



**Audit**  
of the exercise by  
**An Garda Síochána**  
of the provisions of  
**Section 12 of the Child Care Act 1991**  
by  
**Dr Geoffrey Shannon**

**SECTION 12 AUDIT**

**DR. GEOFFREY SHANNON**

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## PREFACE

This audit report has been written by Dr. Geoffrey Shannon with the assistance of Mrs. Hilary Coveney Nash, Mr. Cian O'Connor and Dr. Imelda Ryan. The audit, and the research involved in same, was designed with the following aims:

- (1) to conduct a comprehensive review, employing a combination of quantitative and qualitative research methodologies, of current work practices in the initiation of section 12 of the Child Care Act 1991, including an assessment of the processes and procedures adopted or followed by members of An Garda Síochána (AGS) before, during, and after its use;
- (2) to establish the extent of the use of this power and the circumstances in which it is employed;
- (3) to uncover the actions taken by AGS after removing the child to safety;
- (4) to discover “what happens next” by ascertaining the outcome of the use of section 12, both in the short-, and on a longer-term basis with regard to the role of the Child and Family Agency and any court process;
- (5) to emphasise what works well in the exercise of such emergency measures and to pinpoint shortcomings that exist, with a view to informing both future policy and practice.

The report does not make any findings in relation to any individual, organisation or body corporate. This report is based solely on data collected through examining Garda PULSE resources, written questionnaires (each questionnaire covering a particular instance of section 12 use by AGS in 2014), semi-structured interviews with individual Gardaí who exercised section 12 in September 2015, and focus groups, to gain a deeper insight into Garda understanding of their legal authority under section 12, its limits, and the appropriate use of that power in pressurised, time-sensitive contexts.

Every care has been taken not to identify any of the children/young people and their parents who were the subject of the section 12 power. In order to provide additional safeguards of anonymity, the audit generally has not identified the geographical area the child/young person came from. Moreover, the audit has avoided including any identifying details of audit participants, particularly members of AGS who were interviewed as part of the audit.

In attempting to preserve the anonymity of members of AGS, members have each been designated an identifying letter. This device is used solely as a means of distinguishing each person for the purpose of fulfilling the remit of the audit and is not intended to detract in any way from the individual child or young person the subject of the section 12 power.

It is recognised with regret that the publication of this report may cause additional distress to family members and foster-carers as well as to the professionals who worked on the cases discussed. This is not the intention.

What was unquestionably clear from this audit is that members of AGS are very concerned with ensuring the child's experience in Garda care is not traumatising. Indeed, the overwhelming finding in this audit is that Garda members commit great efforts to treating children sensitively and compassionately when that child has been removed under section 12.

Nobody could fail to be affected by the circumstances surrounding the lives of some of the children and young people who have been the subject of the section 12 power, particularly in those cases discussed in Chapter 3 where chronic neglect played a significant role in the section 12 power being invoked.

All reports inevitably contain some errors. One unavoidable source of error in many of the cases discussed in this report has been the difficulty in extracting the PULSE data. In many cases this may have led to errors appearing in the completed text although every effort has been made to prevent this.

## **ACKNOWLEDGEMENTS**

I would like to acknowledge the advice and insight provided by Professor Judith Masson of Bristol University and Professor Laura Hoyano of Wadham College Oxford.

I wish to acknowledge and thank the staff of AGS who facilitated the work of the audit. In particular, I would like to acknowledge the work and leadership of Detective Superintendent Declan Daly and Detective Inspector Michael Lynch in facilitating the burdensome demands imposed by the forensic nature of the audit undertaken. Their assistance and cooperation was invaluable at all stages of the audit. The fact that a virtually full response rate was received to the questionnaire circulated was in large part due to the efforts of both Detective Superintendent Daly and Detective Inspector Lynch.

Dr. Geoffrey Shannon

28 January 2017

## GLOSSARY OF ABBREVIATIONS

<b>AGS</b>	-	An Garda Síochána
<b>ECHR</b>	-	European Convention on Human Rights
<b>ECtHR</b>	-	European Court of Human Rights
<b>ECO</b>	-	Emergency Care Order
<b>EOHS</b>	-	Emergency Out-of-Hours Social Work Service
<b>EPO</b>	-	Emergency Protection Order
<b>FPC</b>	-	Family Proceedings Court
<b>GAL</b>	-	Guardian <i>Ad Litem</i>
<b>GISC</b>	-	Garda Information Services Centre
<b>HSE</b>	-	Health Service Executive
<b>ICO</b>	-	Interim Care Order
<b>NWHB</b>	-	North Western Health Board
<b>PULSE</b>	-	Police Using Leading Systems Effectively
<b>TUSLA</b>	-	The Child and Family Agency
<b>UNCRC</b>	-	United Nations Convention on the Rights of the Child

