

# Joint Submission to the Operational Review of Oberstown Detention Campus

1 December 2016

## Introduction

We welcome this opportunity to make a submission to the Operational Review of Oberstown Detention Campus, whose clear objectives are set out in the Terms of Reference:

- To evaluate practice and policy in line with International Standards and Best Practice;
- To identify obstacles or barriers to achieving greater implementation of international standards and best practice; and,
- To make recommendations to ensure greater and more successful implementation of these standards.

This submission seeks to support and inform the Operational Review by highlighting some current issues and providing general recommendations on the basis of guiding domestic legislation and policy, and international best practice.

This is a joint submission from the following non-governmental organisations:

- Barnardos<sup>1</sup>
- Children's Rights Alliance<sup>2</sup>
- EPIC<sup>3</sup>
- Irish Penal Reform Trust<sup>4</sup>
- Jesuit Centre for Faith and Justice<sup>5</sup>

As a group of NGOs concerned with ensuring the protection of the rights of children, an overarching recommendation of this submission is that the guiding principles of the UN Convention on the Rights of the Child including the '*best interests*' of the child (Article 3) and the '*voice of the child*' (Article 12) must be re-iterated and should be incorporated into both policy and practice at Oberstown Campus.

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<sup>1</sup> [www.barnardos.ie](http://www.barnardos.ie)

<sup>2</sup> [www.childrensrights.ie](http://www.childrensrights.ie)

<sup>3</sup> [www.epiconline.ie](http://www.epiconline.ie)

<sup>4</sup> [www.iprt.ie](http://www.iprt.ie)

<sup>5</sup> [www.jcfj.ie](http://www.jcfj.ie)

In this document, we outline some of the key operational issues from a children's rights' perspective where we believe there are potential areas for improvement. We strongly believe that taking measures to address these issues will contribute to a safer and more positive environment on campus for young people detained and for the dedicated staff who work with them. The issues are examined under the following headings:

1. **Reiteration of Core Principles and Standards**
2. **Placements in Detention**
3. **Procedures for Admission, Orientation and Induction**
4. **Physical Environment and Infrastructure**
5. **Personal and Social Development of Children**
6. **Campus Rules and Consistency**
7. **Managing Challenging Behaviour**
8. **Disciplinary Sanctions**
9. **Complaints System**
10. **Healthcare**
11. **Contact with the Outside World**
12. **Staff Training and Relationships**
13. **Strengthening Transitions**
14. **Publication of Data**
15. **Principle of Detention as a Last Resort**

## 1. Reiteration of Core Principles and Standards

The care, safety and protection of young people on the Campus is of paramount importance and this should be to the forefront of all decision-making. As stated in HIQA's *Standards and Criteria for Children in Detention Schools*, the principle standard of care is:

*"Young people are cared for by staff to whom they can relate to effectively. Day-to-Day care is of good quality and provided in a way which takes account of their individual needs without discrimination. The quality of care provided will be equivalent to that which would be expected of a good parent/guardian."*<sup>6</sup>

In order to adhere to the greatest standards of care, safety and protection of children on the Campus, the guiding principles of the UN Convention on the Rights of the Child including the 'best interests' of the child (Article 3) and the 'voice of the child' (Article 12) must be incorporated fully into both policy and practice at the Campus. The 2009 report *Detention of Children: International Standards and Best Practice* considers the application and implementation of international human rights standards to children detention in Ireland, and how the aims enshrined in these standards can be best achieved in the Irish context<sup>7</sup>.

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<sup>6</sup> Irish Youth Justice Service (2008) *Standards and Criteria for Children Detention Schools* p.1 available at [https://www.hiqa.ie/system/files/Standards and Criteria for Children Detention Schools 2008%20.pdf](https://www.hiqa.ie/system/files/Standards_and_Criteria_for_Children_Detention_Schools_2008%20.pdf) (30/11/16)

<sup>7</sup> Irish Penal Reform Trust (2009) *Detention of Children: International Standards and Best Practice*, IPRT: Dublin

## 2. Placements in Detention

Under Section 8(11)<sup>8</sup> of the Children's Act 2001:

*"Where a junior remand centre is part of a child detention school, children remanded in custody to the centre shall, as far as is practicable and where it is in the interests of the child, be kept separate from and not allowed to associate with children in respect of whom a period of detention has been imposed."*

Under the Children's (Amendment) Act 2015, the designation of part or all of a child detention school as a remand centre is provided for.<sup>9</sup>

### Issue

Currently, the campus is not always achieving the separation of young people detained on remand from young people on a detention order as is required by law.<sup>10</sup> The over-use of detention on remand by the Courts can result in children being detained unnecessarily, with a negative impact on capacity and resources of the Campus. Recent figures reveal that 86% of young people who passed through Oberstown in the first nine months of 2016 were on remand<sup>11</sup>; 58% of children detained on a given day were on remand.<sup>12</sup> The Ombudsman for Children<sup>13</sup>, the Children's Rights Alliance<sup>14</sup> and IPRT<sup>15</sup> have all expressed concern about the use of custodial remand of children on welfare grounds, contrary to Section 88 of the Children Act 2001 (as amended) which stipulates that the Court shall not remand a child in custody solely on the basis of care or protection concerns.

Due to the temporary nature of their status, remand populations tend to be less engaged with the school and other recreational activities. Consistent separation of this group would contribute to a more stable campus environment. However, there may be exceptional circumstances, for example, where there are low numbers of girls detained, where it may not be in the best interests of the child to hold remands separately.

<sup>8</sup> Irish Statute Book, *Children Act 2001, s.8 (11)*

<http://www.irishstatutebook.ie/eli/2001/act/24/section/88/enacted/en/html> (accessed 23/11/16)

<sup>9</sup> See Irish Youth Justice Service website

[http://www.iyjs.ie/en/IYJS/Pages/The%20Children%20\(Amendment\)%20Act%202015](http://www.iyjs.ie/en/IYJS/Pages/The%20Children%20(Amendment)%20Act%202015) and Irish Statute Book, *Children (Amendment) Act 2015* <http://www.irishstatutebook.ie/eli/2015/act/30/enacted/en/pdf> (accessed 23/11/16)

<sup>10</sup> Children's Rights Alliance, *Report Card 2015*, p. 106

<sup>11</sup> *Joint Committee on Children & Youth Affairs Debate October 2016* p.8 of Transcript

<https://www.oberstown.com/wp-content/uploads/2016/10/Transcript-of-JOC-Debate-05102016.pdf> (accessed 25/11/16)

<sup>12</sup> "[O]f the 48 young people on licence in the campus, 20 of them are on committals." *Ibid*, p. 6.

