

A statement of an investigation into the provision of supports
and therapeutic services for a child following disclosures of
alleged sexual abuse

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Section 1: Introduction

In November 2009 an investigation was initiated by the Ombudsman for Children under Section 8 of the Ombudsman for Children Act, 2002 (the Act). The investigation was based on a complaint received by this Office in relation to the administrative actions of the Health Service Executive (HSE) and how they may have affected a child.

Under Section 13(2) of the Act, following an investigation, the Ombudsman for Children is required to produce a statement outlining the results. In accordance with the Act, this statement is for distribution to the public body under investigation, the complainant, other relevant parties involved in the investigation and any other persons to whom the Ombudsman for Children considers it appropriate to send the statement.

This Office is conscious of the time taken to date in concluding the investigation. However there have been a number of external factors which required consideration at various points in time with respect to the remit of the investigation and the best interests of the child.

While this complaint was being considered and investigated by this Office a number of incidents and issues have arisen for the child affecting her health and wellbeing that necessitated the ongoing interaction between the HSE and the complainant on behalf of the child.

In 2010, the complainant also sought that the Director of Public Prosecutions (DPP) re-examine the case to decide whether the substantive criminal allegation should be the subject of a criminal prosecution. That decision not to prosecute was communicated to the complainant in June 2010.

Remit of OCO Investigation

The complaint was brought to the Ombudsman for Children Office in May 2009 from a parent who made the complaint on behalf of her daughter, regarding the actions of the HSE following a disclosure by the child of alleged sexual abuse.

The complaint was received at a time when the DPP had determined that there would be no criminal prosecution brought with respect to the allegations of child sexual abuse and rape which had been investigated by An Garda Síochána.

The complaint highlighted a number of concerns that the mother had in relation to the actions of:

- an Garda Síochána;
- the DPP; and
- the HSE

As part of the complaint submission received, the complainant advised that a combination of the administrative actions of some or all of the above bodies has resulted in a situation whereby the alleged perpetrator of those crimes has not been prosecuted. The specific actions complained about relate to the delay in seeking medical evidence and lack of effective liaison between the HSE and An Garda Síochána.

This Office does not have any role or authority in investigating, subsequently determining, and making findings or inference with respect to the private individual against whom allegations of a criminal nature were made.

This Office does not have the authority to investigate the administrative actions of An Garda Síochána or the DPP. Both the complainant and the HSE were advised of the exclusions to the investigative remit of this Office along with the terms of reference of the investigation itself at the earliest possible stage of the investigative process.

The Child

Between December 2006 and July 2007, an 11 year old girl made disclosures of multiple instances of severe child abuse. The disclosures included but were not confined to reports of repeated instances of violent rape by an adult male and involved death threats and assault with a knife.

Over a period of months, this child underwent several detailed interviews with Gardaí. The child's mother reports that the child threatened suicide and suffered from depression around the time of the disclosures.

As a result of the disclosures, the child's mother engaged both the HSE and An Garda Síochána in order to protect her daughter and obtain therapy and assistance on her behalf.

The Complaint

In May 2009, the mother of the child complained to the Ombudsman for Children's Office about the HSE response to her child's disclosures. She complained that the HSE had failed to provide psychological and medical services to her daughter in a timely fashion. She stated that because of

the HSE delay and inaction in response to the child's needs, she herself had to provide, or push for, many of the services that the child required. She asserted that the HSE failed to have sufficient contact with her. She advised that in the course of the communication that she did have with the HSE, she found the HSE accusatory, confrontational and rude.

The mother of the child in this case stated that the failure of the HSE to respond adequately to her child's needs was harmful to the child's physical and mental health and safety.

The Investigation

Having conducted a preliminary investigation and determined that the complaint highlighted actions by a public body that satisfied the statutory criteria for investigation under Section 8 of the Ombudsman for Children Act 2002, an investigation was instituted.

Through investigation, this Office sought to determine:

1. Whether the administrative actions of the HSE had, or may have had, an adverse effect on the child; and
2. Whether the actions were or may have been:
 - i. taken without the proper authority;
 - ii. taken on irrelevant grounds;
 - iii. the result of negligence or carelessness;
 - iv. based on erroneous or incomplete information;
 - v. improperly discriminatory;
 - vi. based on undesirable administrative practice; or
 - vii. Otherwise contrary to fair and sound administration.

This investigation focused on the actions of the HSE in response to the child welfare concerns relating to the complainant child. The complaint that formed the basis of the investigation in this case included references to HSE interaction with An Garda Síochána and implications of the HSE actions in terms of criminal prosecution. Actions of the Gardaí in this case were not investigated and are only included in the investigation statement in so far as they provide a context in which the actions under investigation occurred.

In conducting the investigation, information was obtained from the complainant and the HSE. Information was also obtained from An Garda Síochána concerning national policy for this Office to gain understanding on the interagency response to child abuse disclosures of such a nature that require the involvement of both the HSE and An Garda Síochána.

As part of the investigation process a draft of this Office's investigation statement with findings and recommendations was provided to the HSE as per Section 13(6) of the 2002 Act. This provision affords the public body with an opportunity to make representations in relation to any findings and criticisms contained in the statement prior to the finalising of the statement. The statement was provided to the HSE in November 2011 and the response pursuant to Section 13(6) of the Act was received in March 2012. In its right to reply, the HSE expressed a number of views with respect to the findings which were made, the content of the statement and the investigation process itself. These were fully considered by this Office and the statement was amended and added to where relevant and appropriate in accordance with the independent discretion of this Office in accordance with the provisions of the 2002 Act.

The views and wishes of the child

Under Section 6 of the 2002 Act, this Office is obliged to consider the best interests of the child in the performance of its investigative functions and shall in so far as practicable give due consideration, having regard to the age and understanding of the child to his or her wishes.

It should be stated that the Section 6 positive obligation placed on the Office is a child centred one. It relates to the manner in which this Office investigates complaints affecting children, it does not set out that this Office must directly interview every child either on an evidentiary or participative piece in order to establish how a child may have been affected by actions which occurred. There are clear instances where such an approach may have a negative and possibly harmful effect on a child.

This Office was satisfied that the child's own views were being communicated by the complainant on her behalf. The decision to meet with the young person in 2012 related to the fact it was a more appropriate time to do so.

Previous to this and having considered the circumstances involved, the rights of the child, and the views of her mother as her natural advocate, this Office determined that it was not appropriate in terms of the child's rights and welfare to seek or conduct a direct interview with the child for the purposes of furthering our investigation. This decision also relates to the extremely serious nature of the allegations which were made and the ongoing difficulties, as expressed by the mother, regarding the psychological needs and welfare of her daughter. Throughout the investigation the complainant as mother and primary advocate for the child in this process advised this Office on her daughter's health and welfare in addition to the child's views and feelings about what had occurred. This

included how the HSE's actions were affecting her. We are satisfied that the views and wishes of the child have been fully and fairly represented by her mother to this Office throughout this time

At the start of our investigative process, the complainant advised that she was of the view that it would not be in her daughter's best interest to consult directly with this Office at that stage, but that the matter could be addressed again at a later point. It was explained that should her daughter wish to engage with the Office at any point in relation to any views that she wished to express, we would also consider same as appropriate having regard to the provisions of the Act.

Towards the conclusion of the investigation process, we revisited the issue of how the child's views could be further considered. Having regard to the age and understanding of the child, it was appropriate that a meeting could take place. When we met the young person she advised that she was aware of the communication that we had with her mother and had received and read the letters we had sent to her directly. She had also read the letters and emails we issued to her mother which offered a meeting and set out our reasons for same. Both the mother and daughter directly confirmed that they felt that any meeting previous to this point would not have been of benefit due to the health difficulties faced by her and that she would not have liked to talk about issues affecting her.

Views of the young person

The young person was articulate and clearly able to freely represent her views and opinion on how the actions of the HSE affected her. She was also able to provide detail on what she would like to happen following the complaint investigation process.

As time progressed from 2006 she advised she was aware of the difficulties being encountered by her mother with the HSE. Her mother kept her informed on what was occurring with the HSE. She advises she was present in the room for some of the arguments that occurred between the HSE and her mother over the telephone.

She directly advised that she no longer trusted the HSE to look after her best interests and that she felt betrayed by their actions. She advised that she would have liked an opportunity at the time to explain to the HSE that the reason that she did not want to be interviewed by the HSE on her own was that she needed and wanted her mother there. She felt as if the blame was being put on her mother for her not wishing to attend the HSE assessment interviews unaccompanied rather than her mother listening and acting on her views.

She felt that as a result of making and lodging complaints to various bodies, including this Office, that when she later met HSE professionals seeking to help her, that the focus was too centred on seeking to attribute blame to her mother for making and continuing with her complaints through the various processes and that this was somehow prolonging or making things worse for her. She also did not like having to repeat her story of what had happened to all the different professionals she met.