## **Section 12 of the Child Care Act 1991**

This is an audit of the use of section 12 of the Child Care Act by An Garda Síochána. Section 12 is the principal legal mechanism through which An Garda Síochána performs its child protection function. The section authorises a Garda member to remove a child from the care of his or her family, or a person acting in loco parentis, in circumstances where that Garda believes “there is an immediate and serious risk to the health or welfare of a child”, and where that Garda also believes “it would not be sufficient for the protection of the child from such immediate and serious risk to await the making of an application for an emergency care order by [the Child and Family Agency] under section 13”. Section 12 grants members of An Garda Síochána exceptional powers to enter any place without warrant, and remove a child to safety. Exercise of this power is not dependent on prior authorisation of a court, a member of the judiciary, or any other Garda member. Section 12 is a power exercisable on the judgement of the individual Garda faced with what he or she believes to be a serious and urgent child protection risk.

### **Executive Summary**

In this audit, the Garda respondents’ accounts of contemporary policing in Ireland highlights the increasingly diverse and demanding roles expected of members of An Garda Síochána, of which child protection is now firmly a part.

In various interviews throughout the interview stage of this audit, a number of Garda respondents cited their overriding professional obligations in terms of public protection, which flowed from their roles in An Garda Síochána. Many spoke with pride on the role of An Garda Síochána as “first responder”.

What was unquestionably clear from this audit is that members of An Garda Síochána are very concerned to ensure the child’s experience in Garda care is not traumatising. Indeed, the overwhelming finding in this audit is that Garda members commit great efforts to treating children sensitively and compassionately when a child has been removed under section 12.

For example, this audit has found numerous instances of Garda members staying long beyond their rostered working hours to organise the care of a child removed under section 12. This finding is broadly consistent with, and reflective of, the audit’s findings of compelling evidence that members of An Garda Síochána demonstrate very high levels of commitment to the welfare of children they have removed under section 12.

The audit also shines a light on a truth the Irish public are somewhat uncomfortable with: some parents, or others acting *in loco parentis*, for various reasons fail to protect their children, and it is then the responsibility of An Garda Síochána to protect those children by removing them from their care. Therefore, the powers granted to members of An Garda Síochána to remove children from parental care under section 12 of the Child Care Act are an essential tool in the broader child protection framework within the Irish State.

The audit's largely positive findings on the attitude by Garda members to the treatment of children following their removal under section 12 must, however, be contextualised. This audit's remit was confined to an examination of the treatment of children when removed under An Garda Síochána's child protection powers and functions. It did not examine any cases where the child was arrested for suspected commission of a criminal offence – though, admittedly, there may be some overlap between these two legal and material categories of Garda intervention in the care of children.

The audit has found inadequacies in the operation of the Garda PULSE system, risking the operational and accountability functions of the PULSE system.

The PULSE system was not able to provide a consistent and accurate picture of section 12 use by members of An Garda Síochána. Months of repeated inquiry found numerous gaps, flaws and variations in the data captured and saved on the PULSE system in relation to instances of section 12 removal of children.

The audit has also identified outstanding questions and ambiguities in relation to Garda practices in recording case narratives on the PULSE system. An Garda Síochána has confirmed that systemic reform of PULSE is underway, and this process of reform is clearly to be welcomed. However, ambiguities exist in relation to the role of the Garda Information Services Centre (GISC), in particular in how narratives are recorded on PULSE, and whether it is aiding or undermining comprehensive and accurate reporting of cases on the system, and more generally its role in the management of key statistical data on the work of An Garda Síochána.

Evidence from all stages of this audit has demonstrated inconsistencies in terms of data collection and data management. It is clear that crucial demographic data in relation to individuals who engage with members of An Garda Síochána is not routinely recorded on their

PULSE file. There are also inconsistencies in the quality and detail of PULSE entries regarding particular incidents involving An Garda Síochána. Consistent, comprehensive and accurate data collection, and the careful and secure management of that data, is an essential part of contemporary best practice and evidenced-based policing strategies. Comprehensive and rigorous data collection practices facilitate effective and reflexive policing practice, and enable the efficient management and deployment of limited policing resources towards addressing risks identified through careful data analysis. More fundamentally, proper data collection and management is also central to the realisation of appropriate transparency, and full accountability of An Garda Síochána in its performance of all its duties, including child protection.

