association stresses that a thoroughly realistic approach must immediately be adopted. For all further building 100 percent State grants are required. A Department architect should be employed to recommend alteration or replacement of buildings. However, he should work in conjunction with the school's own architect and school manager. This is recommended in the interests of the best results being obtained. The resident manager and local architect can relate the plans to local needs and environment, while the architect appointed by the Department will have greater experience of modern trends in such buildings. The Department should refund for recently altered buildings.

Keeping Families Together 4.8

Since it is highly desirable that brothers and sisters of the same family be kept together the Government and Local Authorities should make more provision for this. With adequate facilities boys and girls over 14 years of age could share homes. In the case of a problem child special facilities should be available.

Group Homes 4.9

Before embarking totally on this new system it should be carefully examined, and the Government should speak clearly on its future. A testing scheme should be provided in pilot areas. While most schools approve of this system basically, especially since some schools have been working on this approach for some time, the Association wishes to draw attention to some of its more obvious disadvantages. The conversion of all existing buildings would cost £4 million. The time element involved would also have to be considered. The system will present great problems of continuity of staff and finance. It may not always allow for emergency accommodation; reception areas would be required. Some emotionally disturbed children are unable to adjust within a confined area and it would seem that this small unit system would tend to ignore the vital factor of space. Reformatory and industrial schools should have individual house names and street names where possible.

Contact with Parents 3.4.

Children are encouraged to visit their children. Contact with parents is essential.

Clothing and Private Property 4.14-15

Children in homes all wear ordinary clothes and are given private property so that they will learn to appreciate and respect the property of others.

Bedroom Accommodation 4.10

It is not necessary for children to have a bedroom of their own. Most of these children come from homes where they were used to sharing bedrooms. For senior children in pre-release units the one child per bedroom idea could be good.

Houseparents 4.9

The provision of House parents will present great problems. House parents would not always be acceptable to the child's real parents as they do not want their place in the child's affection usurped. However, proper training would enable House parents to become involved while remaining objective.

Continuity of Staff 4.9

Religious could contribute towards the alleviation of the problem of continuity of staff. In order to achieve continuity of staff in this field, the work will have to have a better status in the future.

Closed Psychiatric Unit for Girls 6.21

There is a similar need for one for boys. The period of stay here should be one year at a minimum and preferably two years.

High Security Unit for Girls and Boys

There is an urgent need for high security units for boys and girls within the reformatory school system. In the administration of these units, religious Orders do not wish to be directly involved.

Staff Suitability 4.6

Many of the religious personnel involved in this work have been specially chosen and are fully trained. The British survey – 'New Thinking on Institutional Care' 1967 would show that our situation compares favourably with that in England. For people involved in this work suitability of personality is very important. This should be considered before candidates are admitted to training. All staff cannot be adequately trained until State salaries and grants are introduced.

Institutional Approach 4.7

The references here to an 'institutional approach' in these schools are unjustified and therefore misleading.

Training 4.1

Full time specialised courses are urgently needed in Ireland. A Child Care Centre must be established immediately so as to give professional status to those involved in the work. It could take the form of a consortium or centre for training with outside lecturers from the laity and religious. All students in Child Care should have a good basic education as well as suitability of personality. For those already involved in Child Care work, courses of one month should be run for at least three years. In this way, experience gained by these people would be considered and acknowledged.

Training and Finance 5.11

The State must finance staff training. A proper salary structure for all those involved in Child Care must be established. This salary structure should include superannuation allowances. There should be a clear definition of functions of all staff involved in this work, with appropriate salary deductions.

Inadequate Staffing 4.6

There should never be a situation where staff are compelled to hold two posts and work a 24 hour day.

Residential Assessment Centre 4.25-26

A Residential Assessment Centre independent of all schools is of prime importance. This would facilitate a deep and comprehensive assessment of each child. It would entail the child's living in for a required period. The establishment of an assessment Centre will involve the introduction of new legislation on reception into care. However, an Assessment Centre will be of little value until schools are more specialised. At the end of assessment a child's report should be sent to the preferred school manager who should reserve the right to refuse admissions. This report should contain recommendations for treatment, to avoid the child being reassessed on admission.

Personal Record Files 4.27

These are essential and prove and invaluable help when supplied. At present, personal files are being kept to some degree. A report on children's social background is very necessary and is often difficult to obtain. Provision must be made to supply a social background report for all children being admitted into care in future.

