IRISH MEDICAL ORGANISATION

Ceardchumann Dochtúirí na hÉireann

Submission on the Children First Heads of Bill

16 May 2012

IMO Submission on the Children First Heads of Bill

The Irish Medical Organisation (IMO) is the representative body for all doctors in Ireland and represents over 5,000 doctors in Ireland. The IMO welcomes the opportunity to comment on the Heads and General Scheme of the Children First Bill 2012 which will introduce a statutory obligation on the majority of organisations that provide services to children, including health care service providers, to report allegations of child abuse and to appoint a senior member of staff as the Designated Officer in charge of reporting allegations to the Child Protection Services of the HSE.

Doctors, particularly General Practitioners and Community Health Doctors, are at the frontline in dealing with instances and the threat of child abuse and recognise that the protection of children is paramount. Like other healthcare professionals, doctors have a duty to protect children and to report suspected incidences of child abuse. The *Medical Council Guide to Ethical Conduct and Behaviour* requires doctors to be aware of *Children First: National Guidance for the Protection and Welfare of Children* and to report any concerns about alleged or suspected sexual, physical, emotional abuse or neglect of children to the appropriate authorities.

Mandatory reporting is based upon the highest possible motives: to protect children, to prevent abuse of some of the most vulnerable in our society and to reassure parents and families of the safety and security of their children. There are definite clear advantages to mandatory reporting and these would include endorsement at the highest level that child abuse is absolutely and completely unacceptable in any guise or form, an explicit and unambiguous statement that government, statutory and professional bodies and agencies have, as one of their core aims, the protection of our children, that any barriers to reporting should be minimised and the encouragement of reporting at the earliest possible stage.

In jurisdictions where mandatory reporting has been introduced, issues with the definition and diagnosis of child abuse have inflated the numbers of false reports adding unnecessary stress and damage to the affected families. At the same time mandatory reporting is futile without an adequately resourced public health and social care infrastructure to assess and protect children post reporting. The IMO has grave concerns that unless issues of diagnosis and resources are addressed the unintended consequences of mandatory reporting could divert needed resources from the provision of services to children at real risk of abuse.

In order to adequately protect children from abuse there is also a need to focus on prevention and early intervention by providing support services for children and their families to prevent the risk of harm. The IMO would be happy to discuss further the issues raised in this submission.

Issues with the Diagnosis of Abuse

In order to report suspected child abuse frontline professionals and Designated Officers must be able to recognise abuse. For physicians this requires precise definitions of what constitutes abuse and adequate training to identify and diagnose symptoms of physical, emotional and sexual child abuse and neglect. For example outward symptoms of emotional abuse or neglect may be far more difficult to recognise.

At present there is a significant deficiency, internationally, of evidence based case controlled studies that would enable medical practitioners to diagnose child abuse with the level of certainty equivalent to that required by statutory and judicial systems.[i]

In jurisdictions that have introduced mandatory reporting, ambiguities in definitions and diagnosis have had multiple negative consequences for children, suspected perpetrators and medical practitioners[ii] [iii] in particular

a) over-zealous reporting of suspected abuse as a 'better safe than sorry' approach with consequent trauma for both children and suspected perpetrators in relation to the many cases that will arise where no abuse will have taken place. Trauma arising from intrusive medical investigations may be both emotional and physical. Following the introduction of mandatory reporting of child sex abuse in the United States in the 1980s, there was a tenfold increase in the number of children investigated for abuse, with the proportion ultimately demonstrated to be "unfounded" rising from 35% to 65% in one decade.[iv]
b) avoidance of engagement in roles or duties relating to child abuse management as medical practitioners fear the social and professional consequences of erroneous reporting. [v]

In order to support doctors in their proposed statutory duty to report suspicions or allegations of child abuse the IMO would recommend that in advance of such changes:

- Child protection training for physicians be provided both at undergraduate level and on an ongoing basis to all physicians that treat children as part of compulsory CPD programmes. Training should included the recognition of known symptoms and diagnosis of abuse (in both the victim and the perpetrator), engagement with patients on the issue of abuse, adequate report writing skills, and awareness of the functions of relevant HSE, Garda and proposed judicial services.
- Physicians should have access to specially trained medical practitioners, social workers and Gardai to whom they can bring doubts and concerns.
- Mandatory reporting should be accompanied by legislative immunity for doctors who report erroneous allegations of child abuse in good faith.