The audit echoes the call from the Garda Inspectorate for systemic reform of the Garda PULSE system, and recommends an audit of the role and operation of GISC in light of the central operational and accountability functions of proper data collection and management by An Garda Síochána.

One of the principal objectives of this audit was to examine the appropriateness, proportionality, and legality of section 12 removals of children by members of An Garda Síochána. The grounds upon which a Garda member removes a child are the main factual antecedents to the authority of a Garda member to remove a child under section 12 of the Child Care Act 1991. In documenting and critically evaluating these grounds for section 12 removal, the audit sought to account for the circumstances that members of An Garda Síochána encounter, which require the use of extraordinary powers of intervention in the private life of the family. In the overwhelming majority of cases, the audit found that members of An Garda Síochána exercised their powers following a period of careful consideration of the circumstances and available evidence. The audit found no evidence that section 12 is being used in an over-zealous manner by members of An Garda Síochána.

The most frequent circumstance encountered by Garda respondents requiring removal of children under section 12 was some form of failure by a parent or person acting *in loco parentis*, or a temporary lack of capacity or competence to care for the child. The nature of these failures and losses of capacity were manifold, including addiction-related failures on the part of some parents, and a parent's inability to control a violent and disruptive child.

The evidence from each stage of the audit suggests that exercising section 12 removal of children is a rare occurrence for the average member of An Garda Síochána. It appears that an individual member may only invoke the section 12 power a handful of times over his or her entire career.

Garda respondents demonstrated, on the whole, a significant degree of critical sophistication when exercising their section 12 powers. Many respondents engaged in some degree of information-gathering before deciding to remove a child under section 12, with some undertaking considerable effort, investigations and research to ensure the appropriate decision was made. There was no evidence that decisions to exercise section 12 are taken lightly, or that alternatives to removing the child were not considered by respondents. Insofar as the information available or provided enabled the audit to determine, the cases examined involved an appropriately restrained use of section 12 powers by respondents.

The audit's findings clearly show there is no standard case in which a child is removed under section 12. The power is invoked in a highly diverse and contextualised range of circumstances.

The interview stage of the audit found some evidence that the fallout from the 'Tallaght' and 'Athlone' cases<sup>1</sup> has resulted in a degree of anxiety among some members of An Garda Síochána in the exercise of the child protection powers under section 12 of the Child Care Act 1991. This general finding of Garda reluctance to use section 12 may create a situation where children are not removed from situations where it would be best to do so. In this regard, it should also be noted that the terms of reference of the audit did not include cases where section 12 was considered, but not invoked.

A further finding in the audit is that there is little or no emphasis on formal training of new Garda recruits in relation to child protection. It is, however, acknowledged that problem-based learning has been introduced as part of the training regime currently in place, which is a positive development. That said, the audit found little evidence of discrete training on child protection. The overwhelming majority of current serving members of An Garda Síochána have received no such training. Moreover, the overwhelming majority of Garda respondents in this audit had not

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<sup>1</sup> These cases refer to two incidents of section 12 removal of Roma children in October 2013. The children were removed in separate circumstances from their families in Tallaght and Athlone during extensive international media coverage of the "Maria" case in Greece. These cases were the basis for the 2014 Report of the Ombudsman for Children, which recommended this audit.



received training that emphasised children's rights or child welfare during their time as new recruits in the Garda College in Templemore, or subsequently in their career.

A more general finding of this audit relates to a deep-seated culture within An Garda Síochána privileging 'on-the-job' training and learning, over, and possibly to the detriment of, formal core training in the Garda College.

This dearth of appropriate training is also significant for a more general thematic finding of this audit: the increasingly diverse role of An Garda Síochána in contemporary Irish society. Findings from the interview and focus group stages of this audit highlighted the increasing societal expectations and demands on what functions Garda members must fulfil, particularly in the realm of child protection (but also, for example, mental health), and the new and diverse range of responsibilities these expectations place on An Garda Síochána. These findings also highlight an emerging risk of role ambiguity in An Garda Síochána, as the boundaries between its proper functions and responsibilities become blurred as they overlap with the functions and responsibilities of other State agencies and actors.

It is important that Garda members should not be propelled into bypassing their own risk assessments under section 12 by being influenced by a risk assessment by Tusla. No such evidence of influence was found by the audit. That said, it is of paramount importance to appreciate that the risk assessment under section 12 is separate to, and independent of, a general welfare risk assessment. Accordingly, An Garda Síochána risks being exposed to litigation under the Child Care Act 1991, the European Convention on Human Rights and Article 42A of the Constitution, where it does not adopt its own independent risk analysis.