Admittance 6.27

The manager of each school should reserve the right to refuse the admittance of a child in the interest of the child's own well-being and the well-being of the other children in the school. No authority should over-ride the power of the manager on a question of admittance. The School Manager must have a greater say than at present in the matter of releasing a child.

Special Education 7.4

Special education facilities are urgently required as many children admitted to these schools are educationally backward or retarded. To facilitate this need, schools catering for children from reformatory and industrial schools should be given grants for remedial education and psychological services pro rata. The Department should give preference to teachers from such schools for admittance to their courses in remedial education. Surveys have shown how retarded many of our 15 year olds are. Special education is therefore required at post-primary level in some schools.

Counselling 7.5

All schools should be provided with counselling and career guidance services.

School Attendance 7.6

Local school attendance is highly recommended. In the case of delinquents the home school is probably more suitable as there they should be able to receive the special education they require. The discretion of the manager would obviously play a prominent part in this decision.

Local Activities and Social Integration 4.16–4.18

Children in homes generally mix a lot locally. Local children play in the home. Home children attend local birthday parties. In rural areas, many schools entertain local children. But perhaps the best form of social integration is that of holidays with normal families in foster homes or in their own homes.

Aftercare 8.6

Aftercare is in dire need of attention. The lack of proper aftercare is perhaps responsible for the many failures in our system to-date. This matter deserves strong government financial support. A trained aftercare officer paid by the Department should be attached to each school and should work in conjunction with the child's family or with the local social worker attached to the area where the child is placed after leaving the home. Where possible a child's parents should be involved in his aftercare. They can be prepared for their child's return by the social worker. More hostels, youth clubs and night classes are needed. It is desirable that local people should become more involved in this problem.

Further Education 5.13, 10.11

State aid for pupils should continue up to the age of 18 years or after depending on education or training requirements, allowances for third level education should also be available. This would be in keeping with the Commission's theory of overcompensation. To date, many children have been given further education at the expense of Religious Orders in nursing and domestic economy.

Administrative Responsibility 5.14

The Commission's suggestion that child care should be transferred to the Department of Health and that responsibility for the education of children in care should remain with the Department of Education is thought a good one. This development should be regarded as a step towards the establishment of a family welfare department. Important also is the quality of Government personnel involved in this field.

Legislation 2.9

The Association feels that, since new legislation takes so long to introduce, we should first amend the 1908 Children's Act and have it allow for greater flexibility within the system.

Children in Court 10.13

The whole body of legislation regarding the committal of children to care, must be reviewed. Children, orphaned or neglected, should never have to appear in court. It is highly undesirable for a child to have to share a courtroom with adults as happens in provincial areas. A child responsible for a criminal act who must appear in court should be assessed beforehand and his full report presented in court.

Offenders and Non-Offenders 8.4.

Serious and non-serious offenders should not be mixed in one school. However, petty offenders and non-offenders could indeed be mixed. While these terms 'offenders' and non-offenders' are used here for convenience, there is a pressing need to redefine them.

Babies 4.12

It is felt that if babies are liable to be adopted, they should be sent to special reception areas so that their departure will not unsettle the other children in the home.

Age of Criminal Responsibility, 2.10

The age of criminal responsibility should certainly be raised to 12 years. The time has come to eliminate entirely this term 'criminal responsibility' in regard to youth. Our schools should be so treatment oriented as to meet the individual needs of each child and thereby eliminate the element of punishment.

System of Payment 5.8, 5.9

The proposed new system of payment by budget would be very welcome. This should cater for all expenses with the exception of extensions and renovations on buildings separate grants should be made available for these.

Free Medical Care 5.7

Free medical treatment is essential for all these schools.

Increased Family Allowances 5.2

This is essential since every effort should be made to avoid a family break up. That a full family support system be introduced is very desirable. Financial benefits do not always suffice. A proper system will, of course, entail social services, nurseries and other facilities.

Watch Dog Committee 4.5

An advisory body is thought to be essential but not a watch dog committee. This advisory body should have fair representation from the schools themselves and the Government Departments involved as well as other independent personnel. This advisory body would supervise research and visit schools, thus replacing an inspectorate.

Research 2.13

This is very necessary but it should be related and specific so that it can be fed back into schools. It could be placed under the supervision of the advisory body. Research should be approved by the schools managers who will be prepared to put personal files and accommodation at the disposal of the researchers.