<sup>13</sup> Ombudsman for children (2013) *A Meta-analysis of Repetitive Root Cause Issues Regarding the Provision of Services for Children in Care*, available at: <http://www.oco.ie/wp-content/uploads/2014/03/OCOMeta-analysisofservicesforchildrenincare.pdf>

<sup>14</sup> Children's Rights Alliance, *Report Card 2015*, p. 105. See also Seymour, M., Butler, M. *Young People on Remand*. Report commissioned by the Office of the Minister for Children and Youth Affairs, Department of Health and Children, Ireland, 2008, p. 1. The authors note that a judge's decision not to grant bail may be influenced by "the need for time to undertake an assessment of the young person's needs or to find a suitable care placement for them".

<sup>15</sup> Irish Penal Reform Trust (2014) *IPRT Briefing on Detention of Children in Ireland (preliminary)*, available at: [http://www.iprt.ie/files/Briefing\\_on\\_Detention\\_of\\_Children\\_December\\_2014.pdf](http://www.iprt.ie/files/Briefing_on_Detention_of_Children_December_2014.pdf)

A pilot Bail Supervision Scheme<sup>16</sup> was introduced in 2016. This development is very welcome. However, to access the Scheme, the young people must first be detained at Oberstown Campus; they subsequently go back to court for a bail application if they fit the criteria of the Scheme. The current criteria for young people to avail of this programme includes:

- He/she must be on remand
- He/she must be between the ages of 12-18 (three months before their 18<sup>th</sup> birthday)
- He/she must live within a 20-mile radius of Dublin
- The case must have gone through Court 55

In order to meet the principle of detention as a last resort as provided for in the *Children's Act 2001*, the UN CRC, and in international best practice, it is recommended that the assessment of a young person's suitability for the Bail Supervision Scheme should take place at an earlier stage, ideally the first Court hearing. This may alleviate some of the administrative burden on Oberstown Campus.

#### Recommendations:

- **Children detained on remand should be held separately from children who have received a detention order.**
- **The numbers of children detained on remand should be monitored closely to ensure that detention is only being used as a last resort, as provided for in Irish law and under the UN Convention on the Rights of the Child.**

### 3. Procedures for Admission, Orientation, Induction

#### *(a.) Provision of Information upon Committal*

##### Issue

Every young person should receive clear information about their rights upon admission to Oberstown. While previous HIQA<sup>17</sup> inspection reports highlight improvements in the provision of children's rights information, the most recent HIQA report found that while some young people had a good awareness of their rights, others did not.<sup>18</sup> At the time of this HIQA Inspection, an information booklet was being developed, which is a welcome measure.

##### Recommendations:

- **The development of an information booklet to be provided to every child committed to detention is a positive step. Provision of this information booklet to young people should occur at committal stage.**

<sup>16</sup> See more about the Bail Supervision Scheme here <http://www.dcy.gov.ie/viewdoc.asp?DocID=3768> accessed 30/11/16

<sup>17</sup> [https://www.hiqa.ie/social-care/find-a-centre/inspection-reports?field\\_report\\_type\\_centre\\_value\\_many\\_to\\_one=reportchildrens&keys=](https://www.hiqa.ie/social-care/find-a-centre/inspection-reports?field_report_type_centre_value_many_to_one=reportchildrens&keys=) (accessed 22/11/16)

<sup>18</sup> *HIQA Inspection Report on Oberstown Children Detention School, Inspection Period of 16-19 November 2015 published June 2016* p.10 available at <https://www.hiqa.ie/social-care/find-a-centre/childrens-detention-schools> (accessed 23/11/16)

- **Alternative approaches and formats of information on children's rights should be considered in order to ensure that all young people, including those who may have literacy/linguistic issues or a disability, are aware of their rights upon committal and thereafter.**
- **Continual re-engagement with young people about their rights throughout the period of detention is important. This can also be achieved through raising awareness of individual Independent Advocacy Services.**

*(b.) Availability of Illegal Drugs*

**Issue**

The presence of illegal drugs at Oberstown Campus brings challenges for children, staff and management. All children have the right to be held in a safe, drug-free environment. Strong effective measures need to be in place on the Campus to address and reduce both the demand and supply of drugs. The Director of the Campus recently acknowledged that searches for drugs are currently carried out in a protection room, and that this could be improved upon:

*"We still have to search them and test them for drugs and we still need information but it does not have to be done in a protection room with very little light."*<sup>19</sup>

Additionally, concerns have been raised at the use of screened family visits over prolonged periods of time as a measure to reduce the presence of drugs on the Campus. Screened family visits should only be used as an exceptional measure and where there are justified concerns that attempts will be made to bring in forbidden items.

**Recommendations**

- **Measures must be taken to address the supply of drugs on the Campus. Dynamic security approaches should be employed.**
- **Measures to address the demand for drugs such as the provision of counselling and other services must be well-resourced and available for all young people who request such services.**
- **Search procedures should be carried out in a humane and dignified manner.**
- **Screened family visits should only be used as an exceptional measure and where there are justified concerns that attempts will be made to bring in forbidden items.**

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<sup>19</sup> *Dáil Éireann Joint Committee on Children and Youth Affairs*, Wednesday 5<sup>th</sup> of October 2016, p.7 available at <https://www.oberstown.com/wp-content/uploads/2016/10/Transcript-of-JOC-Debate-05102016.pdf> (accessed 28/11/16)

## 4. Physical Environment and Infrastructure

As highlighted previously by the Irish Penal Reform Trust (2009):

*“Extreme care should be taken in planning the layout and structure of new facilities. The design should be in keeping with the rehabilitative aim of residential treatment, with due regard to the need of the child for privacy, sensory stimuli, opportunities for association with peers and participation in sports, physical exercise and leisure time activities.”<sup>20</sup>*

### Issue

An overall review of the physical environment and infrastructure of the new buildings at Oberstown should be considered to ensure that the design and construction meet the needs of the young people on the Campus. Oberstown Girls School was built to high standards as a model detention facility and as such could be useful as a benchmark for good campus facilities. Other models of good practice include the Woodlands Juvenile Justice Centre in Northern Ireland; the Criminal Justice Inspection team found that many positive features are incorporated in the centre to enhance the care of children.<sup>21</sup>

Under the current *National Children and Young People’s Framework, Better Outcomes, Brighter Futures 2014-2020*<sup>22</sup>, the Government commits to reducing the number of children detained in Ireland below 51.<sup>23</sup> Therefore, there should be a clear commitment to a maximum national children detention school capacity of 50 places or less. In the longer term, consideration should be given to building smaller regional facilities to allow children to be detained nearer the families, but with no overall expansion on the maximum national capacity of 50.

