

Statutory obligations regarding child welfare and protection

Doctors play a key role in child protection and it is important to remember that the welfare of the child is paramount, writes **Dee Duffy**

ALL REGISTERED MEDICAL practitioners are mandated persons under 'Children First'. Children First is a generic term used to encompass the *Children First: National Guidance for the Protection and Welfare of Children 2017* (a national policy document to assist people in identifying and reporting child abuse) and the Children First Act 2015. Children First imposes obligations on all persons coming into contact with children and adolescents under 18 years of age.

Mandated persons

Mandated persons have contact with children and/or families by virtue of their qualifications, training and experience, and are key to helping protect children from harm. Both the current (eighth) edition of the Medical Council's Guide to Professional Conduct and Ethics¹ and the ninth edition² (due to come into effect from January 1, 2024) provide that doctors must be aware of and comply with the national guidelines and legislation for the protection of children, and if they have reasonable grounds for suspecting that a child is being harmed, has been harmed, or is at risk of harm through sexual, physical, emotional/psychological abuse or neglect, they must report this to the appropriate authorities and/or the relevant agency without delay.

The Child and Family Agency (Tusla) is the dedicated State agency in Ireland responsible for improving well-being and outcomes for children. As mandated persons, doctors have two main legal obligations under the Act:

- To report harm of children, above a defined threshold, to Tusla; and
- To assist Tusla, if requested, in assessing a concern which has been the subject of a mandated report.

Mandated reporting

As mandated persons, doctors are required to report any knowledge, belief or reasonable suspicion that a child has been harmed, is being harmed or is at risk of being harmed. The Act defines harm as assault, ill-treatment, neglect or sexual abuse, and covers single and multiple instances.

In determining whether a concern reaches the legal threshold to make a mandated report, a helpful question may be: has the child's health, development or welfare been affected, is being affected or is likely to be affected by the harm? If a doctor is in any doubt as to whether the concerns reach the legal definition of harm for making a mandated report, they can contact Tusla, on a no-names basis, and seek further guidance. It is important to

remember that the safety of the child is paramount.

It is important that the contact details for local Tusla social workers, including emergency/out of hours are available to doctors. At no stage should a child's safety be compromised and doctors should contact the gardaí without delay if they think a child is in immediate danger and they cannot contact Tusla to discuss the concerns.

HSE Child Protection and Welfare Policy

It is important to be familiar with the most up-to-date version of the HSE Child Protection and Welfare Policy³ and any guidelines in place for a particular hospital. The HSE reporting procedure outlines key stages as: recognising concerns, responding to any immediate safety needs, consulting with a line manager/senior staff member, reporting to Tusla, informing the family (unless there is good reason not to), recording, assisting Tusla where requested, and monitoring as to whether any further action is required.

Making a mandated report

The Act requires mandated persons to report a concern to Tusla "as soon as practicable". All mandated reports can be submitted via the Tusla website (www.tusla.ie) and doctors should include as much information as possible. It is important to note that mandated reports cannot be submitted anonymously. A report made in good faith detailing a reasonable concern about a child's welfare will not amount to a breach of patient confidentiality and doctors will be protected from civil liability.

While there is no legal requirement for doctors to inform the child's parents/legal guardians that they intend to make a mandated report, the guidelines state that it is good practice to tell them and discuss the reasons. However, if by doing so, a doctor believes the child will be placed at further risk or Tusla's ability to carry out a risk assessment may be impaired, or indeed that a doctor (or colleagues) will be placed at risk of harm, they should not inform them.

Recognising concerns

Doctors working in any specialty can come across child welfare concerns either through their own observations or through allegations reported to them. Doctors should obviously be alert to concerns when treating children. When treating adult patients, it is also important to consider the possibility for child welfare concerns in the context of parent/carer related issues, eg. substance abuse, mental illness.

According to the HSE Child Protection and Welfare Policy, child neglect is the most frequently reported category of abuse, both in Ireland and internationally. Children may present with features of neglect such as malnourishment, lack of hygiene etc. Sometimes, identifiers of neglect may only become apparent when a child is seen over a period of time.

Doctors treating children may observe signs of physical abuse such as non-accidental injuries, bruising, scarring etc. Signs of emotional abuse may be more difficult to recognise as the signs are behavioural rather than physical and can be difficult to identify in once-off interactions.