She felt that when the HSE did arrange for a social worker to directly engage with her in 2011 that the focus of the initial engagement was too much centred on not talking about anything that occurred previous to January 2011. She thought it was unfair and could not see any benefit in it.

She advised that she understood at the time of her initial disclosure in 2006 that a social worker would be allocated to her and would meet with her to go through what was required. She did not understand why this had not happened. Her primary source of information on what would happen next with the HSE was through her mother. Information on the next steps to occur was also provided through the services of the private psychologist.

Her desired outcome from the complaint which was submitted on her behalf and from the investigation process was that HSE practise and procedure would change so that young people's views and opinions were respected.

Section 2: Analysis and Findings

1. Communication

Introduction

It is clear that the relationship between the HSE and the complainant had deteriorated throughout this process. Separately, this has been freely expressed and alluded to by the HSE staff and the complainant in this matter. It is also evident from review of the internal HSE documentation received during this investigation.

The handling of disclosures of allegations of sexual abuse is a matter of a highly professional and sensitive nature which needs to be managed accordingly. In analysing the actions of the HSE in this regard, this Office has obvious regard to the expressed HSE view regarding the high level and quality of service provision in this area in the past and also the prescribed protocols and policy in place to deal with the matter.

The HSE are statutorily charged to deal with issues of child protection and as such must develop and maintain a high level of expertise to deal with any difficulties occurring as a result of their defined role. The HSE has the benefit of specific training, expertise and resources to address the subject matter contained in a child protection referral. A child or parent/ guardian making that referral in the first instance may have an overall understanding that the allegation raises issues of an obvious potential criminal nature, but may not have any meaningful understanding or appreciation as to how the HSE discharges its statutory role or how it liaises with An Garda Síochána or the child.

This Office is of the view that it is nearly always possible to retrospectively determine key moments in any communicative relationship which has deteriorated that could have been improved upon or done differently when the resulting actions, misunderstandings and points of misinformation are subsequently made known. Having analysed the information received during the course of the investigation, it would appear that there were a number of key points in events between the complainant and the HSE which clearly directed and influenced the path along which communication did occur.

1.1 Initial Referral

The HSE National Review of Sexual Abuse Services for Children and Young People which reported in June 2011 provides that in its Assessment of Current services, the key characteristics which exemplify best practice of alternative models developed elsewhere, are of services which:

- Are responsive to the needs of the child
- Are provided in a child friendly environment
- Minimise the distress resulting through multiple interviews
- Meet the holistic needs of the child; and
- Ensure the timely collection of forensic evidence by specialist trained clinicians

In applying this required approach in this instance, it appears that when a disclosure of alleged sexual abuse of a child is made known to An Garda Síochána and subsequently the HSE, a very specific liaison is required with that parent/ guardian. It would appear to this Office that for the HSE liaison with the parent and child (through their parent) to occur in that instance, there needs to be:

- instruction and information with regard to what happens next;
- an impartial and empathetic delivery of information;
- a coordinated approach with An Garda Síochána with regard to their own prescribed remit of criminal investigation;
- awareness of the statutory obligations imposed on the HSE with regard to the child and other children who may also be affected; sensitive and responsive to the needs of the child; and
- awareness that the HSE relationship with the parent is the conduit to which they primarily communicate with the child, and as such needs to be reviewed with respect to its efficacy.

This Office is of the view that one of the most crucial foreseeable points of communication which occurred was the initial contact with the parent. This took place by phone in circumstances where:

- the allegations were already made to An Garda Síochána just two days before Christmas 2006 and two weeks had now passed;
- the internal process of the HSE area meant that there would not be a social worker allocated to the child as a result of capacity and procedural reasons. The HSE further advised this Office that such an allocation would be uncommon unless there was an ongoing risk to the child;
- an Garda Síochána had already initiated their investigative process through several interviews with the child and parent; and
- the parent had requested immediate action through therapeutic intervention.

1.2 Parent as advocate and conduit for information

It is clear in this instance that the parent as natural advocate on behalf of the child would be the primary adviser and conduit for communication between the HSE and the child with respect to what

would happen next. It is the view of this Office that if there was to be no allocated social worker in this matter then it was imperative that the parent understand clearly:

- the child protection and welfare issues which may be ongoing that needed to be addressed;
- the manner in which the HSE assessment and medical examination process worked; the accessing of therapeutic care for her daughter;
- the role of the HSE with respect to possible criminal proceedings; and
- the implications of any steps taken by the parent outside of the agreed practice in place and how this might affect or possibly impede follow-up therapeutic or assessment actions by the HSE and possibly the actions of An Garda Síochána.

The HSE have advised that it is preferable in those first contact situations with a family, with tensions and concerns running high, that while the process is explained, the key priorities are the immediate safety and welfare of the child and communicating what was to happen next. Practise showed that an approach involving too much detail and information was sometimes not beneficial with respect to that initial contact and that follow up with a parent or child provided greater opportunity to further explain the exact detail of the processes.

This Office is of the view that if the parent was expected to play such a key role in circumstances where there would be no assigned social worker; it was incumbent on the HSE that an early face-to-face meeting took place to fully discuss and explain all such issues. While it may not be practicable in all cases, it should have been foreseeable having regard to the communication difficulty involved that a meeting was required.

1.3 Need to address communication difficulties

The HSE have advised that their initial instructions to the complainant were clear and definitive with respect to the process which was to follow at that point and that there were several attempts to clarify matters over the phone with the complainant at the time of disclosure in January 2007 and in efforts to arrange a Child Sexual Abuse assessment as quickly as possible. However it is evident that there was a high level of uncertainty and ambiguity perceived by the complainant. This Office is of the view that the clarifications and responses were being sought at a stage when the responsibility and planning for what would occur next should have been well established.

This ambiguity is evident through:

- The various actions and administrative channels followed in attempting to obtain a medical examination on behalf of her daughter;

- The issue involving the use of a private therapist;
- The high level of involvement on behalf of the complainant in liaising with An Garda Síochána and the HSE;
- The differing points of contact within the HSE who were being engaged to provide information to the complainant; and
- The recurring queries and issues to be addressed regarding whose responsibility it was to arrange and instigate communication on the various follow-up which were required.

The HSE area involved in their collective response strongly refute that there was any ambiguity or uncertainty in the communication process which occurred. It advises that the fact that other personnel including the Principal Social Worker were involved at particular stages during that key stage following disclosure was due to the queries raised by the complainant directly with those staff members.

In relation to the various actions and administrative channels followed in attempting to get a medical examination on behalf of the child, the HSE advised of the Regional and National difficulties in getting this work completed due to not having appropriate medical staff in place to do it. The efforts to source a female paediatrician were also set out. The HSE local area explain that the difficulties involved related to resources at a National and Regional level as opposed to any uncertainty on the part of the HSE in trying to provide the service.

It is clear to this Office that the complainant was very active in the pursuit of the assessment, therapies and examination on behalf of her daughter. Periods of perceived inaction or delay (which may have been above or beyond standard practice in that area) invariably involved the complainant seeking to expedite matters, mitigate circumstances if possible and demanding understanding of where responsibility for next action lay at those times.

If the HSE initial communication was as clear and unambiguous as it contends, it should have become immediately apparent following the difficulties arising from the actions of the complainant and any related regional or national resource implications that the HSE needed to immediately rethink and consider its communicative approach at those times.

It is not evident that the HSE were responsive enough to the communicative difficulty and problem which was developing. An indicator of this relates to one of the first letters issued by the solicitors on behalf of the complainant to the HSE in July 2007 seeking a without prejudice meeting to openly

discuss the issues for the benefit of the child involved. It does not appear that the HSE substantively responded to that request at that time.

The Social Work Team leader was of the view that they personally were not in a position to have a meeting of this nature involving a solicitor and that it had never been the practice of their department to become involved in meetings with legal representatives outside of matters that are before the Courts. The Team Leader advises that they contacted the solicitor and outlined the position of the HSE that the assessment was still available and agreed for a social worker to visit the family home to meet the parent and child.

It appears to this Office that the problems arising from communication were not limited to clarity of message and the understanding of the complainant of same. The complainant's response to the initial HSE information being provided was to seek tighter time frames, seek immediate help for her daughter and to demand a greater response. The HSE have at times presented this case as an instance where a parent refused to comply with HSE policy regarding the assessment protocol and that as a result the opportunity for therapeutic intervention was lost. It is instructive that the language used by the HSE in written notes and communication at times discounts the views and concerns of the child and represents them as solely being the refusal by the parent to the assessment interview taking place.