### Recommendations:

- **A structural assessment of the physical environment and new buildings, including its size and the durability of the materials, should be undertaken in order to ensure that these meet the needs of the young people.**
- **Consideration should be given to facilitating an open regime within the Campus for those children for whom it would be suitable.**

<sup>20</sup> Martynowicz, A. (2009) ‘Physical Environment and Accommodation’ in Detention of Children in Ireland: International Standards and Best Practice, Chapter 5, p.48, Irish Penal Reform Trust available at [http://www.iprt.ie/files/Detention\\_of\\_Children\\_in\\_Ireland\\_FINAL.pdf](http://www.iprt.ie/files/Detention_of_Children_in_Ireland_FINAL.pdf) (23/11/16)

<sup>21</sup> Criminal Justice Inspection Northern Ireland (2008) Inspection of Woodlands Juvenile Centre, Belfast CJINI cited in Martynowicz, A. (2009) Detention of Children in Ireland, International Standards and Best Practice, p.47 available at [http://www.iprt.ie/files/Detention\\_of\\_Children\\_in\\_Ireland\\_FINAL.pdf](http://www.iprt.ie/files/Detention_of_Children_in_Ireland_FINAL.pdf) (accessed 30/11/16)

<sup>22</sup> *National Children and Young People’s Framework, Better Outcomes, Brighter Futures* p.109 available at [http://www.dcy.gov.ie/documents/cypp\\_framework/BetterOutcomesBetterFutureReport.pdf](http://www.dcy.gov.ie/documents/cypp_framework/BetterOutcomesBetterFutureReport.pdf) (accessed 30/11/16)

<sup>23</sup> The Irish Youth Justice Service (2014) states that as of the 26th February 2014, there were 16 17-year-olds in adult prisons (5 on remand and 11 serving a sentence) while there were 33 boys and 2 girls in Oberstown. See footnote p.110 in the *National Children and Young People’s Framework, Better Outcomes, Brighter Futures* [http://www.dcy.gov.ie/documents/cypp\\_framework/BetterOutcomesBetterFutureReport.pdf](http://www.dcy.gov.ie/documents/cypp_framework/BetterOutcomesBetterFutureReport.pdf) (accessed 30/11/16)

- **Consideration should be given to providing smaller regional facilities in the longer term, but with no expansion in the maximum national capacity of 50.**

## 5. Personal and Social Development of Children

### (a.) Education and Recreation

The European Committee for the Prevention of Torture has stated:

*“Juveniles deprived of their liberty should be offered a full programme of education, sport, vocational training, recreation and other purposeful activities. Physical education should constitute an important part of that programme.”*<sup>24</sup>

#### Issue

In the most recent HIQA<sup>25</sup> report, the length of time young people were attending school was highlighted as insufficient:

*“Children received an education programme based on assessed needs. However the staggered movement of children to and from the school based on campus wide risk assessment impacted on the length of time individual children attended school.”*<sup>26</sup>

This issue of insufficient schooling hours has also been raised by practitioners working with young people on the Campus. It is important to normalise young people’s schooling experience on the Campus so they can effectively transition into the standard schooling system upon release; this can be achieved through longer school hours. As it currently stands, the school year at the Campus is based on a primary school year, not a secondary school year, and class hours are based on primary level.<sup>27</sup>

Furthermore, in the most recent HIQA report, all children informed staff they would like more activities; some young people also identified that the lack of time spent doing recreational activities contributed to behavioural issues.<sup>28</sup>

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<sup>24</sup> European Committee for the Prevention of Torture and Inhuman or Degrading Treatment (1999) 9<sup>th</sup> General Report on CPT’s Activities, covering the period 1<sup>st</sup> January to 31 December 1998 Strasbourg: Council of Europe.

<sup>25</sup> HIQA Inspection Report on Oberstown Children Detention School, Inspection Period of 16-19 November 2015 published June 2016 [https://www.hiqa.ie/social-care/find-a-centre/inspection-reports?field\\_report\\_type\\_centre\\_value\\_many\\_to\\_one=reportchildrens&keys=](https://www.hiqa.ie/social-care/find-a-centre/inspection-reports?field_report_type_centre_value_many_to_one=reportchildrens&keys=) (accessed 22/11/16)

<sup>26</sup> Ibid p.8

<sup>27</sup> Dáil Éireann Joint Committee on Children and Youth Affairs, Wednesday 5<sup>th</sup> of October 2016, p.5 available at <https://www.oberstown.com/wp-content/uploads/2016/10/Transcript-of-JOC-Debate-05102016.pdf> (accessed 28/11/16)

<sup>28</sup> HIQA Inspection Report on Oberstown Children Detention School, Inspection Period of 16-19 November 2015 published June 2016 [https://www.hiqa.ie/social-care/find-a-centre/inspection-reports?field\\_report\\_type\\_centre\\_value\\_many\\_to\\_one=reportchildrens&keys=](https://www.hiqa.ie/social-care/find-a-centre/inspection-reports?field_report_type_centre_value_many_to_one=reportchildrens&keys=) (accessed 22/11/16)

## Recommendations

- All young people detained should have access to a minimum of six hours' daily schooling on a 12-monthly basis.
- Young people should have greater access to recreational activities and vocational training. There should be increased access of a programme of activities available for young people at weekends and holidays amounting to not less than six hours per day.
- Young people should be consulted on the type and range of activities they would like to access, tailored to the young person's interests and skills development.<sup>29</sup>
- Any policies relating to the maximum number of young people who can be together at one time, introduced in response to individual serious incidents, should be examined to assess whether any unintended negative effects (e.g. limited access to school or outdoor activities) are justified, and measures must be taken to ensure any such negative impacts are reduced.