Concerns relating to sexual abuse

It is important to remember that sexual activity involving a young person may be sexual abuse even if the young person concerned does not themselves recognise it as abusive. The information may also be critical to Tusla's assessment of risk to another child, either now or in the future. A doctor is not required to judge the truth of any disclosure made or the credibility of the person reporting, and should deal with the disclosure sensitively and professionally.

Dealing with a retrospective allegation of sexual abuse

Disclosure from an adult patient of alleged sexual abuse that took place during their childhood should also be reported to Tusla, as the alleged abuser may pose a current risk to children.

The HSE published a guide on responding to disclosures of retrospective abuse in November 2022⁴ which states that all disclosures of child sexual abuse must be reported to Tusla. The guide states that it is important to explain to the person making the disclosure the reason for reporting, ie. so that Tusla can assess if there is any potential risk to a child/children who may be in contact with the person subject to allegations of abuse. The guide also states that the mandated person is not required to have the consent of the person who made the disclosure, nor is the mandated person required to know the identify of the alleged perpetrator.

This guidance follows a High Court judgment made on October 3, 2022⁵ where Ms Justice Siobhán Phelan ruled that the Children First Act 2015 meant that a report to Tusla was required where an adult disclosed past harm suffered as a child to a counsellor (a mandated person).

Reporting exception – consensual sexual activity

There is one exception to reporting concerns of possible sexual abuse, which relates to certain consensual sexual activity between teenagers. In Ireland, the age of consent for sexual intercourse is 17. However, a scenario where one of the parties to a sexual relationship is under 17 may fall under the statutory reporting exception provided for in the Act. If a doctor is satisfied that all of the following criteria are met, they do not have to report consensual sexual activity between older teenagers as sexual abuse to Tusla:

- The young persons concerned must be between 15 and 17 years
- The age difference between the two must not be more than 24 months

- There is no material difference in their maturity or capacity to consent
- The relationship does not involve intimidation or exploitation of either person; and
- The young persons concerned do not want the matter disclosed to Tusla.

It is very important to highlight that there is no reporting exception for sexual activity involving persons under 15 years; doctors must make a mandated report to Tusla in those circumstances.

Consequences of non-reporting

While the Act does not impose criminal sanctions on mandated persons who fail to make a report to Tusla, if, following an investigation it transpires that a doctor did not make a mandated report and a child was subsequently left at risk or harmed, Tusla may:

- Make a complaint to the Medical Council
- Pass information about the failure to make a report to the National Vetting Bureau of An Garda Síochána, which could be disclosed to a current or future employers when the doctor is next vetted.

Mandated assistance

Children First also provides that mandated persons can be requested by Tusla to provide necessary and proportionate assistance to aid their assessment of risk to a child. Mandated assistance usually involves a request to supply further information, eg. a verbal/written report or to attend a case conference.

Doctors must comply with this request, regardless of who made the mandated report. Doctors should also be aware that data protection legislation does not prevent the sharing of information on a reasonable and proportionate basis for the purpose of child protection.

Tusla has the authority to share information concerning a child with a mandated person and can only share what is necessary and proportionate. If a doctor is required to share information with Tusla when assisting in the assessment of risk to a child, they are protected from civil liability. The Act makes it an offence, however, for a doctor to disclose information shared with them by Tusla to a third party, unless they are provided with prior written authorisation from Tusla to do so.

Conclusion

Doctors play a key role in child protection and it is important to always bear in mind that the welfare of the child is paramount. If a doctor has any concerns relating to the health, development or welfare of a child, they should report those concerns to Tusla without delay.

References

1. Guide to Professional Conduct and Ethics for Registered Medical Practitioners (Amended) 8th Edition 2019. RPC012129_EN_PR_D_7.indd (medicalcouncil.ie)
2. Guide to Professional Conduct & Ethics for Registered Medical Practitioners 9th Edition 2024. guide-to-professional-conduct-and-ethics-for-registered-medical-practitioners-2024.pdf (medicalcouncil.ie)
3. Children first national office. HSE Child Protection and Welfare Policy, 2019, Jan 1. Available at: <https://www2.healthservice.hse.ie/organisation/national-pppgs/hse-child-protection-and-welfare-policy/>
4. HSE. Responding to Disclosures of Retrospective Abuse responding-to-disclosures-of-retrospective-abuse.pdf (hse.ie)
5. Tom McGrath v Health Service Executive [2022] IEHC 541 pdf (courts.ie)

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