In its response at Section 13(6), the HSE have sought the rationale and further grounding of this Office's view in this regard. This Office sets out the following to clarify the position held and to also assist the HSE in its understanding of the matter.

- The HSE information provided to this Office regarding the parent protocol meetings of February 14th and February 15th 2007 (scheduled to occur with the child on her own but which did not take place) do not reflect adequately the fact that the complainant was acting on what she considered was her daughter's best interests. It is clear that the complainant was of the view that in addition to the support provided there would be a benefit with respect to the level of information that her daughter would provide at an assessment meeting if she was present. In her view this was evidenced by the support that she had provided to her daughter in the previous Garda interviews which had taken place. This Office is satisfied that the complainant in her communication to the HSE gave sufficient indication that it was not solely her own view rather it included her daughter's who did not want to attend the assessment meeting without her. The HSE information does not set out that the complainant went home that evening of the 14th February 2007 and was unable to assuage the concerns of her daughter on the process to occur the following day. While it was ultimately the decision of the parent in that

instance, it is evident that it involved more than just her particular view. The HSE details it as simply the complainant refusing the interview process without reference to the child. In circumstances where the mother would be the conduit for information or be able to persuade her daughter to the contrary it is overly simplistic and perhaps damaging for such a key decision to be recorded as a parent refused assessment process.

- There was the refusal to meet with the complainants' solicitor in July 2007 to try and resolve or mediate issues on a without prejudice basis. This occurred at a point where it may have been beneficial and it was obvious there was a breakdown in trust and the quality of communication. If there was organisational reluctance to engage with solicitors, there were options available to the HSE with respect to other forms of acceptable advocacy or indeed independent mediation to be considered at that stage once the complainant had made a move at resolving the impasse.

The HSE have advised this Office that they attempted to provide services to the child but was not able to do so due to the approach of her mother. A number of HSE personnel had contact with the complainant, a Social Worker, Social Work Team Leader, Principal Social Worker, and Psychologist. The HSE directly advises that each professional along this chain found the complainant to be challenging, difficult to engage and having an attitude of distrust and negativity towards the HSE.

It should be stated that a HSE Social Worker did meet the complainant and child in July 2007 and it does appear that there was a rapport established whereby the issue of a possible reengagement with the assessment was revisited between the complainant and Social Worker. However it appears that the child was still refusing to attend an interview without her mother at that stage.

The HSE are of the view that the decision of the mother to engage a private therapist negated the need for the HSE to provide this service and that it would be highly inappropriate to have two Therapists working in conjunction with a child at that age. They advise that the complainant was clear that she wished to continue with her engagement with this private therapist and did not require the services of the HSE.

The HSE advise that the lack of social work contact for a period of 6 months after the disclosures was as a result of the parent not giving consent to the assessment. The child was being seen by a private psychologist and the Gardaí were continuing to investigate the original report. The Social Work Team Leader's recollection is that the complainant was not seeking social work contact per se

but rather therapeutic support for her daughter. As this had been arranged privately, there did not seem to be a pressing role for social work.

It is the view of this Office that portraying the events that occurred as being that of parental choice with respect to therapy is too simplistic a representation of how and why the family continued with the private therapist arrangement. It is clear to this Office that the complainant was seeking supports for her daughter.

It appears to this Office that the complainant moved to secure the services of a therapist in response to a perceived lack of response or delay in the actions of the HSE with respect to providing support. Furthermore this was occurring at a time several weeks on from the original disclosure to An Garda Síochána in December 2006. The difficulties that subsequently arose in proceeding with the assessment meant that the HSE would not be providing therapeutic support. That is, as the issue lay unresolved with respect to the assessment, further disclosures of alleged abuse were made which reinforced the need for support and assistance for the family. From that point on, the position of the HSE was clear with respect to the interview as part of the assessment process as being the prerequisite to potential therapeutic services. It was also clear that the refusal to be interviewed alone was perceived as an impasse in the process.

The HSE dispute that there was any delay in response and that the matter was expedited by way of prioritising appointment times. This does not address the issue that the mother was extremely concerned that there was a lack of immediate supports available and the impact that further interviews would have on her daughter. It also appears to highlight the need for an establishment of possible protocols for such situations where (for whatever reason) an assessment interview cannot be done to determine the HSE's role with respect to providing therapeutic support in the situation.

It is clear that the HSE were of the view that the actions of the complainant impeded its handling of the matter. This Office would expect that such an aspect would render the need for a coordinated communication process even more pressing and that this would be clearly reflected in the management of the case.

It is also clear to this Office that the HSE were aware of the complainant's frustration and overall concern for her daughter at an early stage in this process. It appears that the HSE was also aware of the problematic nature of the relationship which was occurring at a time when communication with the child was of paramount importance.

Having regard to the best interests of the child, this Office is of the view that in those circumstances, the HSE should have taken the earliest possible opportunity to address the difficulties that were arising. We suggest that this could have occurred in a number of ways:

- Through arranging a face-to-face meeting to explain the process.
- Allocating a single point of contact/liaison for the complainant.
- Devising a communication plan with the mother to set out the responsibilities of all concerned and how matters would be progressed.
- By considering if changing personnel in contact with the complainant would assist.
- Professional mediation or through the use of a trusted third party.
- The HSE should have engaged more fully and appropriately with the advocates and legal representation on behalf of the complainant when it occurred.

1.4 Adverse Effect

In failing to communicate adequately with the mother of the child, the HSE contributed to the deterioration of the relationship between the mother of the child and the HSE. Her mistrust and insecurity in relation to the HSE occurred in a context wherein the HSE for a period of several months failed to write to her or meet with her face-to-face. The deterioration in this relationship was an impediment to the effective and efficient delivery of family support and welfare services to the child. Thus the HSE's failure to communicate adequately with the mother of the child had an adverse effect on the child in this case.

The engagement and interaction with the HSE throughout this protracted period has coincided with key stages of this child's development. Having met with the young person, she is directly questioning why the HSE did not listen to, respect, recognise and consider her views as part of its decision making process. Throughout the process, she had questioned what would and should happen next and why her views were being ignored and not being considered. Answers to questions that she had, at those times, have been addressed in some way by advocates working on her behalf. This Office is of the view that the difficulties between the HSE and the complainant regarding communication became, and continue to be, personalised to the detriment of a possible resolution.

This Office is concerned that this breakdown in relationship had a direct negative effect on the quality and level of communication which occurred and that this adversely affected the child through uncertainty and added difficulty in circumstances where a child has made such serious allegations. Furthermore we are concerned that consideration of the supports that this child needs continues to impeded the level of mistrust which now exists between the HSE and the complainant and child.

1.5 Findings

In relation to the remedial or progressive actions which we have set out above, this Office is unable to retrospectively state if these would have improved communications to the point of benefiting the child in this complaint. On balance this Office is satisfied to state with respect to the communication that occurred, the actions taken by the HSE at certain points alongside the absence of other key actions in the management of the case have contributed to an adverse effect on the child by:

- adding to existing confusion and delay surrounding the process which was to occur following the initial disclosures;
- contributing to circumstances where the young person today (7 years on) does not trust the HSE to consider her interests and views;
- failing to consider her best interests as a primary factor when communicating with complainant; and
- not gaining her understanding or views on any of the matters concerning her

Ultimately, those actions contributed to a situation whereby a child who has made serious allegations of sexual abuse did not receive therapeutic support from the HSE. The supports which were sought were sourced privately by the complainant.

In accordance with Section 8 of the 2002 Act, this Office finds the actions of the HSE in

- not ensuring an early face-to-face to meeting with the complainant and child;
- not adequately addressing the communication difficulties which were foreseeable and occurring through out this process;
- allowing personal difficulties between complainant and HSE to persist and develop
- not clearly setting out the role and responsibilities of all parties involved;
- not taking sufficient ownership and responsibility for the communication and follow up processes which were required; and
- failing to allocate a social worker or single point of contact;

all adversely affected the child by not considering her best interests and that those actions were or may have been

- based on undesirable administrative practice; and
- otherwise contrary to fair and sound administration.

2. Case Management

Introduction

At the time of initial disclosure of the abuse allegations there were a number of HSE actions that could be categorised as;

- immediately necessary with respect to safety and welfare of the child;
- resulting from statutory obligation and duty to do so under the relevant legislation;
- as a result of relevant policy or guidelines such as the Children First Guidelines;
- foreseeable as being necessary and beneficial to the child and should be planned for in any event; and
- ongoing with respect to how the matter would be concluded.

While some of the actions may be considered as being triggered by the immediacy and urgency of the disclosures which occurred, they required an efficient coordination of approach internally within the HSE and An Garda Síochána. The situation also required an effective communicative and liaison channel with the child. The HSE is the statutory agency with responsibility for child protection.