### *(b.) Meaningful Participation of Young People*

#### Issue

Research has previously shown that meaningful participation of young people in decisions affecting them yields more positive results giving young people more personal agency.<sup>30</sup> In the most recent HIQA report, it was reported by children in relation to placement planning meetings:

*"They were absent from most of their placement meetings and were only allowed in for the last 15 minutes of the meeting."*<sup>31</sup>

Furthermore, HIQA Inspection found that the reasons for young people's non-attendance at meetings was not clearly documented.<sup>32</sup>

Young people also raised the issue of choice in relation to food and clothing with HIQA. IPRT has previously recommended that:

*"All facilities should provide residents with the opportunity to wear and select their own clothing."*<sup>33</sup>

<sup>29</sup> Activities that have proven to have had enormous beneficial effects for the adult prison population include animal care programmes and bicycle repair workshops <http://www.irishprisons.ie/index.php/bikes-for-africa-at-loughan-house> (accessed 23/11/16)

<sup>30</sup> Cashmore (2002) Promoting the Participation of Children and Young People in Care, *Child Abuse and Neglect* 26pp.837-847 available at <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.459.697&rep=rep1&type=pdf> (accessed 23/11/16)

<sup>31</sup> Ibid p. 11

<sup>32</sup> Ibid.

<sup>33</sup> Martynowicz, A. (2009) 'Physical Environment and Accommodation' in Detention of Children in Ireland: International Standards and Best Practice, Chapter 5, p.48, Irish Penal Reform Trust available at [http://www.iprt.ie/files/Detention\\_of\\_Children\\_in\\_Ireland\\_FINAL.pdf](http://www.iprt.ie/files/Detention_of_Children_in_Ireland_FINAL.pdf) (23/11/16)

#### Recommendation:

- **As outlined under Article 12 of the UN Convention on the Rights of the Child, meaningful participation in decisions of young people’s daily lives (e.g. choice of food, clothing, participation in care planning meetings) is imperative and provides young people with personal agency through being involved in the decision-making process.**

#### (c.) Addressing Offending Behaviour Programmes

##### Issue

*“International Standards make it clear that if detention of children is to have a positive effect it must involve a serious and co-ordinated effort to address the problems that give rise to the child’s offending behaviour and prepare him or her after release.”<sup>34</sup>*

Addressing a young person’s offending behaviour while in detention is a vital component in any sentence. In the latest HIQA<sup>35</sup> report on Oberstown Campus, it was evidenced that many young people were not participating in an offending behaviour programme. Figures provided to HIQA prior to the inspection showed that only seven children were in receipt of an Offending Behaviour Programme, with only three having completed the programme.<sup>36</sup> The limited number of offending behaviour programmes on the Campus has been raised in a number of recent inspections. This has also been identified by practitioners, who outlined delays in the ‘Risk Reduction’ programme with the purpose of reducing offending behaviour.

There is a need for further development of offending rehabilitation programmes tailored to the needs of the individual child in order to support the young person and reduce the risk of re-offending post-release. CEHOP (Care, Education, Health and Well-Being, Offending Behaviour and Planning for Discharge) is a new programme at the Campus that aims to bring the ethos of schools together in order to create a common approach and take into account the individualised needs of the young person.<sup>37</sup>

##### Recommendations

- **There is a need for a tailored, individualised offending rehabilitation programmes that meet the specific needs of each individual young person.**
- **A new programme, CEHOP (Care, Education, Health and Well-Being, Offending Behaviour and Planning for Discharge), aims to take into account the holistic needs of the young**

<sup>34</sup> Kil Kelly, U. et.al. (2002) *In Our Care: Promoting the rights of children in custody*, Belfast: Northern Ireland Human Rights Commission, p. 52 (available at: <https://www.nihrc.org>) cited in IPRT (2009) *Detention of Children in Ireland*.

<sup>35</sup> HIQA Inspection Report on Oberstown Children Detention School, Inspection Period of 16-19 November 2015 published June 2016 [https://www.hiqa.ie/social-care/find-a-centre/inspection-reports?field\\_report\\_type\\_centre\\_value\\_many\\_to\\_one=reportchildrens&keys=](https://www.hiqa.ie/social-care/find-a-centre/inspection-reports?field_report_type_centre_value_many_to_one=reportchildrens&keys=) (accessed 22/11/16)

<sup>36</sup> HIQA Inspection Report on Oberstown Children Detention School, Inspection Period of 16-19 November 2015 published June 2016 [https://www.hiqa.ie/social-care/find-a-centre/inspection-reports?field\\_report\\_type\\_centre\\_value\\_many\\_to\\_one=reportchildrens&keys=](https://www.hiqa.ie/social-care/find-a-centre/inspection-reports?field_report_type_centre_value_many_to_one=reportchildrens&keys=) (accessed 22/11/16) p.15

<sup>37</sup> Dáil Éireann Joint Committee on Children and Youth Affairs, Wednesday 5<sup>th</sup> of October 2016, p.3 available at <https://www.oberstown.com/wp-content/uploads/2016/10/Transcript-of-JOC-Debate-05102016.pdf> (accessed 28/11/16)

person. The implementation of CEHOP is to be welcomed and the number of young people attending and its effectiveness should be continuously monitored by HIQA.

## 6. Campus Rules and Consistency

### Issue

A comprehensive review of all rules and regulations at the Oberstown Campus is recommended in order to assess the impact of risk management strategies on the young people detained, and to identify whether more flexibility could safely be allowed in some areas, where this is in the best interest of the child. While the importance of assessing and reducing risk must be acknowledged, it is suggested that taking a more flexible approach in certain practice areas may help build the personal agency of the young person and minimise unnecessary tensions.

At the same time, a lack of consistency in practice across units is a significant issue identified by young people. Inconsistencies in practice between units can be viewed as unfair by young people, and may contribute to tensions. Therefore, an overall consistent approach in practice should be applied across all units throughout the Campus.

### Recommendations

- A comprehensive review of all rules and regulations at Oberstown Campus should be undertaken to assess the impact of risk management strategies on the children detained.
- The principle of consistency in approach should be applied throughout all units of the Campus.

