



# Child welfare and protection – know your statutory obligations

*Claire Cregan, Legal Counsel in Medisec, outlines the statutory responsibilities placed on registered medical practitioners in relation to children protection*

Children are among the most vulnerable persons in our society and it is our responsibility to protect them and keep them safe. Regrettably, we cannot prevent all abuse from taking place but it is important to recognise when a child may be at risk and how to respond.

Child welfare and protection policy is based on a legal framework provided primarily by the Child Care Act 1991 and the Children First Act 2015, which at its core, seeks to promote the welfare of children who may not receive adequate care and protection.

The *Children First: National Guidelines for the Protection and Welfare of Children* (the guidelines) operate side-by-side with the legislation and impose obligations for all persons coming into contact with children and adolescents under 18 years, with the aim of assisting individuals in recognising child abuse and reporting a reasonable concern about a child's welfare or protection.

The term "children first" is now a generic term used to encompass both the legislation and the guidelines.

The Children First Act 2015 (the Act) places several statutory obligations on specific groups of professionals with regard to child protection and welfare concerns. This article seeks to highlight and explain the statutory responsibilities placed on registered medical practitioners, who are listed as mandated persons under the Act.

## 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. All registered medical practitioners are mandated persons under the Act and it is important to be aware of your professional and statutory obligations/responsibilities in that regard.

Paragraph 26 of the Medical Council's Guide to Professional Conduct and Ethics for Registered Medical Practitioners (Amended) 2019, provides that you must be aware of and comply with the national guidelines and legislation for the protection of children, and if you have reasonable grounds for suspecting that a child is being harmed, has been harmed, or is at risk of harm through sexual, physical, emotional abuse or neglect, you 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 wellbeing and outcomes for children. As a mandated person, you have two main legal obligations under the Act:

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

## Mandated reporting

As a mandated person, you 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 your 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 you are in any doubt as to whether your concerns reach the legal definition of harm for making a mandated report, you can contact Tusla, on a no-names basis, and seek fur-

ther guidance.

It is important to remember that the safety of the child is paramount. At no stage should a child's safety be compromised and you should contact the gardaí without delay if you think a child is in immediate danger and you cannot contact Tusla to discuss your concerns.

## 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](http://www.tusla.ie)) and you should include as much information as possible to assist Tusla.

You should note that mandated reports cannot be submitted anonymously; however, a report made in good faith detailing your reasonable concerns about a child's welfare will not amount to a breach of patient confidentiality and you will be protected from civil liability.

While there is no legal requirement for you to inform the child's parents/legal guardians that you intend to make a mandated report, the guidelines state that it is good practice to tell them and to inform them of your reasons for the decision. However, if by doing so, you believe the child will be placed at further risk or Tusla's ability to carry out a risk assessment may be impaired, or indeed that you will be placed at risk of harm, you should not inform them in those circumstances.

## Concerns relating to sexual abuse

All sexual abuse falls within the category of seriously affecting a child's health, development or welfare and you must submit all concerns about sexual abuse to Tusla. 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.

If you receive a disclosure of either sexual abuse or alleged sexual abuse from a child, you must inform Tusla. The information may also be critical to Tusla's assessment of risk to another child, either now or in the future. Remember you are not required to judge the truth of the disclosures or the credibility of the child and you 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. If your patient provides information that can identify the alleged perpetrator, you should inform your patient that you have to inform Tusla, to assist their investigation/assessment of whether there is a possible continuing risk to children. You should also encourage your patient to report the alleged abuse to the gardaí and to engage with appropriate counselling services.

## 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, a sexual relationship where one or both parties is under 17 years is illegal. However, for the purpose of making a mandated report to Tusla, this scenario may fall under the statutory reporting exception provided for in the Act.

If you are satisfied that all of the following criteria are met, you 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 any information about the activity to be disclosed to Tusla.

It is very important to highlight that there is no reporting exception for sexual activity involving persons under 15 years; you 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 you 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 your failure to make a report to the National Vetting Bureau of An Garda Síochána, which could be disclosed to your current or future employers when you are next vetted;
- ▶ Employers are encouraged to include references to obligations in relation to mandated reporting in codes of conduct and contracts of employment. Many employers consider a failure to report a child protection concern to be a disciplinary matter.

## Mandated assistance

The Act 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, for example, a verbal/written report or to attend a case conference. You must comply with this request, regardless of who made the mandated report.

You should 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 you are required to share information with Tusla when assisting in the assessment of risk to a child, you are protected from civil liability. The Act makes it an offence, however, for you to disclose information shared with you by Tusla to a third party, unless you are provided with prior written authorisation from Tusla to do so. We see this issue arise occasionally in practice and it is important to be cognisant of this requirement.

As the guidelines state, child protection is a multi-agency and multidisciplinary activity. Agencies and professionals must work together in the interests of children as the safety and welfare of children is paramount and everyone's responsibility. The overall aim in all dealings with children and their families is to intervene proportionately to support families to keep children safe from harm.

As mandated persons, registered medical practitioners 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 you have any concerns relating to the health, development or welfare of a child, you should report those concerns to Tusla without delay.

If you have any concerns relating to child protection and welfare, you should contact your indemnifier for specific advice and guidance.