2.1 Children First Guidelines

The Children First Guidelines applicable at the time sets out the routine steps to be undertaken by HSE Staff and other involved professionals when dealing with and making enquiries about children's care and protection. In this case the HSE were of the view that there was no immediate ongoing risk to the child.

In the majority of cases, the perceived harm or risk does not warrant emergency action and the child protection concern should be followed up in a planned, co-ordinated manner. This involves communicating with all professionals involved with the child and enlisting their assistance if appropriate.

Furthermore the guidelines advise that the assessment of a child protection concern can often be complicated by factors outside the control of the professionals involved and does not always resemble the ordered process described in the National Guidelines. The safety and welfare of a child must remain a priority throughout and the remainder of the tasks covered in the most efficient and expeditious manner possible.

In summary, all child protection concerns reported to the HSE must be followed-up as soon as possible. It is normally the role of the HSE social worker to carry out this task. However this role may be allocated by the social work manager to another professional or agency closely involved with the family. Alternatively, the work may be carried out jointly between the HSE and another agency.

A number of key tasks are involved in making a child protection enquiry. These include the following;

- establishing with the child and his/her parents/carers whether grounds for concern exist;
- if necessary, arranging for a medical examination, assessment for child sexual abuse and medical treatment;
- communicating with any professionals involved with child and family and eliciting their views on the report of abuse;
- identifying the nature and severity of any risks;
- identifying any strengths and protective factors which appear to lessen the risk; and
- deciding on initial protective action pending, or prior to, further action such as investigation, child protection conference discussion or comprehensive assessment.

At any point in a child protection enquiry, it may be considered appropriate to convene a strategy meeting between the HSE and An Garda Síochána to arrange a number of tasks including;

- share available information;
- consider whether immediate action should be taken to protect the child;
- consider available legal options;
- identify possible sources of protection and support for the child;
- allocate responsibility for further enquiry; and
- agree how the remainder of the enquiry is to be handled.

While it is clear that the HSE met with the Gardaí on a periodic basis and the matter was discussed after the difficulties with the assessment had occurred, it appears to this Office that a specific strategy meeting convened before or around the time of the initial assessment with the purpose of feeding back appropriate information to the complainant would have engendered a greater trust in the liaison which was occurring. Also, foreseeable issues such as the medical examination could have been identified and arranged accordingly.

2.2 HSE contact with the child

Irrespective of the accuracy or veracity of the disclosures which were made, the serious nature and frequency of disclosures, the nature and frequency of contact with the Gardaí, the surrounding familial stress and the exhibition of problem behaviours by this child amount to serious child welfare concerns. However, for a period of more than six months following this case coming to the attention of the HSE, the HSE had no social work contact of any kind with the child.

While the breakdown in February 2007 of arrangements to carry out a child abuse assessment may have contributed to the HSE delay in having contact with this child, it does not fully explain it. Even after February, several months elapsed before the HSE conducted a house visit or had any contact with the child. During this time the HSE did not make sustained or sufficient efforts to have contact with the child. Eventually, the HSE visited and met with the child in circumstances where there had been no substantial change in the nature of the child welfare concerns involved.

For several months the only HSE knowledge of this child's welfare was through the mother of the child and the Gardaí. The Gardaí's knowledge of, and indeed responsibility for, the child's welfare was limited. As a result of the acute communication difficulties between the mother and the HSE, the information which was being provided would appear to have been of limited informative value to the HSE.

2.3 Consequences of lack of contact

For several months following the disclosures made by the child, the HSE had no first hand knowledge of the child's welfare situation. In some instances, such as the difficulty surrounding the child being interviewed alone, the feelings and wishes of the child seem to have been characterised by the HSE primarily as positions adopted by the mother. Over a lengthy period, the HSE did not obtain direct knowledge of the child's wishes and feelings.

In delaying having direct contact with the child, the HSE failed to prioritise the welfare of the child in accordance with their statutory obligations. The delay had direct adverse effect on the child by depriving the child of social work contact which normally occurs through assessment for a period of months.

As stated previously, a HSE Social Worker did meet the complainant and child in July 2007 on a number of occasions and it does appear that there was a rapport established whereby the issue of a possible reengagement with the assessment was revisited between the complainant and Social Worker. However it appears that the child was still refusing to attend an interview without her mother

at that stage. This also appears to be independent collaboration that the complainant's view was consistent with that of the child.

The delay may also have indirectly adversely affected the child. An earlier social work visit to the child within the first 6 months may have provided reassurance to both the mother and the child at such a crucial time period. The lack of contact with the child, for as long as it lasted, was an important element in the breakdown of the trust and the deterioration of the relationship between the mother and the HSE which was ultimately the major obstacle to the delivery of welfare services to the child.

2.4 Specialist medical examination

In February 2007 the mother of the child requested a specialist medical examination for her daughter. She felt this should be carried out as a matter of urgency on the basis that her child might need treatment as a result of sexual abuse. She also felt that it could yield valuable evidence that might be of use in a criminal prosecution of the perpetrator of the alleged abuse of her daughter.

Within the first 72 hours of an instance of sexual abuse or rape, there is a higher probability that a specialist medical examination will yield evidence that may be significant in terms of criminal prosecution. In such circumstances while HSE medics generally carry out the examination, it will be the Gardaí rather than child care social workers who will request the examination. This reflects that it is the Gardaí rather than social workers who have responsibility and expertise in the area of criminal prosecution.

In cases where more than 72 hours has elapsed since a reported instance of sexual abuse, there is a much lower possibility that a specialist medical examination will yield evidence that may be significant in terms of criminal prosecution. In such circumstances, where there is no compelling medical complaint, the specialist examination will not be carried out as a matter of urgency. HSE child care social workers will however, normally request that a specialist medical examination be carried out on the basis that it will provide reassurance to the child and the child's family and thus be of therapeutic value. In this case, the HSE did not receive information regarding any specific instance of sexual abuse within 72 hours of the alleged instance of abuse occurring.

2.5 Arranging the medical examination

In February 2007, the mother of the child asked the HSE to carry out a specialist medical examination. There was a divergence between the mother and the HSE regarding the urgency and

purpose of the medical examination. Nevertheless, the HSE indicated that it would accommodate the mother's request.

Subsequently, a HSE Senior Area Medical Officer telephoned the mother informing her that an appointment had been arranged for the specialist medical examination. The appointment that had been arranged, however, was with a male specialist.

The mother of the child indicated that the child would find it extremely troubling to be examined by a male. The mother maintains that she had advised the HSE of this on a previous occasion. HSE records do not reflect that the mother had advised the HSE of this previously. The HSE however, have not asserted that the mother did not so advise.

Whether or not the HSE had been advised previously, the Senior Area Medical Officer said that they would revert to the mother with a new appointment with a female medical specialist. It does not appear that the mother was given any indication that this might be especially problematic or there would be a delay in the examination being carried out.

2.6 Difficulty in finding a female specialist

The HSE had some difficulty sourcing a suitably qualified female specialist to carry out the examination. It seems there were no suitably qualified female professionals available locally. The mother of the child canvassed various hospitals, medical professionals and the Gardaí in attempting to secure a female specialist to conduct the examination. At one stage, it appeared as if she had arranged for an examination to be carried out in a hospital close to where she lived. This arrangement however, fell through.

The HSE also made efforts to arrange the examination. The HSE efforts in this regard, showed a lack of urgency and poor internal communications. There did not seem to be a register of suitably qualified specialists or any effective procedure to establish the availability and suitability of medical personnel nationally. The HSE actions in arranging medical examinations show significant and unexplained lapses of time.

The HSE advised of the Regional and National difficulties in getting this work completed due to having appropriate medical staff in place to do it. The efforts to source a female paediatrician were also set out. The HSE advise that the issues involved were to do with resources which were at a

National and Regional level as opposed to any uncertainty on the part of the HSE in trying to provide the service.

2.7 Administrative Delay

The issue of the child's medical is indicative of the level of conflict and misunderstanding between the mother and the HSE. Here the communication difficulties were exacerbated by administrative inefficiency and delay on the part of the HSE.

While the medical examination may not have been a matter of urgency with direct regard to the child's welfare, there was a benefit, to it being arranged and done in a timely manner. This Office is of the view that having committed to carrying out the medical examination the HSE delayed and displayed administrative inefficiency in arranging it. Following the collapse of the appointment with the male specialist, it was in excess of two months before an appointment was arranged with a female specialist and the medical examination carried out.

This occurred in a time frame when there were serious difficulties and challenges in the communication process between the HSE and the complainant. By delaying in this regard the HSE further contributed to the breakdown of trust between it and the mother that was an impediment to delivery of child welfare services in this case.