In England and Wales, the requirement of internal oversight of police emergency child protection powers is an important organisational gatekeeping check on the exercise of section 46 of the Children Act 1989. It may be appropriate to consider a similar approach in this jurisdiction in any revised protocols on the exercise of section 12 powers.

The audit sought to evaluate the nature of inter-agency communication between Tusla and An Garda Síochána. It sought to examine the processes and cultures, if any, in which Tusla social workers provide feedback on cases to Garda members, following their removal of children under section 12. Interview respondent Gardaí described a general situation where Tusla do not

routinely provide feedback or updates to Garda members following the handover of children into Tusla's care. The audit has found that as well as being personally and professionally frustrating, this absence of routine and meaningful feedback also reinforces a 'mystification' experienced by Garda members in relation to their understanding of Tusla's practices and procedures. Additionally, the absence of consistent feedback undermines the valuable learning potential for both Gardaí and social workers from these cases, and reinforces the institutional silos between agencies tasked with pursuing the same child protection objectives. There is no evidence of formal routine follow-up from Tusla regarding the progress of a particular case after a member of An Garda Síochána has handed over responsibility. Moreover, there is no evidence of effective and robust systems for inter-agency information-sharing and cooperation after the invocation of section 12. Despite respondents clearly articulating a desire and need for feedback on how they handled a case, and how it progressed, there is no systemic provision for such feedback. Unless a member of An Garda Síochána commits a significant degree of his or her own time and energies to following up on a case, or unless he or she has an existing strong professional relationship with the local social work team, he or she is likely to be left in the dark about how a child's case progressed.

The audit found continually poor and limited levels of inter-agency cooperation and coordination between An Garda Síochána, the Child and Family Agency (Tusla), and other agencies within the broader child protection infrastructure in Ireland during and after the invocation of section 12. Examples of these failures were most pronounced in the audit's findings of very low levels of provision for joint training programmes on child protection between Garda members and Tusla social workers. The audit also consistently found low levels of meaningful communication between agencies, and that the most significant cooperation appears to be confined to Garda members occupying higher levels within the organisation's hierarchy; to particular Garda regional divisions; or to the sporadic, informal development of strong professional relationships between Gardaí and social workers. The vast majority of respondents never participated in case conferences in relation to a child – with a handful of instances where respondents were not permitted to attend such meetings due to overtime restrictions. The evidence from the interview and focus group stages of the audit also strongly indicated that good inter-agency cooperation and coordination was largely dependent on the organic development of good, informal, personal relationships with individuals within other agencies with child protection functions and responsibilities. There is little evidence that An Garda Síochána, Tusla and related agencies have developed formal structures to foster good

inter-agency cooperation. The few existing mechanisms for such cooperation, provided on a national basis, such as HSE/Tusla notification forms, appear to only serve a minimum superficial level of inter-agency communication. The critical theme of “notification is not communication” emerged again and again at every stage of the audit.

While An Garda Síochána has rhetorically committed to the inter-agency ‘partnership’ model of child safeguarding and protection, the practices and working ideologies of child protection within An Garda Síochána fall far short of this international best practice paradigm.<sup>2</sup>

This audit has also found an almost total absence of training, or strategic policy direction felt at an operational level, in how An Garda Síochána should respond to Ireland’s increasing ethno-cultural diversity. This finding, consistent across multiple stages in this audit, raises issues in relation to the central overarching question in this audit, namely racial profiling in the exercise of An Garda Síochána’s child protection function. The audit has found no evidence that racial profiling influences the exercise of section 12 powers of removal by An Garda Síochána. In each instance examined that involved a minority ethnic child or family, there were very strong factual grounds for removing that child under section 12. That said, this finding must be tempered by the finding that certain ethno-cultural demographic information does not appear to be routinely documented by An Garda Síochána on the PULSE system. For example, whether a child or parent is an Irish Traveller does not appear to be routinely documented by Gardaí, as the PULSE system does not include a specific field for Irish Travellers. At a quantitative national level, this means any finding that there was no racial profiling in the exercise of section 12 powers by An Garda Síochána must be somewhat qualified because of an absence of consistent documenting of a child’s ethno-cultural background. However, the interview and focus group stages of the audit found no evidence that Garda respondents were wrongfully influenced<sup>3</sup> by a child or parent’s nationality or ethnicity when deciding to remove the child under section 12. It should be noted that it was beyond the remit and focus of this audit to examine the treatment of ethnic minorities by An Garda Síochána more generally in the performance of their statutory

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<sup>2</sup> Among the most developed policies on inter-agency child protection working are those in the UK: Department of Education, *Working together to safeguard children: A guide to inter-agency working to safeguard and promote the welfare of children* (HM Government, 26 March 2015).