Resources

In Ireland social services in relation to children are recognised as grossly deficient. Lack of funding and successive recruitment moratoriums has severely hampered services, including delays in intervention, inconsistencies in assessment procedures, regional variations in family support services and therapeutic services available, no 24-Hour Community Care Service, difficulties accessing Garda Officers with a special interest & expertise in Child Protection. Without investment in adequate social services to protect children post reporting the introduction of mandatory reporting is likely to be counterproductive. Indeed countries with functioning public health and social care infrastructure experience increased reporting of child abuse in a non-mandatory environment compared with countries that have mandatory reporting systems[vi]

In Ireland the number of cases reported to child protection services has already increased from 9,000 in 2000 to 26,000 in 2009, while the proportion of substantiated cases has fallen from 35% to 10%. Dr Helen Buckley an expert on Child Protection and Chair of the National Review Panel examining incidents including the deaths of children in care has raised concerns that mandatory reporting will lead to an increase in the number of false negatives and false positives, is likely to be resource intensive and fails to address the deficiencies and weakness in services that convey a lack of confidence in the system.[vii]

The development of adequate assessment and supportive systems should be enacted prior to plans for mandatory reporting in order to foster confidence by service users and medical practitioners in optimum outcomes from reporting. Such systems should be based on prevailing and developing clinical and psychological standards.

Medical Assessments

All cases reported to the Child Protection Services will require a mandatory medical history and examination together with a formal report from at least one medical practitioner. Currently GPs are often asked by the HSE to provide the history / examination and formal report. This situation is unsatisfactory for a number of reasons:

- GPs have insufficient knowledge, training and experience to perform this role;
- Presently there is no formal assessment system in place for the provision of GP reports on children that are suspected to be victims of non accidental injury (NAI);
- In the context of a child registered with a specific GP and where an allegation of NAI does not originate from that GP, a request from the HSE for a history / examination and formal report poses an ethical conflict for GPs who provide care for the child but are asked to act as an officer of the state and present a formal report on an allegation.

Medical assessments require substantial resource provision and expertise and are more appropriately provided by Specialised Community Paediatric Services.

Focus on prevention and early intervention

International research suggests that focusing on prevention and early intervention and providing the supports needed for children and their families leads to better outcomes.

The *Strategic Review of the Delivery and Management of Children and Family Services* [viii]found that rather than focusing solely on managing risk and investigating alleged abuse "there is an emerging sense that the focus needs to shift to providing supports and specialist services for children and their families to prevent the risk of harm".

In order to share the responsibility for the provision of early help The Monroe Review of Child Protection in the UK[ix] recommended:

The Government should place a duty on local authorities and statutory partners to secure the sufficient provision of local early help services for children, young people and families. The arrangements setting out how they will do this should:

? specify the range of professional help available to local children, young people and families, through statutory, voluntary and community services.

? specify how they will identify children who are suffering or who are likely to suffer significant harm, including the availability of social work expertise to all professionals working with children, young people and families who are not being supported by children's social care services and specify the training available locally to support professionals working at the frontline of universal services;

? set out the local resourcing of the early help services for children, young people and families; and, most importantly

? lead to the identification of the early help that is needed by a particular child and their family, and to the provision of an "early help offer" where their needs do not meet the criteria for receiving children's social care services.

Child protection services in Ireland place an emphasis on the protection role for children at the expense of prevention and early intervention, resulting in a crisis-driven service. The IMO recommend that the Minister for Children and Youth Affairs adopt a prevention and early intervention approach to child protection in line with international evidence-based best practice.

Other Ethical Issues for consideration

Mandatory Reporting raises other ethical issues which require due consideration:

1. *Confidentiality and the engagement of minors in consensual sexual activity*

The Bill presumes that consensual sexual activity permitted by law is not sexual abuse. Under current legislation children under the age of 15 may not consent to any sexual activity while those between the age of 15 and 17 may consent to sexual activity but not to sexual intercourse. In addition females below the age of 17 cannot be charged with statutory rape, but males under the age of 17 can.

According to *The Irish Health Behaviour in School-Aged Children (HBSC) Study 2010*, 27% of 15-17 year olds report having had sex of which 59% reported having used the birth control pill as a form of contraceptive. [x] A common scenario encountered by GPs involves a minor (e.g. a 15 year old) who in the course of a consultation discloses that he/ she is engaging in a sexual relationship. Though in the eyes of the law this is illegal, the patient may perceive this relationship as consensual and normal. Commonly encountered cases, for example, involve sexual health related queries such as patients attending for STI (sexual transmitted infection) advice/ treatment or girls attending for contraceptive advice. Under the Non-Fatal Offences Against the Persons Act 1997, under 16 year olds cannot consent to medical treatment. However GPs commonly undertake consultations with a minor, employing Gillick

competence and the Fraser guidelines from the UK. This anomaly in the Irish system leaves Irish doctors hugely exposed.