2.8 Other administrative factors

HSE actions and contacts relating to the case were not contemporaneously recorded in a uniform and consistent fashion. In some instances information is missing from notes. Telephone calls are referred to with little detail of what was said. Notes appear without indication of who made the note. Some documents in the case file are undated. In some instances, a note refers to a dated incident without revealing the date the note was made.

There is little evidence of systematic use of proper time planning by the HSE in this case. There are significant periods of time elapsed without the HSE progressing this case. Files do not show any system that would lead cases to be periodically revisited where matters were not progressing and child protection concerns remained. It may be that failure to draw up timetables was a contributory factor to HSE delay in this case.

The HSE did not allocate a social worker to this case when it first came to its attention. The HSE states that this failure to allocate a social worker was due to an unfilled vacancy on the team. The

HSE states that given the assurances from the mother that the child was not in contact with the alleged perpetrator, the child did not appear to be in any immediate danger of further sexual abuse.

The HSE states that if the child had appeared to be in imminent danger of further abuse when it was first notified of the disclosure, the case would have been allocated a social worker on a priority basis in spite of the unfilled vacancy. While this Office is mindful of the reference made to the shortage of resources, the failure to allocate a social worker was a contributory factor in some of the delay and poor communication by the HSE in this case. Particularly, in terms of communication it would have been re-assuring to the mother of the child to have had a consistent point-of-contact who was taking general responsibility for the case.

HSE actions in communicating with the mother, having contact with the child, and reactions to delays, are aspects of the HSE handling of this case that had an adverse impact on the child. Failure to allocate a social worker, failure to keep good records and failure to have systematic case management review in place are administrative factors that this Office considers to be among the underlying causes of these actions. With respect to the legal responsibility of the HSE to regard the welfare of the child as the first and paramount consideration therefore, this Office finds that the HSE failure to allocate a social worker and failure to keep good records were contrary to sound administration.

2.9 Collaboration between the HSE and An Garda Síochána

The mother of the child in this case was greatly concerned that HSE interviews of the child would have an unnecessarily detrimental effect on the welfare of the child given the number of interviews already carried out by Gardaí. Generally, families in which there is a disclosure of child sexual abuse find themselves thrown unexpectedly into complex administrative processes. In what are clearly circumstances of great stress they are required to engage with service providers and bureaucracies that interact in sophisticated and subtle ways.

In order to best protect children who make disclosures of sexual abuse and to improve the experience of families affected by disclosures of child sexual abuse the interaction between various professionals and their agencies should be made as seamless as possible.

Children First Guidelines envisages systematic collaboration between the HSE and An Garda Síochána. Inconsistency in this regard was already highlighted by this Office in a report based on an investigation into the implementation of Children First (April 2010 Chapter 4 (e) vi).

The Office notes that there was formal notification and a significant level of communication between the HSE and Gardaí. The first engagement by either body in this matter with the family was through the Gardaí in seeking to investigate the allegations and interviewing the child. The HSE were then involved and the issue in relation to the assessment interview arose. This appeared to have effectively stalled the HSE's assessment process with respect to potential therapeutic supports. It is difficult in those circumstances to measure the adequacy of the HSE actions as part of the required systematic and well-integrated approach of the standard established under the Children First Guidelines.

The issues in this regard also involve a communications element. In this case, establishment and maintenance of quality channels of communication could have helped the mother to understand the various processes involved and perhaps mitigate her and her daughter's concerns in this regard.

2.10 Psychological Treatment

Until June 2010 when the child was able to directly access HSE psychology services, the HSE did not provide psychological therapy of any kind to the child in this case. Two factors should be noted when looking at this issue.

Firstly, the HSE were hampered by the lack of assessment of this child. The purpose of assessment in cases of child sexual abuse includes the establishment of the therapeutic needs of the child. In this case therefore, in the absence of assessment, the HSE did not put itself in a position where it could ascertain what would be suitable psychological therapy for the child.

Secondly, the mother of the child privately engaged a psychologist to provide therapy to the child. The mother states in her own words that she felt forced to do so by the inaction of the HSE in this regard. This private psychologist, however, was engaged by the mother when only a matter of days remained before the HSE assessment team including a psychologist, was due to meet with the child. So, while the HSE did not provide psychological therapy for this child, the child did privately receive some psychological therapy over this period. It appears that one of the additional challenges in those circumstances is that that therapy occurs where the HSE have not assessed the child's needs. That difficulty may be negated through time and the skill and actions of the therapist. However in this case when the family relocated and the need for a new therapist arose, the background or history of never having been HSE assessed with regard to the allegation of sexual abuse becomes an issue that still needs to be addressed.

It is a matter of concern that the HSE did not provide psychological therapy to this child over an extended time given the magnitude of the child welfare concerns that existed and given reports from the mother that the child was experiencing depression, suicidal thoughts and difficulty at school. The HSE were also aware of a state of heightened anxiety on the part of the mother which was also significant in terms of the child's welfare in the circumstances.

The HSE were disadvantaged in providing suitable psychological therapy to this child by the fact that the child had not been assessed, however this is not to say, that some level of psychological therapy could not have been provided. Subsequent efforts by the HSE to provide supports to the child in the intervening years since 2006 appear to have been frustrated, not by the lack of an initial assessment, but as a result of the lack of trust by the child in the HSE to consider her views in the process.

While questions remain, regarding the HSE delay in providing at least some kind of psychological therapy for the child in this case, the lack of assessment of this child affected the ability of the HSE to provide suitable psychological services.

2.11 Adverse Effect

In considering whether the child was adversely affected by the actions of the HSE in the management of the case, it is necessary to initially address the substantive nature of the allegations which were made and the time frame in which they occurred.

It is clear from the information provided that the HSE were of the view that the immediate child protection issues were being dealt with by the complainant in this regard in that contact with the alleged perpetrator would not occur and that the Gardaí were aware of the allegations. It is also apparent that at a later stage a serious disclosure of an alleged rape was made by the child with respect to the same alleged perpetrator. This alleged rape was disclosed as occurring at a time in January 2007 when it may be fairly perceived that a greater HSE involvement by way of face-to-face contact with the child through allocated social worker or otherwise could have occurred.

Throughout this time, and up to the point of drafting this investigation statement, it is our understanding that there have been no criminal charges brought in this matter. This Office in deliberating and making findings with respect to the administrative actions which took place must have due regard to the clear elements of due process and presumption of innocence which exists regarding the allegations of a criminal nature.

For this reason, we are not in a position to state or opine whether the case management by the HSE added to a greater more substantive adverse effect of what was alleged to have occurred. However there are findings to be made regarding the effect on the child with respect to how the management of the case itself impacted upon her and her current health and welfare needs.

From the most current information provided to this Office, we are satisfied to state that there appears to be an existing therapeutic need for this child. It would appear that it is being acted upon by the complainant and addressed privately through health professionals. The HSE should have provided psychological therapy to this child given the magnitude of the child welfare concerns that existed and given reports from the mother that the child was experiencing depression, suicidal thoughts and difficulty at school.

Child's understanding of the actions which took place

A child in these circumstances making such serious disclosures is invariably in a vulnerable position where they may not know what happens next or indeed the consequences of such a disclosure. In this investigation the child understood, at the outset the basic role of the Gardaí in detecting and prosecuting crime and that of the HSE as a possible source of help or assistance. Certainly the detail of how the complex interaction between the HSE and the Gardaí would work was not a concept which was well understood to her. While subsequent supports occurred through the family engaging a private therapist and being assisted by related advocacy groups, in this instance the primary source of information for the child was through her mother. This Office finds that any delay occurring or confusion in understanding how the case would be managed did have an adverse effect on the child.

The child was 11 at the time of the initial disclosures and is now at an age where it may be stated that the capacity is such that a greater questioning may occur as to why or how her case was handled in a certain way. It appears that the matter has been left unresolved both in relation to how ongoing difficulties can be addressed and indeed an understanding of how decisions made which affected her were considered and acted upon. The issue of how to progress this matter is effectively at a standstill and time is progressing. While such an effect may not be of direct impact while at a younger age, there is a concern that this adverse effect has been exacerbated through time and will continue as the child grows older. The complainant advises that the child is now at an age where she is directly questioning why the HSE did not consider her views as part of its decision making process. Having also directly met with the young person, it is clear that she feels that her views were not respected by the HSE and that her voice was ignored.

2.12 Findings

While every case is different and assessed on its own merits, there are common factors of concern and foreseeable difficulties which need to be addressed, when any parent of a child makes initial disclosures of such a serious nature. There are set procedures in place with respect to what should happen when this occurs.