<sup>3</sup> There were some cases where a child or parent’s nationality was a legitimate factor in the decision-making around section 12 removal by a Garda – particularly where the nationality (among other factors) suggested to the Garda that the family may be a ‘flight risk’. Such instances of considering nationality are legitimate and appropriate in the context of child protection, though nationality should not be the sole determiner of whether a family is a flight risk.

duties. These qualified findings in relation to the question of racial profiling are confined to the exercise of section 12 of the Child Care Act 1991 by members of An Garda Síochána.

The audit has found evidence of repeated removal of some children under section 12, from the same family circumstances. Such findings suggest some systemic failings with regard to child protection systems in Ireland. The audit has also found evidence in each stage highlighting systemic failures to help children with challenging behaviour. Despite this particular finding, the audit found no evidence of over-zealous use of section 12 removal of children from families living in social or economic deprivation. Removal in all instances was generally well within the subjective risk threshold under section 12. However, the audit's findings also indicate that the children and families in which section 12 is invoked are typically experiencing some level of social dysfunction, trauma or insecurity.

The audit has found that in the majority of Garda districts, the Garda station is used as the *de facto* 'initial place of safety' for children removed under section 12. The audit's findings from the interview and focus group stages also emphasise the inappropriateness of using the Garda Station as the initial place of safety, where most Garda respondents described a Garda station as a completely inappropriate and unsafe environment for children. For example, Garda respondents working in busy urban stations advised the audit on how busy the station was, with a high level of "prisoner traffic" throughout the day.

The audit has also found that public hospitals serve as the *de facto* 'initial place of safety' in a minority of Garda districts. Garda respondents from these areas were also emphatic on the inappropriateness of a hospital as a place of safety, as these hospitals were not equipped or appropriately resourced to deal with this responsibility.

The audit found very positive evidence on the operation of the specialist child protection units in An Garda Síochána. These units have been set up on an *ad hoc* basis in a handful of Garda stations throughout the State, and do not operate on a 24-hour basis. However, the members of these units generally have the most extensive training and experience in child protection, and the strongest links with colleagues in Tusla and related agencies. The continued expansion and formalisation of this model on a nationwide basis is recommended.

The provision, or lack, of out-of-hours social worker services by Tusla was the subject of considerable criticism from Garda respondents. Where there was an out-of-hours Tusla social worker service available, Garda respondents suggested it is systemically inadequate, as it is often under-resourced, and cannot facilitate access to case files on particular children. This finding suggests the absence of a comprehensive and unified system containing information on the children and families with whom Tusla is engaging, and to which all Tusla social workers have access.

The use of private fostering service providers as the *de facto* ‘official’ out-of-hours child protection service by An Garda Síochána was among the most prominent themes that emerged throughout this audit.<sup>4</sup> As a significant number of the cases reviewed as part of the audit occurred outside of Tusla’s standard hours of service, a number of respondents placed the child removed under section 12 with emergency foster placements arranged through the Five Rivers organisation. Respondents who expressed opinions on the quality of this service were generally very positive. However, it is crucial to note that no Garda respondent was able to give the audit a detailed insight into the nature of the Five Rivers organisation. Nor was any Garda respondent in a position to explain the legal basis upon which children were transferred from the care of An Garda Síochána, into the care of an emergency foster placement organised by the Five Rivers organisation. In a number of instances, Garda respondents appeared to confuse the Five Rivers organisation with the Child and Family Agency/Tusla.

These findings in relation to the handover of the child indicate gaps in support for Gardaí undertaking their child protection function from other outside agencies – principally Tusla. The audit’s findings also detail serious weaknesses within An Garda Síochána in terms of procedures for managing post-section 12 removal of children, and how Garda resources are managed and deployed to deal with post-section 12 circumstances.

