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Meeting: 1362nd meeting (December 2019) (DH)

Item reference: Action plan (10/10/2019)

Communication from Ireland concerning the case of O'KEEFFE v. Ireland (Application No. 35810/09)

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Réunion : 1362^e réunion (décembre 2019) (DH)

Référence du point : Plan d'action

Communication de l'Irlande concernant l'affaire O'KEEFFE c. Irlande (requête n° 35810/09)
(anglais uniquement)

10 OCT. 2019

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

O’Keeffe v. Ireland
Application no 35810/2000
Grand Chamber Judgment 28 January 2014

Information submitted by the Government of Ireland on 10 October 2019

Introduction

1. The previous ten Action Plans have set out in detail the measures which Ireland has taken to implement the Judgment of the Grand Chamber in the case of O’Keeffe v Ireland. This Action Plan provides updated material which supplements the extensive information submitted in the tenth and previous Action Plans.

Update on General Measures

Children First Act 2015

2. Previous Action Plans have provided updates on the *Children First Act 2015*¹ which was signed into law on 19 November 2015. Updated figures on mandated reports and the resources available to support the implementation of the Act are as follows:
 - Providers of relevant services to children were required to undertake a risk assessment and to prepare and publish a Child Safeguarding Statement within three months of the date of commencement, i.e. by 11 March 2018. As the requirement to produce a child safeguarding statement was a new statutory obligation for many organisations, Tusla, the Child and Family Agency², took active steps to promote compliance.
 - Mandated persons which includes registered teachers, psychologists and other categories of professionals as listed in Schedule 2 of the Act are required to report child protection concerns over a defined threshold to Tusla. A total of 18,892 mandated reports were received from the commencement date of 11 December 2017 to the end of May 2019.³ Since commencement, the highest number of mandated reports has been received from the Gardaí, Ireland’s national police force (5,207 reports), followed by teachers (4,255 reports).
 - Tusla has the power to request those mandated persons to assist Tusla in the assessment of a child protection risk, and if such a request is made, the mandated person is obliged to assist. It has not been necessary for Tusla to invoke this power to date.

As previously reported, and for ease of reference, the revised Children First Guidance (2017) has been published and can be accessed on www.dcy.gov.ie.

As previously reported, Tusla has also published an accompanying suite of Children First resource documents for those individuals and organisations who acquired legal obligations under the Children First Act 2015 and launched a comprehensive 90 minute basic Children First training programme, which is universally available on line and is free of charge. This online e-learning module was launched on 2 October 2017. To

¹ <http://www.irishstatutebook.ie/eli/2015/act/36/enacted/en/pdf>

² <https://www.tusla.ie/>

³ Latest available validated data

date, over 5,000 Tusla staff and Agency staff assigned to Tusla have accessed the e-learning programme. The number of external persons who have accessed the programme is now over 175,000.

Child protection measures in schools

3. As part of the Government's ongoing improvement of the child protection framework in schools, and specifically with regard to online safety, a key educational resource, Webwise.ie⁴ is now available. Webwise promotes safer use of the internet for young people, teachers and parents through a sustained information and awareness strategy. The Webwise team work closely with the Health and Wellbeing team in the development of Social Personal Health Education and other curriculum resources.

Ongoing Monitoring of school compliance with Child Protection Procedures

4. As explained in earlier Action Plans, new Child Protection Procedures were published in 2017 with guidelines issued to schools. The revised *Child Protection Procedures for Primary and Post-Primary Schools 2017*⁵ significantly strengthened the oversight role of the Inspectorate in relation to schools' compliance with child protection procedures. The Inspectorate is required to monitor and report on compliance with these Procedures during all school inspections. Furthermore, once the Inspectorate notices non-compliance with child protection procedures, it must continue to engage with the school until deficiencies are addressed.

In order to meet its oversight obligations, the Inspectorate has developed three levels of monitoring of schools' compliance:

- Level one monitoring involves checking compliance with three aspects of the 2017 procedures. Level one monitoring is conducted during short inspection models such as Incidental Inspections, Follow-Through Inspections, Curriculum Evaluations (Primary) and Subject Inspections (Post-Primary).
- Level two monitoring checking compliance with eight aspects of the 2017 procedures. Level two monitoring is conducted during whole-school type evaluations such as Whole-School Evaluation – Management, Leadership and Learning (WSE-MLL), evaluations of action planning for improvement in DEIS⁶ schools and evaluations of schools at Special Care Units.
- Level three monitoring is a stand-alone inspection model, entitled the Child Protection and Safeguarding Inspection (CPSI) model. This model focuses in an in-depth way on school compliance with key aspects of the 2017 Procedures. Essentially, the inspections comprise ten overarching checks, each of which has a number of sub-checks.