This Office is unable to retrospectively state whether better case management would have resolved the issues surrounding the assessment and addressing the need for psychological and therapeutic services. On balance, however, it is satisfied to state that the lack of a commonly understood cohesive plan and the execution of same resulted in circumstances where:

- the complainant was taking on too much of the administrative burden in seeking to address the needs of her child. Examples of this are the efforts made in seeking to arrange the medical examination and the high level of liaison which occurred with the Gardaí;
- there was confusion and delay surrounding the process which was to follow; and
- the child today does not trust the HSE to consider her interests and views or provide services on her behalf.

Ultimately, those actions contributed to a situation whereby a child who made serious allegations of sexual abuse is not receiving therapeutic support from the HSE.

In accordance with Section 8 of the 2002 Act, with respect to the case management of this matter, this Office finds the actions of the HSE in:

- not ensuring an early face to face to meeting with the complainant and child;
- not convening a specific strategy meeting for the purpose of achieving the goals as set out in Children First Guidelines;
- not communicating adequately with the complainant;
- failing to adequately respond to the communication difficulties which arose;
- not clearly setting out the role and responsibilities of all parties involved;
- failing to adequately plan for and set up the medical examination in a timely manner;
- keeping poor records;
- failing to allocate a social worker or single point of contact; and
- not providing or offering psychological or therapeutic services for this child

all adversely affected the child by not considering her best interests and that those actions were or may have been:

- based on undesirable administrative practice; and
- otherwise contrary to fair and sound administration.

3. Child Sexual Abuse Assessment

Introduction

The HSE provides that a child sexual abuse assessment serves the dual function of making a determination regarding the veracity of the child sexual abuse concerns and establishing the welfare and therapeutic needs of the child. In this case, the child sexual abuse assessment was never completed.

3.1 Child Sexual Abuse Assessment

Under the terms of the Childcare Act, 1991 the HSE is obliged to perform its statutory child welfare function with first and paramount regard for the welfare of the child. At an early stage in this case, the HSE deemed a Child Sexual Abuse Assessment to be in the best interests of the child. Following a child protection notification meeting, and a meeting of the team of child sexual abuse assessment specialists, the HSE made arrangements for a child sexual abuse assessment to be carried out by a panel of specially trained professionals in accordance with local protocol.

The mother objected to the timeframe initially proposed by the HSE for the carrying out of the assessment. After some disagreement in relation to this issue, the HSE brought the dates for assessment forward. However, only the first part of the assessment, an interview by the team of the mother was ultimately carried out.

3.2 Joint Interviews

The mother was concerned at the time of the scheduling of the assessment that the child had already undergone several Garda interviews. She expressed worry about the welfare implications of another interview.

The purpose and nature of Garda interviews are different from HSE interviews. Garda interviews could never be a substitute for an assessment interview. However, there is a certain amount of overlap between Garda interviews and the element of the HSE assessment that assesses the credibility of the child's disclosure.

In other jurisdictions, the overlap between police and social work interviews has been used to form the basis of a co-operative approach between police and social workers. Such a joint approach has been seen to benefit children who are not subject to any more interviews than necessary.

In Ireland, the Criminal Evidence Act, 1992 was passed primarily to allow for direct admission of children's statements in criminal proceedings. This Act envisages that such statements may be taken by social workers or Gardaí. Social workers can be specially trained for this purpose. While this legislative provision is limited in scope, it does provide a platform for closer collaboration between HSE and Gardaí at interview stage.

This Office recognises that joint interviewing is complex. It involves a number of different welfare and policing considerations. It may not be suitable for every case. By the time the HSE received notification of this child protection concern in this case, the child had already undergone Garda interviews. Nevertheless, following HSE notification, the child subsequently had further Garda interviews. It is not clear that the possibility of HSE and Garda collaboration with regard to interviewing the child was ever considered or discussed in this case.

3.3 The breakdown of the scheduled assessment

On the day the team was scheduled to interview the child as part of the assessment, the child's mother telephoned the HSE and indicated that she was unhappy with the child being interviewed alone. The mother states that the child had broken-down the night before the interview was scheduled to occur and said that she could not go ahead with it.

The mother maintains that she was motivated by her daughter's best interests in requesting an accompanied interview. She states that her daughter was extremely upset and distressed at the prospect of being interviewed alone and was adamant that she wished to be accompanied by her mother during the interview.

HSE protocol requires that as a part of a child sexual abuse assessment, a child should be interviewed unaccompanied. The HSE points out that this requirement is in keeping with international best practice and is essential to the efficacy of the assessment. The interview did not go ahead as scheduled.

3.4 Flexibility of protocol

The HSE states that there was unanimous agreement amongst members of the assessment team and another social worker with relevant expertise that it would not be appropriate or possible to have the child accompanied by her mother during the interview.

The HSE maintains however, that the protocol around child sexual abuse assessments allows for flexibility. A settling-in process may occur in the presence of the parent prior to an interview. A rapport building stage that allows a child to overcome anxieties can precede the central part of the interview. Where a child is too distressed to progress from one stage of assessment to another, a child will not be forced to do so. Informal “non-interview” meetings can be arranged to help allay a child’s anxieties.

HSE contends that the position adopted by the mother of the child in this case was rigid and inflexible. The HSE asserts that because of the rigidity of the mother’s position, the childcare professionals involved did not get an opportunity to demonstrate the flexibility allowed for by the protocol.

3.5 Following the breakdown

The HSE in its response at 13(6) sets out the fact that two interviews were scheduled for the child indicates the level of effort involved. The first one which was originally scheduled for March 2007 was rescheduled for February 2007 when the complainant queried the length of time this would take. The HSE in the information provided through the investigation also set out that the rescheduled appointment meant that other clients of the psychologist and the social worker’s caseloads had to have their appointments rearranged in order to facilitate change.

However it is the view of this Office that at the time of the breakdown of the scheduled interview, the HSE made no direct offer to arrange a pre-assessment meeting for the child. In the period immediately after the breakdown of the scheduled child abuse assessment, the HSE conducted no house visit, wrote no letter to the mother, made no attempts to arrange a face-to-face meeting, and made no attempt to have a childcare professional meet with the child.

The HSE contends that it was prevented from exploring the possibility of flexibility with the mother. While it may have been difficult to address alternative possibilities in the course of a heated telephone exchange, this is not to say that further efforts might not have been fruitful.

In the period between February and July 2007, HSE social workers had little contact with the mother. What sporadic contact occurred was conducted via telephone. There was no face-to-face contact, no invitation to attend a meeting, and no letter or written communication of any kind that outlined the position of the HSE or addressed the issue of assessment of the child.

3.6 Home visit

In early July 2007 the HSE received a letter from the mother's solicitor requesting that the HSE urgently meet with the mother. In late July, HSE social workers made a house visit.

At this stage, a social worker met the child. This was more than six months after the matter had come to the attention of the HSE. A HSE social worker visited with the child and her mother on the 17th, the 20th and 23rd of July 2007.

In the course of these meetings, the possibility of the child interacting with a local neighbourhood youth project was discussed and arrangements were made in this regard. It does not seem that any substantial attempt was made in these meetings to re-visit the issue of assessment for the child. In short, there is no evidence of efforts to provide those elements of a flexible approach as outlined above in paragraph 3.4.

3.7 Failure to Assess

The HSE is legally obliged to perform its statutory child welfare function in the best interests of the child. In this case, there were child welfare concerns of the gravest nature. At an early stage the HSE scheduled a sexual abuse assessment for the child.

Following the breakdown of the scheduled assessment, and at least up to the time a complaint was made to this Office more than two years later, the HSE was not pro-active, persistent or consistent in seeking to resolve issues that impeded the carrying out of an assessment of the child. Having experienced conflict and difficulty in their dealings with the mother, the HSE allowed a level of administrative inertia to prevail at the expense of the welfare and best interests of the child.

The HSE did not make sufficient, pro-active, persistent or consistent efforts to overcome the obstacles to assessment. The gravity of the child's disclosures, her state of anxiety as recounted by her mother, the recognised poor state of relations with her mother and particularly the proper discharge of the HSE's statutory duty to the child collectively give rise to a question as to whether the HSE's administrative actions were or may have been the result of negligence.

3.8 Adverse effect

The adverse effect in this instance relates to the fact that this child has never been formally assessed by the HSE in accordance with its own prescribed child sexual abuse assessment procedures and protocol. As a result, there has never been a HSE led determination with respect to the therapeutic inputs which may be required.

As time progressed further disclosures were made and the complainant sought direct intervention from the HSE with respect to her daughter's mental health and welfare. Private therapists have been obtained by the family, but there have been further immediate issues arising surrounding the mental health and welfare of the child. While such issues have been addressed as arising, the effect of not having an assessment completed has meant that the HSE has been limited with respect to the level of services and engagement provided. It is clear to this Office that the non-completion of the assessment process has proven extremely problematic both in relation to the child and the HSE.