## 7. Managing Challenging Behaviour/Use of Single Separation

### Issue

Challenging behaviour by young people is best managed through the building of strong relationships between staff and young people, and through well-resourced and regular training of staff in de-escalation and other relevant techniques. As also addressed in 5(a) and 5(b) above, provision of a varied and busy programme of meaningful activities, 7 days a week, can also contribute to the lowering of tensions and conflict on Campus.

The most recent HIQA Inspection Report on Oberstown Campus found that the *'management of challenging behaviour was not consistently in line with best practice'*.<sup>38</sup> Furthermore the report found that 49% of staff did not have up-to-date training in behaviour management.<sup>39</sup> The need for staff to have up-to-date training in current best practice, including de-escalation techniques, is a vital component in ensuring that challenging behaviour is effectively managed.

<sup>38</sup> HIQA Inspection Report on Oberstown Children Detention School, p.8 [https://www.hiqa.ie/social-care/find-a-centre/inspection-reports?field\\_report\\_type\\_centre\\_value\\_many\\_to\\_one=reportchildrens&keys=](https://www.hiqa.ie/social-care/find-a-centre/inspection-reports?field_report_type_centre_value_many_to_one=reportchildrens&keys=) (accessed 23/11/16)

<sup>39</sup> Ibid, p.17

The use of restrictive practices such as separation of young people has been identified as a concern in HIQA inspections. Figures provided to HIQA at the time of inspection (November 2015) showed that there had been 813 incidents of single separation since July 2015.<sup>40</sup> Single separation incidents were not always recorded, as well as the length of time single separation went on for.<sup>41</sup> A directive regarding restraint procedures and other practices of physical restraint used by staff was issued on 10<sup>th</sup> November 2015.<sup>42</sup> We welcome that the Campus single separation policy is currently under review by the Minister for Children and Youth affairs and Tusla.

Practices of physical restraint should always only be used as a last resort. As highlighted by the Ireland's Special Rapporteur on Child Protection, Dr. Geoffrey Shannon:

*"Further attempts should be made to avoid the use of force, including restraint, of children in custodial settings."<sup>43</sup>*

Furthermore, this was clearly stated by the Inspector of Prisons in his investigation into practices in St. Patrick's Institution for Young Offenders:

*"I would be in dereliction of my duty if I did not say that locking up 16 and 17 year old children for 23 hours a day offends against all that should be expected of a civilised society in the 21<sup>st</sup> century."<sup>44</sup>*

### Responding to Critical Incidents

During 2016, there have been a number of serious incidents at Oberstown Campus. It is essential that robust contingency plans are in place to minimise the impact of any potential action or incidents, and that any such plans ensure that the rights of the children detained are protected. The intervention of An Garda Síochána should only be required as a last resort, and where de-escalation and all other safe approaches have already been tried. A review of Campus responses to critical incidents, examining best practice and developing clear protocols between staff, management and An Garda Síochána, is recommended.

### **Recommendations:**

- **All staff should have up-to-date training on managing challenging behaviour and de-escalation techniques, including regular refresher training. Techniques for managing challenging behaviour should follow international best practice standards and should be reviewed regularly.**
- **The Oberstown Campus single separation policy should be kept under regular review by the Minister for Children and Youth Affairs, Tusla, and Oberstown management, and continually updated according to emerging best practice.**

<sup>40</sup> Ibid, p.18

<sup>41</sup> Ibid p. 18

<sup>42</sup> Ibid. p17.

<sup>43</sup> Shannon G (2016) *Ninth Report of the Special Rapporteur on Child Protection*, p. 18

<http://www.dcy.gov.ie/documents/publications/201611189thReportoftheSpecialRapporteuronChildProtection.pdf> (accessed 25/11/16)

<sup>44</sup> *Report on an Inspection of St. Patrick's Institution by the Inspector of Prisons Judge Michael O' Reilly*, p.56

<http://www.inspectorofprisons.gov.ie/en/IOP/Appendix%20A%2005.10.pdf/Files/Appendix%20A%2005.10.pdf> (accessed 28/11/16)

- **Restrictive Practices such as physical restraint and single separation should only ever be used as a last resort and for the shortest duration of time possible.**
- **Incidents of physical restraint, single separation and significant incidents should be clearly documented and in detail, with the reasons why and duration of time spent in single separation clearly recorded.**
- **Significant incidents should be communicated in a timely manner to Social Work Departments, Guardians-ad-Litem, parents and carers.**
- **A review of Campus response to critical incidents, examining best practice and developing clear protocols between staff, management and An Garda Síochána is recommended.**

## 8. Use of Disciplinary Sanctions

### Issue

The use of separation and the denial of family visits as disciplinary sanctions is an issue of concern. These sanctions should never be used as forms of discipline, in line with international best practice and guiding domestic legislation.<sup>45</sup>

More clarity is needed around the aim and use of 'structured programmes.' Young people should only be removed from their peers as a last resort. The impact of the use of 'structured programmes' on the young person's access to schooling is also of concern. In the past, disciplinary sanctions have been imposed on everyone as a result of the actions of a small group. Sanctions should always be proportionate to the breach of rules by the young person(s).

There is also a reported lack of clarity around the 'levels' system for young people at the Campus and how the 'level' of a young person is decided. Clearer criteria and information should be provided to all young people on Campus in relation to the 'Levels' system.

### Recommendations:

- **The ethos of the Children Detention facility should be one of care, education and welfare and not of punishment. However, clear guidelines on the potential consequences of misbehaviour must be made available, and these should be clearly communicated to young people. If any changes are made to these guidelines, these should be clearly communicated to the young people.**
- **Disciplinary sanctions must always be proportionate to the breach of rules by the young person.**
- **Reduction in or withdrawal of Family Visits should never be used as a disciplinary sanction. Such use is in direct contravention with international best practice.**
- **The imposition of disciplinary measures should consider the role that peer pressure plays in decision-making by the young people, and recognise the strength of character it takes to resist becoming involved in an incident. A non-tolerance approach should be taken towards bullying and peer pressure.**
- **Clearer criteria and information should be provided in relation to 'structured programmes' and the incentivised 'Levels' system. This information should be directly communicated to all young people at the Campus, and any incentivised system should be applied consistently.**

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<sup>45</sup> Section 201 of the Children's Act 2001 states (1) Any child who breaches the rules of a children detention school may be disciplined on the instructions of the Director of the School in a way that is both reasonable and within prescribed limits (2.) Without prejudice to the power of the Minister to prescribe limits for the disciplining of children detained in children detention schools, the following forms of discipline should be prohibited (a.) corporal punishment or any other form of physical violence (b.) deprivation of food or drink (c.) treatment that could reasonably be expected to be detrimental to physical, psychological or emotional well-being and (d.) treatment that is cruel, inhuman or degrading."