The audit found a pattern of private foster care services refusing to organise placements for children with challenging behaviour. These findings highlight a key issue with heavy reliance by the Irish State on private, non-statutory frontline service providers. In these cases where placements were refused by private providers, there was no agency available out-of-hours with

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<sup>4</sup> It should be noted that the Five Rivers organisation, a private company, has, from the beginning of 2016, been contracted by Tusla to provide its Out-Of-Hours Services to deal with Section 12 referrals and placements. According to its website, Five Rivers is the first independent fostering agency in Ireland. It is a subsidiary of the UK-based Five Rivers Child Care.

an express statutory obligation to take the child into care. Where Tusla provides no service, the private service providers who have filled the gap are under no statutory obligation to take children they deem to be too problematic or difficult. Additionally, it is not clear upon which criteria private foster care service providers such as Five Rivers determine children too problematic to take into care. That said, the audit makes no criticism of Five Rivers in that it is not Five Rivers' function to ensure facilities exist to accommodate children with challenging behaviour.

In November 2015, Tusla commenced an Emergency Out-of-Hours Social Work Service (EOHS) which cooperates with and supports An Garda Síochána in relation to the removal of a child from his or her family under section 12 of the Child Care Act 1991 and separated children seeking asylum. Through the service, An Garda Síochána can contact a social worker by phone or arrange access to a local on-call social worker. The EOHS is to be welcomed as it strengthens inter-agency cooperation. That said, there continues to be no comprehensive social work service that is directly accessible to children or families at risk outside of office hours.

Statements made by individual Gardaí in this report, in particular where critical of other persons, are allegations only, and while there are no grounds for the audit to doubt any statement, the audit has not had the opportunity to independently verify all statements made and none of them are thus held out as facts.

## SUMMARY OF THE AUDIT'S RECOMMENDATIONS

An essential change which must occur throughout the child protection system is a change in the culture. Each and every person working within the system, including members of An Garda Síochána must take responsibility for his or her own role in promoting the welfare of children and in ensuring their protection. The following is a summary of the Audit's recommendations based on data collected through examining Garda PULSE resources, written questionnaires, semi-structured interviews with individual Gardaí who exercised section 12 in September 2015 and focus groups.

### **New Garda Protocol**

#### **1**

*The section 12 power is not subject to any external oversight prior to its invocation and while such extraordinary measures may be necessary at times to protect the health and welfare of vulnerable children, it should be stressed that these measures are to be used as a last resort. Clear guidelines for the use of Garda powers under section 12 of the Child Care Act 1991 should be produced and made available to the public. Such guidelines should clearly stipulate that the powers granted under section 12 of the Child Care Act are to be used only as a last resort.*

#### **2**

*An Garda Síochána should develop a protocol requiring the exercise of section 12 powers to be confirmed by a member not below the rank of Sergeant.*

### **Laminated Card**

#### **3**

*A laminated card as set out in Appendix 4 with regard to the operation of section 12 should be furnished to every member of An Garda Síochána.*

### **PULSE**

#### **4**

*Members should be required to complete mandatory information fields on PULSE as set out in Appendix 6. The Garda PULSE system does not routinely record instances where section 12 was seriously considered but decided against. Such information should be recorded on PULSE.*

*In overall terms, the average number of section 12 removals per annum is not so large that a full reporting of relevant information would present an onerous task for a Garda member. A monthly or other regular review by an*

*appropriate person of data entries relating to the invocation of section 12 powers is also recommended. Such a post-event review process should capture difficulties and/or errors, if any, with regard to correct practice and procedure. It would also allow a practical review of the operation of any new provisions to be introduced in due course.*

## **Risk Assessment**

### **5**

*An Garda Síochána must conduct a risk assessment prior to the invocation of section 12 powers independent of the risk assessment undertaken by Tusla. It is imperative that the psychological and mental health needs of children and young people form part of the risk assessment.*

## **Risk Principles**

### **6**

*In light of best international practice,<sup>5</sup> An Garda Síochána must adopt risk principles for guidance in operational decision-making. The following provides a draft set of risk principles.*

#### *Risk Principles for An Garda Síochána*

*Principle 1: An Garda Síochána performs a central role in the child protection system in Ireland. Like all professionals working in child protection, members of An Garda Síochána are required to make decisions in conditions where the degree of probability that a risk to a child's welfare will materialise is uncertain.*

*Principle 2: The Irish legal order expressly recognises distinct constitutional rights of the child, of the family, and of communities of religious belief. As agents of the State with distinct protective functions and responsibilities, members of An Garda Síochána are required to respect and vindicate those rights in any decision-making that has the potential to infringe those rights.*

*Principle 3: Maintaining and protecting the safety, security, wellbeing, and constitutional rights of individuals and communities is a primary consideration in risk decision-making by State agents involved in child protection.*

*Principle 4: Risk-taking involves judgment and balance, with decision-makers required to consider the value and likelihood of the possible benefits of a particular decision, against the seriousness and likelihood of the possible harms.*

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<sup>5</sup> From England and Wales: The College of Policing's Risk Principles. See <<https://www.app.college.police.uk/app-content/risk-2/risk/>>.