In these examples the question of mandatory reporting will greatly hinder the doctor-patient relationship. A scenario where the GP would have to disclose the sexual activity to the social services, which could lead to the potential of the boyfriend being tried for statutory rape would deter minors from seeking legitimate help from physicians in Ireland.

2. *Children and the right to self -determination*

The Bill ignores the rights of children to engage in self-determination as recognised by the UN Convention on the Rights of the Child (the opinion of the child is to be taken into account); the Child Care Act (due consideration is to be given to the wishes of the child) and Non-Fatal Offences against the Person Act (over 16s can consent to surgical, medical or dental treatment). It also fails to recognise the desired ethical approach by medical practitioners to competent minors in respecting their right to self-determination and upholding the best interests of the child (*Medical Council Guide to Ethical Conduct and Behaviour*; multiple international best practice guidelines). The wishes of a competent minor should be respected in relation to management of abuse e.g. the right to refuse examination or investigations and the right to confidentiality.

Summary of Recommendations

Issues with the Diagnosis of Abuse

In order to support doctors in their proposed statutory duty to report suspicions or allegations of child abuse the IMO would recommend that in advance of such changes:

- Child protection training for physicians be provided both at undergraduate level and on an ongoing basis to all physicians that treat children as part of compulsory CPD programmes. Training should included the recognition of known symptoms and diagnosis of abuse (in both the victim and the perpetrator), engagement with patients on the issue of abuse, adequate report writing skills and education regarding the functions of relevant HSE, Garda and proposed judicial services
- Physicians should have access to specially trained medical practitioners, social workers and Gardai to whom they can bring doubts and concerns.
- Mandatory reporting should be accompanied by legislative immunity for doctors who report erroneous allegations of child abuse in good faith.

Resources

Without investment in adequate social services to protect children post reporting the introduction of mandatory reporting is likely to be counterproductive. The development of adequate assessment and supportive systems should be enacted prior to plans for mandatory reporting in order to foster

confidence by service users and medical practitioners in optimum outcomes from reporting. Such systems should be based on prevailing and developing clinical and psychological standards.

Medical Assessments

Medical assessments should be provided by adequately resourced Specialised Community Paediatric Services.

Focus on prevention and early intervention

Child protection services in Ireland place an emphasis on the protection role for children at the expense of prevention and early intervention, resulting in a crisis-driven service. The IMO recommend that the Minister for Children and Youth Affairs adopt a prevention and early intervention approach to child protection in line with international evidence-based best practice.

Other Ethical Issues for consideration

Mandatory Reporting raises other ethical issues which require due consideration:

- *Confidentiality and the engagement of minors in consensual sexual activity*
- *Children and the right to self -determination*

---

[i] Bunting L. Lazenbatt A. Wallace I. Information Sharing and Reporting Systems in the UK and Ireland: Professional Barriers to Reporting Child Maltreatment Concerns. *Child Abuse Review* 2010 : 19: 187-202

[ii] Bunting L. Lazenbatt A. Wallace I. Information Sharing and Reporting Systems in the UK and Ireland: Professional Barriers to Reporting Child Maltreatment Concerns. *Child Abuse Review* 2010 : 19: 187-202

[iii] Larcher V, Ethical issues in child protection *Clinical Ethics* 2007 : 2 :4. 208-212

[iv] Hewitt A, Robb G. Analysis of the international literature on mandatory reporting. Wellington: Department of Social Welfare; 1992.

[v] Larcher V, 2007

[vi] Irani M. Mandatory Reporting of Child Abuse: all that glitters is not gold downloaded from

[vii] Buckley H. Mandatory reporting of child abuse not a panacea. Irish Times 09 May 2012

[viii] PA Consulting Group *Strategic Review of the Delivery and Management of Children and Family Services* HSE: Dublin Oct 2009 downloaded from http://www.hse.ie/eng/services/Publications/services/Children/PA2010.pdf

[ix] Monroe E. The Monroe Review of Child Protection: Final report A Child-centred System Department for Education : UK May 2011

[x] Kelly C. Gavin A. Molcho M. And Nic Gabhainn S. The Irish Health Behaviour in School-Aged Children (HBSC) Study 2010, Health Promotion Research Centre, National University of Ireland Galway 2012