## 9. Complaints System

### Issue

Ensuring that all young people have access to a robust and transparent complaints system is essential. The most recent HIQA<sup>46</sup> report highlighted that while a child's right to complain was respected, there is a need to increase young people's confidence in the complaints system. One issue highlighted by children themselves to HIQA was the length of time it took to receive a response and for the issue to be addressed. This can contribute to tensions on Campus.

The below obstacles have been identified as barriers to complaints for young people in a previous IPRT report:<sup>47</sup>

- The manner in which information was given to young people about how to complain;
- Written format of complaints mechanism in place;
- Lack of clarity around the definition of what constitutes a complaint;
- Challenge of empowering young people to make complaints in environments in which they are detained;
- Potential or perceived lack of independence within complaints mechanism impacting on young people's ability to make complaints.<sup>48</sup>

### Recommendations:

- **The current structure of the complaints system should be reviewed in order to ensure that all young people detained have confidence in the complaints system. This review should take into account the whole process, including e.g. to whom the young person is submitting a complaint, how the complaint is investigated, if there is an independent appeals system/panel of investigators if the young person is not happy with the management or resolution of his/her complaint.**
- **The complaints process should be a tight, robust and transparent system. The management of any complaint should be addressed in a timely manner with an initial acknowledgement to the young person who made the complaint. Subsequently a verbal and written response should be communicated to that young person. There should be reasonable timelines for review and results of outcomes of complaints and for these to be made clear to all young people on the Campus. If these timelines are not met, young people should be communicated and provided with a reason for the delay.**

<sup>46</sup> HIQA Inspection Report on Oberstown Children Detention School, Inspection Period of 16-19 November 2015 published June 2016 [https://www.hiqa.ie/social-care/find-a-centre/inspection-reports?field\\_report\\_type\\_centre\\_value\\_many\\_to\\_one=reportchildrens&keys=](https://www.hiqa.ie/social-care/find-a-centre/inspection-reports?field_report_type_centre_value_many_to_one=reportchildrens&keys=) (accessed 22/11/16)

<sup>47</sup> IPRT (2014) *Children's Rights Behind Bars: Human Rights of Children Deprived of Liberty: Improving Monitoring Mechanisms*, the full national report can be accessed here [http://www.iprt.ie/files/IRELAND\\_FINAL\\_REPORT1.pdf](http://www.iprt.ie/files/IRELAND_FINAL_REPORT1.pdf), a summary can be accessed here [http://www.iprt.ie/files/Childrens\\_Rights\\_Behind\\_Bars\\_-\\_Ireland\\_-\\_Executive\\_Summary\\_EMBARGO\\_TO\\_1600\\_THURS\\_11\\_DEC\\_2014.pdf](http://www.iprt.ie/files/Childrens_Rights_Behind_Bars_-_Ireland_-_Executive_Summary_EMBARGO_TO_1600_THURS_11_DEC_2014.pdf) (accessed 23/11/16)

<sup>48</sup> For more information on this, see IPRT's (2015) *Children's Rights Behind Bars Summary* [http://www.iprt.ie/files/Childrens\\_Rights\\_Behind\\_Bars\\_-\\_Ireland\\_-\\_Executive\\_Summary\\_EMBARGO\\_TO\\_1600\\_THURS\\_11\\_DEC\\_2014.pdf](http://www.iprt.ie/files/Childrens_Rights_Behind_Bars_-_Ireland_-_Executive_Summary_EMBARGO_TO_1600_THURS_11_DEC_2014.pdf) (accessed 28/11/16)

- There is a need to ensure a definite conclusion is reached in relation to every complaint made by a young person, and that the outcome of the complaint is clearly and directly communicated to the young person.

## 10. Provision of Health Care

### Issue

Young people in detention should have access to appropriate mental and physical healthcare. A study carried out by Hayes and O'Reilly (2007) found high levels of substance dependence and psychiatric disorders among young people in detention.<sup>49</sup>

An issue of serious concern highlighted in the most recent HIQA<sup>50</sup> report is the unsafe medication administration practices where 0% of staff had training in medication management. Staff who administer medication should have up-to-date training.

The current *Programme for Partnership Government* commits to increasing therapeutic supports for children in Oberstown; this should be implemented as soon as possible:

*"We will also support the increased use of therapeutic intervention services for children in detention within Oberstown, including psychology, speech and language therapy and where appropriate referrals to addiction services to children."*<sup>51</sup>

### Recommendations:

- The administration of medication should be in line with best practice to ensure the safety and well-being of the young person. Staff who administer medication should have up-to-date training.
- Provision of adequate healthcare, including the provision of mental health services and psychiatric services, is essential in order to reduce incidents of self-harm and protect against potential incidents of suicide.
- The resourcing and use of therapeutic interventions, including addiction services for children in detention, should be increased as committed to in the current *Programme for Partnership Government*.

<sup>49</sup> Hayes JM. & O' Reilly G (2007) *Emotional Intelligence, mental health and juvenile delinquency*, Cork Juvenile Mental Health Matters.

<sup>50</sup> Ibid.

<sup>51</sup> *A Programme for Partnership Government*, p.81

[http://www.merrionstreet.ie/merrionstreet/en/imagelibrary/programme\\_for\\_partnership\\_government.pdf](http://www.merrionstreet.ie/merrionstreet/en/imagelibrary/programme_for_partnership_government.pdf) (accessed 23/11/16)

## 11. Contact with the Outside World

### Issue

It is vital that young people are facilitated to maintain relationships with their family while in detention (where it is in the child's best interests). Therefore, having quality family visits is of utmost importance. The use of screened visits should always be as an exceptional measure and where specific circumstances or intelligence justifies it.