*Principle 5: Harm can never be totally prevented. Risk decisions should, therefore, be judged by the quality of the information-gathering and decision-making, not the outcome.*

*Principle 6: Taking risk decisions and reviewing others' risk decision-making is difficult. Account should therefore be taken of whether that decision-making involved dilemmas, emergencies, was part of a sequence of decisions, or might properly have been taken to other agencies, or actors.*

*Principle 7: If the decision-making is shared with appropriate partner agencies and actors, then the risk is also shared, and the risk of error is reduced. Decision-making on child protection concerns should therefore involve meaningful engagement, information-sharing, and cooperation with all responsible and competent partner agencies, so that a wealth of experience and insight can be brought to bear on the risk decision.*

*Principle 8: Since good risk-taking depends on quality information, those working in child protection should share relevant information with partner agencies about people in the household affected who pose a risk of harm to themselves or others, or people in the household affected who are vulnerable to the risk of being harmed, and devise effective structures, procedures and systems to facilitate information-sharing between partner agencies.*

*Principle 9: The standard expected and required of those working in child protection is that their risk decisions should be consistent with those that would have been made in the same circumstances by professionals of similar specialism or experience.*

*Principle 10: To reduce risk aversion and improve decision-making, child protection needs a culture that learns from successes as well as failures. Good risk-taking decision-making should be identified, commended and shared in a regular review of significant events.*

## **Child Welfare and Mental Health**

### **7**

*From a child welfare perspective, any child who is the subject of section 12 of the Child Care Act 1991 should have a developmentally informed, culturally sensitive, comprehensive assessment that addresses his or her basic needs, his or her safety, barriers to effective parenting, the appropriate fit between the type of care needed and between caregiver and child. This assessment should also address the child's medical, educational, emotional and behavioural needs.*

*The assessment should of necessity be sensitive to any emotional trauma the child may experience as a result of being removed under the section and address the effects of separation from his or her family and the effects of disrupted attachments. In particular if a child, as a result of the section being invoked, has been placed in a different geographical location away from community, school and peer supports, the assessment should address as a matter of priority, how to return the child to his or her natural environment as soon as is possible and practicable.*

*An awareness of the likely traumatic impact of the predisposing factors that exist in the child's life prior to the section being invoked together with a sensitivity of the likely impact on children who are removed under section 12, should permeate all aspects of decision-making in relation to children by An Garda Síochána and Tusla.*

### **Out-of-Hours Service**

#### **8**

*A social work service that is directly accessible to children or families at risk outside of office hours should be developed as a matter of priority to ensure a comprehensive and unified child protection system.*

*The 1995 Foster Care Regulations should be expressly referred to in any contract between Tusla and a private provider.*

*The legal framework applying to emergency placements with private providers should be clarified to remove any ambiguity as to the standards to be applied in respect of such placements, particularly in cases where children have emotional and behavioural problems.*

### **Review of the Operational Guidelines for Policing**

#### **9**

*Given the now express constitutional status of children's rights in the Irish legal order, it is an opportune time to weave the constitutional rights of children (as well as other fundamental rights holders in our constitutional order) into operational guidelines for policing. In this way, express reference to those rights, and their implications for policing practice, should be a core part of all Garda policy on child protection operations and training.*

### **Training**

#### **10**

*Comprehensive training on child protection should be provided as part of the Garda training programme reflecting the current law and international best practice.*

## **Diversity Training**

### **11**

*The Garda Racial, Intercultural and Diversity Office (GRIDO) should be expanded and reviewed to ensure that the positive work undertaken by the Office is relevant to all members of An Garda Síochána and not only members occupying the higher levels within the organisation's hierarchy.*

*All members of An Garda Síochána should be required to undergo diversity training.*

## **Inter-Agency Cooperation**

### **12**

*The implementation of the Children First Act 2015 (when fully commenced) should be reviewed from the perspective of An Garda Síochána and clear guidelines on how cooperation should work in practice between An Garda Síochána and other State agencies should be drafted.*

## **Data Sharing**

### **13**

*It is essential that agencies dealing with child protection can share information. Such free flow of information is imperative to the proper functioning of the child protection system. In this regard, the Data Protection Acts should be reviewed to ensure no legislative roadblock impedes child protection services sharing information relating to vulnerable children and their families.*