This Office is of the view that greater steps could and should have been taken to address the issues of the child as advocated by her mother, so that the informal interviews could have taken place. It is not possible to determine if that would have resulted in formal assessment meetings occurring as per protocol. However, this Office is satisfied to state that based on the facts as presented in this case, that an assessment would not ever take place without the first initial step of the informal stage and all efforts should have been taken to alleviate the obvious tension and impasse that had been reached. Strident efforts needed to be made on the HSE's part to address the mother's feeling that the HSE was not listening to the views or considering the best interests of her daughter. The HSE were on notice that the child felt that her views were being ignored and that her best interests were not being considered. While such resolution may not have been possible at that material time, it was up to the HSE to take a little time to regroup, and address how the problem could be solved. It is commonly agreed that there was major communication difficulties at that time, different approaches should have been explored and acted upon to promote the trust of the child in the process.

For example, the HSE could have written to the mother (with a possible version for the child, if the mother deemed it appropriate) explaining the consequences of not doing the interview as per protocol, with respect to both the potential criminal prosecution and therapeutic implications and also offering a meeting with child and parent to address any questions or issues. An effective withdrawal from social work interaction for a period of six months (which ended after the mother's solicitor wrote in July 2007) is to be viewed with utmost concern in the circumstances of this case.

3.9 Findings

It is clear in this instance that the child sexual abuse assessment was a key stage in the HSE intervention in this matter. The outcome of same would directly inform how the HSE would address any therapeutic needs for the child.

This Office is not stating that the assessment interview should have taken place as per the complainants and child wishes. We clearly accept that the HSE in its role as statutory body responsible for the issue of child protection and welfare that it develops its own clinical and professional protocol with respect to how assessments and therapeutic supports are determined. While the protocols provided are specific as to who should attend the formal assessment interview meeting, there is an inherent and expressed flexibility with respect to how that point is reached.

The child has never been assessed. The rationale provided by the HSE is that the complainant's refusal meant that the interview could not occur. It makes no reference or acknowledgement of the views or concerns of the child as a contributing factor to the challenging position presented or how the HSE could consider same and seek to resolve the matter. The problem was treated as an impasse between the parent and the HSE, with the parent needing to move first before the HSE would respond. In this instance, it would be up to the parent to assuage the fears of the child and convince her that the interview should take place. Based on what had gone before and the deterioration of trust which had occurred, it was clearly unlikely that this was going to happen without intervention by the HSE in a more flexible way.

The concept of a position held as being too rigid to allow any degree of flexibility may suffice in the heat of the moment in difficult and stressful situations or indeed when the person is an adult with the known consequences only affecting them. In this instance, the consequence of a non-assessment situation would directly impact upon a child. From that time on and through-out the subsequent disclosures which were made, the HSE has not shown how it actively reconsidered or revised its strategy to overcome the challenge.

It appears that the HSE are of the view that the behaviour of the parent was the primary causative factor in the interview not occurring. This Office is of the view that, even if that was the case, the HSE have not provided any information to demonstrate a flexibility in its approach to alleviate the stand-off in order to address and directly consider the concerns of the child about the process.

In accordance with Section 8 of the 2002 Act, with respect to the administrative actions in relation to the assessment, this Office finds the actions of the HSE in:

- not demonstrating sufficient flexibility in approach in ensuring that an initial informal interview meeting took place;
- not adequately revisiting or reconsidering the issue of the interview of the child at an appropriate point in time where communication difficulties could be resolved;

- failing to acknowledge, consider or address the views of the child as expressed through her mother as being separate and individual and requiring response;
- poor communication with the complainant as further disclosures were made and the need for an assessment became more apparent and urgent.

all adversely affected the child by not considering her best interests and contributed to the continued lack of trust felt by the child in the HSE and that those actions were or may have been

- based on undesirable administrative practice; and
- otherwise contrary to fair and sound administration.

In addition this Office finds that the actions of the HSE:

- failing to take pro-active, persistent or consistent steps necessary, consistent with its statutory duty of first and paramount consideration for the welfare of the child to ensure that an assessment took place

is an action that was or may have been the result of negligence.

Section 3: Conclusions of findings

The findings in this investigation may be summarised under the following headings:

1. Communication

The actions of the HSE adversely affected the child by:

- contributing to existing confusion and delay surrounding the process which followed;
- contributing to circumstances where the child today does not trust the HSE to consider her interests and views;
- failing to consider her best interests as a primary factor when communicating with the complainant; and
- not gaining her understanding or views on any of the matters concerning her.

Ultimately, those actions contributed to a situation whereby a child who has made serious allegations of sexual abuse not receiving therapeutic support from the HSE. In circumstances such as this where there are ongoing psychological difficulties for that child; she does not trust the HSE to listen to her views and respect them.

In accordance with Section 8 of the 2002 Act, this Office finds the actions of the HSE in

- not ensuring an early face-to-face meeting with the complainant and child;
- not adequately addressing the communication difficulties which were foreseeable and occurring throughout this process;
- allowing personal difficulties between complainant and HSE to persist and develop;
- not clearly setting out the role and responsibilities of all parties involved;
- not taking sufficient ownership and responsibility for the communication and follow up processes which were required; and
- failing to allocating a social worker or single point of contact;

all adversely affected the child by not considering her best interests and that those actions were or may have been:

- based on undesirable administrative practice; and
- otherwise contrary to fair and sound administration.

2. Case management

This Office finds that the lack of a commonly understood plan and the execution of same resulted in circumstances where;

- the complainant was taking on too much of the administrative burden in seeking to address the needs of her child. Examples of this advocacy are the efforts made in seeking to arrange the medical examination and the high level of liaison which occurred with the Gardaí;
- there was confusion and delay surrounding the process which was to follow;
- the child today does not trust the HSE to consider her interests and views or provide services on her behalf; and
- ultimately, those actions contributed to a situation whereby a child who has made serious allegations of sexual abuse not receiving therapeutic support from the HSE.

In accordance with Section 8 of the 2002 Act, with respect to the case management of this matter, this Office finds the actions of the HSE in

- not ensuring an early face to face to meeting with the complainant and child;
- not convening a specific strategy meeting for the purpose of achieving the goals as set out in Children First Guidelines;
- not communicating adequately with the complainant;
- failing to adequately respond to the communication difficulties which arose;
- not clearly setting out the role and responsibilities of all parties involved;
- failing to adequately plan for and causing delay with respect to the medical examination;
- keeping poor records;
- failing to allocate a social worker or single point of contact; and
- not providing psychological or therapeutic services for this child

all adversely affected the child by not considering her best interests and that those actions were or may have been:

- based on undesirable administrative practice; and
- otherwise contrary to fair and sound administration

3. Assessment

In accordance with Section 8 of the 2002 Act, with respect to the administrative actions in relation to the assessment, this Office finds the actions of the HSE in:

- not demonstrating sufficient flexibility in approach in ensuring that an initial informal interview meeting took place;
- not adequately revisiting or reconsidering the issue of the interview of the child at an appropriate point in time where communication difficulties could be resolved;
- failing to acknowledge, consider or address the views of the child as expressed through her mother as being separate and individual and requiring response;
- poor communication with the complainant as further disclosures were made and the need for an assessment became more apparent and urgent;

all adversely affected the child by not considering her best interests and contributed to the continued lack of trust felt by the child in the HSE and that those actions were or may have been:

- based on undesirable administrative practice; and
- otherwise contrary to fair and sound administration.

Section: 4 Recommendations

The Ombudsman for Children, following an investigation, aims to make recommendations which are fair and constructive for all parties concerned. In making these recommendations, the Office has regard to the best interests and rights of the child at the centre of this investigation. In making recommendations, the Ombudsman for Children is also cognisant of her statutory obligation to promote the rights and welfare of children. In this respect, while the recommendations arise from a specific investigation, this Office also has regard to the context of these recommendations as they pertain more generally to the rights and welfare of children.

The investigation into the instant complaint found that the child was adversely affected by the administrative actions of the HSE in relation to its actions following the disclosures of alleged sexual abuse of that child.

As per Section 13(3) of the Ombudsman for Children Act, 2002, following this investigation and its findings, the Ombudsman for Children recommends that the following actions take place:

1. The HSE to continue to engage with the child and mother

It is clear to this Office that there is an existing need for a constructive relationship between the HSE and the complainant and her child. This relates to the ongoing needs of the child with respect to therapeutic supports which may be required. It is absolutely clear to this Office that there is a high degree of mistrust felt by the young person with respect to the actions and intent of the HSE in its ongoing interaction with her and her mother. There have been a number of occasions in the past 2 to 3 years when the complainant has sought interventions and follow up supports from the HSE for the benefit of her daughter. While separate from the assessment process which has effectively concluded without an assessment interview having taken place, the effects of a perceived lack of HSE support at the material time along with the heightened sense of mistrust, would appear to have negatively impacted upon the ability of subsequent Health professionals to assist and the ability of the child to place sufficient trust in the process.