It is reported that there has been a change in release criteria for young people in detention, where a young person must now serve 40% of their sentence prior to meeting the criteria for day release and 80% of their sentence prior being allowed an overnight stay with their family. As a result, this may mean that young people have more limited opportunities for the prospect of release, including Christmas release, with potential knock-on effects in terms of mental health and well-being of the young person. Such rigid policies may also serve to increase frustrations and tensions among the young people, which in turn can lead to a less safe environment for children and staff alike.

Young people who were in State Care prior to detention are a particularly vulnerable group who may have no family members to visit them. If these young people do not have an allocated Social Worker or the Social Worker does not remain in contact with the young person while in detention, they may lose contact with the outside world.

### Recommendations:

- **Policies around contact with the outside world should be guided by the principle of normalisation and the importance of building and maintaining relationships with the family and the community.**
- **Where it is in the individual's best interests, young people should be facilitated to have family visits and remain in touch with their families through phone calls. Consideration should be given to installing in-room phones to facilitate contact with family members.**<sup>52</sup>
- **Decision-making around Campus Leave including Home Leave should be made on an individual basis, guided by the best interests of the child and an assessment of whether he/she will adhere to the conditions attached to leave. There should be no minimum period of sentence that must be served before leave is granted. Flexibility is required in terms of examining whether a young person is suitable for short-term, including Christmas, release.**
- **Young people with care experience are a particularly vulnerable group as these young people may have no family members visiting them. It is important that Social Workers remain in contact with the young person while in detention with careful pre-planning prior to the young person's release.**

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<sup>52</sup> This practice happens in Loughan House and it is a recommendation made by the Inspector of Prisons in the UK <http://www.telegraph.co.uk/news/uknews/law-and-order/9902787/Prisoners-should-be-given-in-cell-phones-inspector-says.html> (accessed 30/11/16)

- Consideration should be given to the development of programmes that facilitate safe contact with the local community. This would help facilitate normalisation and demonstrate ‘payback’ to the community, which may help counteract the demonization of young people in detention while simultaneously alleviating community fears.

## 12. Rehabilitation and social integration into the community following release from custody: Strengthening Transitions

### Issue

Strengthening transitions for young people particularly for those who have been in the care of the State is one of the key objectives and commitments made in the current *National Children and Young People’s Framework: Better Outcomes, Brighter Futures 2014-2020*:

*“Ensure all young people leaving care, detention or residential disability settings are adequately prepared and supported to negotiate the system and transition to stable independent living, further education, training or employment through the development of a quality aftercare plan and the development of protocols in relation to housing, education and training.”<sup>53</sup>*

An issue highlighted by both HIQA and service providers is the lack of inter-agency planning for young people leaving detention. The absence of planning is likely to have more negative effects for the young person. For example there have been delays for young people in accessing the Crinan Project<sup>54</sup> which is a project that aims to reduce drug use in the community.

Young people who have care experience are particularly vulnerable as they may not have a Social Worker to help them plan their onward placement. These young people have uncertainty over where they will go upon release, as they may have lost their previous placement. They may be left with little or no option but to return to an inappropriate home environment. It is essential that an appropriate and safe onward placement is identified prior to discharge. Without clear planning and an identified placement upon release, there is a higher risk of homelessness and re-offending.

### Recommendations:

- **Throughcare planning is essential to ensure that all young people leaving detention have proper aftercare supports to support them to effectively reintegrate back into society, thus reducing the likelihood of re-offending.**
- **Clear planning and aftercare supports (including provision of suitable long-term accommodation) need to be in place for young people leaving detention, particularly those young people who have care experience who have little or no familial supports.**

<sup>53</sup> Department of Children and Youth Affairs (2015) *National Children & Young People’s Framework, Better Outcomes, Brighter Futures 2014-2020*  
[http://www.dcyh.gov.ie/documents/cypp\\_framework/BetterOutcomesBetterFutureReport.pdf](http://www.dcyh.gov.ie/documents/cypp_framework/BetterOutcomesBetterFutureReport.pdf) (accessed 22/11/16)

<sup>54</sup> More information on the Crinan Youth Project available here <http://crinanyouthproject.org/> (accessed 25/11/16)

### 13. Staff Training & Relationships

#### Issue

Detention of children should be a last resort, and therefore, by definition, the children who are detained are likely to exhibit the most challenging behaviour. Therefore, recruitment of staff with specific skills in dealing with children in crisis is important. In his 9<sup>th</sup> *Special Rapporteur Report on Child Protection in Ireland*, Dr Geoffrey Shannon recommends that:

*“Staff recruitment should have a clear focus on individuals with a proven ability of working with children, and those who come from similar backgrounds as those in custody.”*<sup>55</sup>

In order to meet the challenges of working with young people in detention, staff should be supported and receive regular and up-to-date training in all aspects of their work. The latest HIQA report highlighted that only half (51%) of staff had up-to-date training in behaviour management.<sup>56</sup>

Relationship building with staff is crucial to young people’s engagement and therefore strengthening the development of healthy, positive relationships with young people should be a priority. As highlighted in a research report<sup>57</sup> on relationship building by Bambar et al. (2016):

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<sup>55</sup> Shannon G (2016) *Ninth Report of the Special Rapporteur on Child Protection*, p. 18  
<http://www.dcy.gov.ie/documents/publications/201611189thReportoftheSpecialRapporteuronChildProtection.pdf> (accessed 25/11/16)

<sup>56</sup> HIQA *Inspection Report on Oberstown Campus* (2016)p.38 <https://www.hiqa.ie/social-care/find-a-centre/childrens-detention-schools> (accessed 23/11/16)

<sup>57</sup> Bambar J, Brolly C., Mills E., & Farrar C. (2016), p.3 *Lessons from the Literature-Building Relationships with Detained Young People to improve pro-social outcomes*. Oberstown Detention Campus, Dublin  
[https://www.oberstown.com/wp-content/uploads/2016/06/Oberstown\\_ebook.pdf](https://www.oberstown.com/wp-content/uploads/2016/06/Oberstown_ebook.pdf) (accessed 25/11/16)

*“A young person’s development stage is the starting point for relationship building. In detention settings, this stage may include the absence of maturity, resistance to change, and trauma history, either as victims or offenders. This can be challenging for staff, who will need access to effective management, supervision, peer support and appropriate learning and development opportunities.”<sup>58</sup>*

The report<sup>59</sup> identifies three ways that good relationships can be developed between staff and young people:

1. Informal, face-to-face interactions between staff and young people
2. Involve young people and staff participating together in structured activities which facilitates positive communication between young people and staff.
3. Participation in more specialised interventions through evidence based programmes

It is important that staffing levels on Campus allow for the building of strong relationships with the young people detained, while providing sufficient cover for any crisis situations that might occur for individual children.