⁴ <https://www.webwise.ie/>

⁵ https://www.education.ie/en/Schools-Colleges/Information/Child-Protection/child_protection_guidelines.pdf

⁶ Delivering Equality of Opportunity in Schools (DEIS) the Action Plan for Educational Inclusion which provides additional resources to schools based on their level of educational disadvantage

In June 2019, the Inspectorate published a total of 22 Child Protection and Safeguarding Inspection reports on 11 school (initial and final inspections). These reports are published on the Department's website.⁷

Update on General Measures regarding Discontinued Litigation in relation to Historic Abuse Claims – Determinations of the Independent Assessor, Mr Justice O'Neill.

5. As set out in previous Action Plans, the *ex gratia* Scheme was established in 2015 to provide an effective remedy for a specific category of people, namely those persons who had commenced domestic litigation but who had discontinued those proceedings following the High Court and Supreme Court judgments in Ms O'Keeffe's case and who were unable to re-commence their litigation in the domestic courts following the ECtHR judgment.

Following extensive submissions by the Minister for Education and Skills, all of which are published on the Department's website⁸, and by other parties, the Independent Assessor, Mr Justice O'Neill, concluded his assessment of applications for the *ex gratia* scheme that had been declined by the State Claims Agency (SCA) in July 2019. Of the 50 applications received, 45 were declined by the SCA and, of those, 19 unsuccessful applicants sought an assessment.

Mr Justice O'Neill determined that 13 applicants whose application for a payment from the *ex gratia* scheme was refused by the SCA on the sole ground that they failed to furnish evidence of a prior complaint are each entitled to a payment from the scheme.

The Assessor also determined that six applicants whose applications were refused on the latter ground but also on the additional ground that they do not fulfil the eligibility criterion in the *ex gratia* scheme in relation to discontinued litigation, are not entitled to a payment from the scheme.

The State is abiding by the determinations of the Assessor. In consequence, offers of payment have been made to those 13 applicants in respect of whom the Assessor has made a positive determination.

In addition, a further five⁹ applications to the scheme which were not amenable to being determined or submitted for assessment in the timeframe applying to the Assessor's deliberations have been disposed of on the same basis as those 13 cases which were determined positively by the Assessor. In consequence, of these five cases, a further three offers of payment have been made where absence of a prior complaint was the only ground for their being declined by the SCA. No offer was made in respect of the other two cases, as those cases did not fulfil the eligibility criterion of the scheme in relation to discontinued litigation.

⁷ <https://www.education.ie/en/Publications/Inspection-Reports-Publications/child-protection-and-safeguarding-inspection/>

⁸ <https://www.education.ie/en/Learners/Information/Former-Residents-of-Industrial-Schools/ECHR-OKeeffe-v-Ireland/independent-assessment-process/>

⁹ These cases include one case referred to in the previous Action Plan which is the subject of judicial review proceedings. Those proceedings remain in being and will be further reported on in the next Action Plan.

Therefore, a total of 16 offers of payment have been made. To date, seven applicants have accepted and received a payment from the scheme. Further payments will be made upon acceptance of the remaining offers.

All fifty applications to the scheme which were made since its inception have now been determined and offers made in the relevant cases. The operation of the *ex gratia* scheme is currently being reviewed.

In addition to his determinations of the applications submitted to him for assessment, the Assessor also addressed the issue of the requirement for evidence of prior complaint as a criterion for eligibility under the *ex gratia* scheme.¹⁰

Next Steps

6. A further Action Plan will be filed by 28 January 2020 to report on the actions identified.

¹⁰ <https://www.education.ie/en/Learners/Information/Former-Residents-of-Industrial-Schools/ECHR-O'Keeffe-v-Ireland/independent-assessment-process/o'keeffe-v-ireland-decision-of-the-independent-assessor.pdf>