It would also be necessary to establish trust with the young person who may potentially seek a further understanding at a later stage as to how decisions made which affected her were considered and how her views were addressed.

The HSE have an obligation to protect the welfare of the child. This obligation requires the HSE to work persistently to overcome any obstacles that impede the fulfilment of its statutory duty.

The relationship between the HSE and the mother has greatly deteriorated. Nevertheless, serious child protection and welfare concerns remain in respect of the child. Because of the difficulties that have arisen, the child has not received a child sexual abuse assessment. There is also still an expressed difficulty in obtaining services that may be based on the lack of trust existing.

This Office is of the view that firm proposals should be drawn up by the HSE in this regard.

Imaginative solutions could involve the use of mediation or the appointment of an independent social worker. The complainant's own difficulties that have arisen since these disclosures might need to be separately addressed.

This Office recommends that the HSE at a national level consider the following steps as a means of addressing the communication difficulties which exist:

- Writing to the complainant with a view to looking forward to identifying ways to open constructive and beneficial dialogue in the interests of the child
- Source and obtain mediation as a way of conflict resolution and promotion of a better relationship between the parties
- Through engaging with the complainant, consider how it may communicate with the young person to explain how her views were considered and acted upon throughout this process.
- Engage with the health professionals working on behalf of the young person to identify and address how the HSE may support the therapeutic work being done. This to include the resourcing of same if required and appropriate.

2. The HSE to prioritise direct contact with children

The communication between the HSE and the complainant in this complaint was problematic. In any case where the relationship between the HSE and parent is problematic, this Office recommends that the HSE make it policy and procedure that all efforts are made to ensure direct contact with the child on a priority basis in such cases where there are serious child welfare concerns.

3. The HSE to inform and educate parents of children making disclosures of alleged sexual abuse.

In this case, the mother attended an interview with a Child Sexual Abuse Assessment Team. The HSE reports that she was told about the assessment process on a few occasions over the telephone and once in the course of the parental protocol interview. There was nevertheless much confusion and disagreement between her and the HSE. This Office recommends that the HSE formulates a communication strategy and prepares suitable written materials for cases of disclosure of child sexual abuse; to educate and inform parents about the full range of services available to them; to empower parents; and to help engage parents fully in promoting the welfare of their children in

partnership with the HSE and with other agencies, including an Garda Síochána. Parental understanding of and, as appropriate, involvement in work to promote the welfare of children must be a priority.

4. The HSE to have face-to-face contact

In circumstances of high familial stress and significant communication difficulty, the HSE relied predominantly on telephone contact to communicate with the mother. It was several months before a house visit was conducted and this was pre-empted by direct engagement by her legal advocate.

This Office recommends that, in all cases, and particularly in cases where there are difficulties with communication, that the HSE makes face-to-face contact with families a priority as a matter of policy.

5. The HSE to allocate a social worker to complex cases

This case did not receive an assigned social worker when it first came to the attention of the HSE. The HSE state that this failure to allocate was due to an unfilled vacancy in the social work team. The HSE state that this case would have been prioritised if an imminent threat to child had been perceived.

While this Office is cognisant of the resource difficulties which may be experienced by social work child care teams, we are of the opinion that certain cases may be particularly deserving of allocation on grounds other than prospective threat to the child. Cases that involve particularly complex communication issues might also deserve special attention. Such cases are likely to include cases of child sexual abuse.

This Office recommends therefore, that the HSE adopts a system for reviewing or revisiting the priority of cases for the assignment of social workers where interagency work and/or other communications issues arise.

6. The HSE to improve record keeping

In this case, records were kept in an inconsistent manner. The inconsistency may have contributed to problems that arose in the area of case management and communication.

This Office recommends that the HSE adopt a robust standardised and centralised case file system where schedules containing succinct summaries of the significant dates and events in the case in chronological order, as well as all other relevant information and documentation are securely maintained.

7. The HSE to set case management goals

Following the collapse of the initial arrangements to carry out a child sexual abuse assessment, there was little evidence of case management strategy or time-tabling.

This Office recommends that the HSE adopt a system whereby cases are prospectively given timetable targets. We further recommend that a clear and robust system of diary-keeping is established that will alert the relevant social worker when such targets are not achieved or when a case has not been progressed after set periods of time. We recommend the use of periodic case reviews.

8. The HSE to streamline its system for organising medical examinations

In this case, the system for organising the medical examination component of the child sexual abuse assessment did not function smoothly. There was significant delay and there seemed to be no straightforward way to check the availability of suitable medical professionals on a nationwide basis as distinct from the local area.

This Office recommends that the HSE establish a system so medical personnel with expertise in matters with particular relevance to child protection can be sought on a nationwide basis and so that relevant social workers are kept informed of any appointments sought or scheduled.

9. The HSE to review the availability, accessibility and gender balance of physicians qualified to carry out medical examinations as part of Child Sexual Abuse Assessments

The mother indicated that the child would find it upsetting to be examined by a male. There was no suitably qualified female available locally at the time. There was some delay in accessing a suitably qualified female nationally.

This Office also recommends that consideration be given to whether the availability, accessibility and gender balance of staff qualified to carry out medical examinations in child sexual abuse assessments throughout the country allows for timely facilitation of children; particularly those children for whom the gender of the examining specialist might be an issue. We recommend that necessary steps be taken to rectify any shortcomings that might exist in this regard

10. The HSE to continue to work towards a national systemic joint approach with An Garda Síochána for cases of suspected child sexual abuse

The issue of the need for joint interviewing in this complaint was raised by the complainant at the earliest possible stage. By the time the HSE had been notified of the disclosures, a number of Gardaí interviews with the child (with her mother present throughout) had occurred. Following this the difference in approach to the HSE assessment interview and the non-availability of a joint interview process was a causative factor in why an assessment did not occur.

The issue of the need for joint interviewing is not unique to this complaint. It is an issue that the HSE and An Garda Síochána have sought to address previously and continue to do so. National child welfare policy as set out in the Children First Guidelines emphasises the importance of inter-agency co-operation between the HSE and An Garda Síochána. Both the HSE through its National Review of Sexual Abuse Services for Children and Young People and An Garda Síochána through the Garda Inspectorate Report into Responding to Child Sexual Abuse (November 2010) recognise the need and benefit in addressing the barriers that may exist in both bodies jointly working together. This complaint exemplifies and illustrates the absolute need for greater cooperation in that regard.

In the HSE Report on the National Review of Sexual Abuse Services for Children and Young People, which was published in June 2011, joint interviewing is recommended. The benefit for the child is stated as being a potential reduction in the number of interviews needed to gather the necessary information. It is also set out that this benefit is only achievable when the information can be shared and used for other purposes.

The Report of the Garda Síochána Inspectorate on Responding to Child Sexual Abuse recommends that the Garda Síochána work with the HSE in addressing the barriers to joint working identified in reviews of the Children First guidelines and ensure, as far as possible, the use of shared systems and agreed records.

The actions of An Garda Síochána are not within this Office's investigative remit, however both these organisations are currently responsible for addressing child protection and welfare concerns in this country. Each has independently reviewed current practise in relation to how it may be able to improve integration and collaboration with the other organisation having regard to its own specific and separate responsibilities and duties.

Having regard to issues which arose in this complaint with respect to the non-availability of joint interviewing and the internal review processes that have already taken place, this Office recommends the following actions to the HSE and An Garda Síochána:

The issue of joint interviewing should be immediately addressed by the HSE and An Garda Síochána to include a re-establishment of the assessment interview to allow it to be jointly conducted and the sharing of information with the HSE.

The HSE should re-establish the outcome of the assessment interview to allow it to be jointly conducted by the HSE and An Garda Síochána. This Office understands and appreciates that there is a single purpose of the Garda interview under the Criminal Evidence Act, 1992 but is of the view that the outcome should also support the HSE Social Work Team to develop the relevant action plans and make conclusions on the credibility of the allegation. This information should also be available to the HSE for further assessment of the child's needs to help determine how best to plan for and provide supports and therapy.

This Office would also concur with the corresponding recommendations of the HSE review that *“where a criminal investigation is being pursued and in cases where a further assessment is required to determine credibility and therapeutic needs following the joint interview, this should be arranged as soon as possible and in line with the needs of the child. Where this is the case, information gathered from the joint interview for evidential purposes should be available to these professionals prior to the full assessment interviews to allow them to conduct value added, non-duplicating interviews”*.