#### Recommendations:

- **The challenges that staff face working with young people in detention should be acknowledged, and staff should be supported and receive regular up-to-date training (including in children’s rights) in all aspects of their work.**
- **Recruitment of staff with specific skills in dealing with children in crisis is important.**
- **Staffing levels on Campus must be maintained at a level that supports the development of positive, healthy relationships with the young people, while providing sufficient cover for any crisis situations that might occur for individual children.**
- **Relationships between staff and management should be continually strengthened in order to ensure for the best possible environment for the care and safety of young people and everyone on the Campus.**
- **There is a need to develop good recruitment campaigns with incentives to attract staff who have the relevant skills base to work and build positive relationships with young people on the Campus.**

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<sup>58</sup>Ibid.

<sup>59</sup> Ibid.

## 14. Publication of Detention Data and Annual Report by Irish Youth Justice Service

### Issue

There is a dearth in published data on young people in detention (for example, the breakdown of age/offence/sentence length) by the Irish Youth Justice Service. No annual report by the Irish Youth Justice Service has been published since 2011. The recording and publication of this information is essential to identify patterns and inform service provision. It also supports public and civil society scrutiny of the system.

### Recommendations:

- **The Irish Youth Justice Service should collate and publish data regularly on the use of child detention in Ireland, so that policy can respond to emerging issues.**
- **The Irish Youth Justice Service should publish an annual report to facilitate transparency, accountability and public scrutiny.**

## 15. Principle of Detention as a Last Resort

International best practice and the central principle of the Children Act 2001 place emphasis on the diversion of young people away from the criminal justice system. This is also reflected in current Youth Justice Policy.<sup>60</sup>

### Issue

In the recently published *9<sup>th</sup> Special Rapporteur Report on Child Protection*<sup>61</sup>, Dr. Geoffrey Shannon highlights the under-utilisation of community-based sanctions and community-based orders in Ireland:

*“Community-based sanctions and community service orders are available yet are under-utilized and ought to be promoted as alternatives when sentencing.”*

The Rapporteur also highlights the importance of Section 99 of the Children’s Act 2001 which places a statutory obligation on the court to order a probation report prior to sentencing the young person; this aims to support the principle of detention as a last resort. The Rapporteur also recommends the use of more innovative community services approaches. This commitment is also included in the *National Children & Young People’s Framework, Better Outcomes, Brighter Futures 2014-2020*:

<sup>60</sup> Minister for Justice & Equality (2013) *Tackling Youth Crime: Youth Justice Action Plan 2014-2018*

<http://www.iyjs.ie/en/IYJS/Tackling%20Youth%20Crime%20-%20Youth%20Justice%20Action%20Plan%20FINAL.pdf/Files/Tackling%20Youth%20Crime%20-%20Youth%20Justice%20Action%20Plan%20FINAL.pdf> (accessed 23/11/16)

<sup>61</sup> *9<sup>th</sup> Report of the Special Rapporteur on Child Protection*

<http://www.dcy.gov.ie/documents/publications/201611189thReportoftheSpecialRapporteuronChildProtection.pdf> (accessed 22/11/16)

*“Drive reform in the youth justice area through the implementation of Tackling Youth Crime- A Youth Justice Action Plan, 2014-2018, focusing on diversion and rehabilitation, including greater use of community-based interventions, promoting initiatives to deal with young people who offend, providing a safe and secure environment for detained young people and supporting their early re-integration into the community.”<sup>62</sup>*

#### Recommendations:

- **In line with International Best Practice (UN Convention on the Rights of the Child) and guiding domestic legislation (Children’s Act 2001), detention of children should always be used as a last resort.**
- **As highlighted by the *Special Rapporteur Report on Child Protection*, more imaginative community service programmes should be introduced designed and tailored to the interests of the young person.**
- **A recommendation by the Operational Review Group on the need for greater provision of alternatives to detention, including development of age-appropriate community-based sanctions and supported bail schemes, would be welcome.**

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<sup>62</sup> The National Policy Framework for children and young people 2014-2020, *Better Outcomes Brighter Futures* available at p.105  
[http://www.dcy.gov.ie/documents/cypp\\_framework/BetterOutcomesBetterFutureReport.pdf](http://www.dcy.gov.ie/documents/cypp_framework/BetterOutcomesBetterFutureReport.pdf) (accessed 30/11/16)

## Conclusion

We hope this submission is useful in informing the current Operational Review of Oberstown Campus.

We have outlined a number of key operational issues from a children's rights' perspective where we believe potential areas for improvement exist. We strongly believe that taking measures to address a number of issues – including, *inter alia*, reduction in the use of detention on remand, separation of remands, increased provision of meaningful activity, ensuring consistency and flexibility in rules and regulations, and provision of adequate training and supports for staff – will contribute to a safer and more positive environment on Campus for young people detained and for the dedicated staff who work with them. This will in turn lead to better outcomes for children for whom detention is the only appropriate response, and enable Oberstown Campus and the people who work there meet their goal as a model children detention facility.

The contributors would be delighted to provide further feedback or follow-up material regarding any of the issues outlined in this document.

## Appendix 1:

### **Summary of relevant International Conventions that Ireland has signed:**

- UN Convention Against Torture and Other Inhuman or Degrading Treatment or Punishment
- UN Convention on the Rights of the Child
- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
- European Convention on Human Rights and Fundamental Freedoms
- European Social Charter
- Third Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure

Ireland has signed but not ratified:

- UN Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

### **Summary of Domestic Legislation and Policy:**

- Children's Act 2001
- Children (Amendment) Act 2015
- Irish Youth Justice Service Plan, *Tackling Youth Crime, Youth Justice Action Plan 2014-2018*
- National Children and Young People's Framework, *Better Outcomes, Brighter Futures 2014-2020*
- HIQA *Standards and Criteria for Children Detention Schools*
- *Programme for a Partnership Government*