Irish Medical Organisation

Presentation to the Joint Oireachtas Committee on Health and Children

on the Children First Heads of Bill – 19 June 2012

The Irish Medical Organisation (IMO) would like to thank the Joint Committee on Health and Children for the opportunity to comment on the Heads and General Scheme of the Children First Bill.

Doctors, particularly General Practitioners and Community Health Doctors, are at the frontline in dealing with instances and the threat of child abuse and to Doctors the protection of children is of paramount importance. Like other frontline 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 familiar with *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. The Children First Bill will place this duty on a statutory footing.

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 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 are minimised and that reporting is encouraged at the earliest possible stage.

However, 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 unlikely to be effective 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 those children at the greatest risk of abuse.

Additionally, the issue of reporting consensual sex among minors requires clarification.

Issues with the Diagnosis of Abuse

In order to report suspected child abuse mandated 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. Long-term emotional abuse or neglect is often as potentially fatal as physical abuse yet the severity of the sign does not necessarily equate to the severity of the abuse.

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 prefer risking sanctions to the social and professional consequences of erroneous reporting. [v] While legal protection for those reporting allegations of child abuse is provided for under the Protections for Persons reporting Child Abuse Act 1998,[vi] reports that turn out to be false positives have the potential to destroy not only a family's relationship with their GP but with the medical profession in general.

In order to support doctors in their statutory duty to report allegations of child abuse the IMO recommend that:

- Precise definitions of abuse are provided including the definition of emotional abuse;
- Child protection training for physicians be provided at undergraduate level, post-graduate level and on an ongoing basis as part of compulsory CPD programmes; Training should include the recognition of known symptoms and diagnosis of abuse (in both the victim and the alleged perpetrator), engagement with patients on the issue of abuse and adequate report writing skills;
- Physicians should have access to specially trained medical practitioners, social workers and Gardai to whom they can bring doubts and concerns. Under the Bill the HSE is to provide advice to designated officers; however this function will become redundant if advice provided by the HSE is not an acceptable defence in the context of a decision not to report.

Confidentiality and the engagement of minors in consensual sexual activity

There is also a need to clarify reporting requirements in relation to consensual sex among minors.

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. [vii] Minors frequently seek advice from their GP in relation to contraception or the treatment of sexual transmitted infection. Under the *Non-Fatal Offences Against the Persons Act* 1997, under 16 year olds cannot consent to medical treatment, ever. However GPs often continue with a consultation with a minor, employing Gillick competence and the Fraser guidelines from the UK. This anomaly in the Irish system leaves Irish doctors hugely exposed.

The IMO are concerned that 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 off physicians in Ireland. This issue requires clarification.

Resources

In Ireland social services as they relate 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, and few resources available for prevention and early intervention leading to a crisis-driven service. Doctors also experience difficulties accessing Garda Officers with a special interest & expertise in Child Protection.

As Dr Helen Buckley writing in the Irish Times, [viii] has pointed out, 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%. With mandatory reporting the number of cases reported is likely to rise even further. In addition to an increase in false positives there is a danger that the number of false negatives (that is cases that are screened out by error) will also increase or that the threshold for intervention is elevated as pressure is further put on resources. The screening and triage of reports is resource intensive. Even with the recent increase in funding for Child protection services, mandatory reporting is likely to further divert resources from services to protect children suffering abuse and neglect or to provide support services for those cases that fall below the threshold for intervention.

Following the introduction of mandatory reporting in New South Wales in 1999, the rate of reporting to child protection services increased by 600% in eight years. The proportion of time invested by child

protection services in processing reports was so great that few resources were left available to the children suffering abuse and neglect. Less than one eighth of reports were substantiated, the remaining seven- eighths did not warrant statutory intervention but would have benefited from support services delivered in a less formal manor in the community. [ix]

Medical Assessments

All cases reported to the Child Protection Services require a mandatory medical history and examination together with a formal report from at least one medical practitioner. Four centres exist for the assessment of child sexual abuse. Both St Louise's in Crumlin and St. Clare's, Temple Street have no in-house Community Paediatrician - assessments are carried out on request. The Family Centre Cork has three Community Paediatricians available on an on-call basis and Waterford Community Child Centre has one ½ time equivalent Community Paediatrician. The rest of the country has no formal assessment centres in place. In 2011, the Community Paediatrician in Waterford saw almost 200 cases with each assessment taking on average a full working day. Specialised Community Paediatricians have the training and accumulated clinical experience that enables them to diagnose abuse with some degree of clinical certainty[x]. GPs and other physicians have insufficient knowledge, training and experience to perform this role.

The IMO recommends that :

1. 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. Indeed countries with functioning public health and social care infrastructure can experience increased reporting of child abuse in a non-mandatory environment compared with countries that have mandatory reporting systems[xi]

2. That the impact of the Children First Bill on Child Protection Services is monitored and that a review of the legislation takes place within three years;

3. Investment in prevention and early intervention approach to child protection in line with international evidence-based best practice which suggests that prevention and early intervention can lead to better outcomes.

4. Medical assessments require substantial resource provision and expertise and are more appropriately provided by Specialised Community Paediatric Services, and not by GPs.

[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] Hewitt A, Robb G. Analysis of the international literature on mandatory reporting. Wellington: Department of Social Welfare; 1992.
[vii] 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
[viii] Buckley H. Mandatory reporting of child abuse not a panacea. Irish Times 09 May 2012
[ix] Buckley H. Mandatory reporting may not be right for child abuse, Sunday Business Post 24 July 2011
[x] Larcher V. 2007
[xi] Irani M. Mandatory Reporting of Child Abuse: all that glitters is not gold downloaded from