## **Child Safety Belts and Car Seats**

### **14**

*All Garda vehicles should be equipped with child safety belts and car seats, in the event that it is necessary to drive with children following the use of section 12.*

## **Specialist Child Protection Units**

### **15**

*Specialist child protection units within An Garda Síochána should be established on a national basis.*

## **Social Workers assigned to Specialist Child Protection Units**

### **16**

*Consideration should be given to having social workers assigned to specialist child protection units.*

## Implementation and Review

### 17

*To address any concern that the section 12 power is not being used appropriately and proportionately, An Garda Síochána should publish statistics on an annual basis on the invocation of section 12 in the preceding year. This reporting should also include details on the challenges/difficulties experienced by Gardaí in the exercise of the power.*

*Any review process on the exercise of section 12 should make explicit reference to the monitoring of ethno-cultural demographic patterns in those children subject to section 12 removal, with the possibility of a robust investigation of such patterns, using a methodology comparable to this audit (access to all PULSE data, and the authority to interview select Gardaí about particular cases of relevance).*

*It is suggested that one year after submission of this report, An Garda Síochána examine the implementation of the recommendations of this audit and, if any recommendations may not have been implemented, provide reasons explaining why they have not been implemented, together with proposals to address such an event.*

**CHAPTER 1:**  
**INTRODUCTION**

## **1.1 AUDIT OF PROCESSES AND PROCEDURES ADOPTED BY MEMBERS OF AN GARDA SÍOCHÁNA IN INITIATING THE PROVISIONS OF SECTION 12 OF THE CHILD CARE ACT 1991**

### **1.1.1 General**

This audit is a significant development in ensuring deeper public knowledge and confidence that An Garda Síochána (AGS) exercises its exceptional child protection powers lawfully and proportionately. Public confidence in such exercises of coercive executive powers depends, in large part, on the robustness and independence of oversight and accountability mechanisms monitoring such exercises of power. This audit fulfils a degree of that necessary external review and accountability.

The key methodologies employed in this audit include: data collection through examining Garda PULSE resources; written questionnaires (each questionnaire covering a particular instance of section 12 use by the Gardaí in 2014); semi-structured interviews with individual Gardaí who exercised section 12 in September 2015; and focus groups, to gain a deeper insight into Garda understanding of their legal authority under section 12, its limits, and the appropriate use of that power in often pressurised, time-sensitive contexts.

Through these methodologies, this audit aims to facilitate the emergence of a culture change in AGS in relation to child protection, and the emergence of a new ‘best practice’ in relation to the role of policing in child protection in Ireland. It is hoped that this audit will be an opportunity for AGS to examine how and why particular responses and practices in the exercise of section 12 powers came about in particular cases. It is hoped that child protection will achieve a broader organisational relevance within AGS, and that mature, critically reflective and transparent approaches to issues such as risk decision-making (see Statement of Risk Principles<sup>6</sup>), and cultural sensitivity will emerge.

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<sup>6</sup> See, for example, Annex A p. 96 Interim Report and The Munro Review of Child Protection: Final Report: A child-centred system (ISBN: 9780101806220 HMSO 2011).

## 1.2 METHODOLOGY

### 1.2.1 Introduction

Section 12 of the Child Care Act 1991 creates a unique power exercisable only by members of AGS in emergency situations. Enacted under Part III of the 1991 Act, which concerns the protection of children in emergencies, section 12 gives AGS the power to intervene in circumstances where there is an immediate and serious risk to the child.

It provides that where a member of AGS has reasonable grounds for believing that –

- (a) there is an immediate and serious risk to the health or welfare of a child, and
- (b) it would not be sufficient for the protection of the child to await the making of an application for an Emergency Care Order by the Child and Family Agency, the member may enter any place and remove the child to safety.

Pursuant to section 12(3), where a child has been removed by a member of AGS, the child must be delivered into the custody of the Child and Family Agency (Tusla) in that area as soon as possible. Upon receipt of the child, Tusla is required to decide whether to return the child to the care of his or her parent or custodian, or whether to apply for an Emergency Care Order at the next sitting of the District Court. Such an application must be made within three days, taking account of situations where a child is removed into care during the weekend and there is no Tusla social work service available until Monday.

Section 12 represents the only legal power through which a child may be removed from the care of a parent, or person acting *in loco parentis*, without a court order first having been obtained. As section 12 is such an important and exceptional power, its seriousness cannot be underestimated. Similar powers exist in child protection legislation in other jurisdictions, and the necessity for a police power of this kind is widely accepted. Nonetheless no study into the use of section 12, the frequency with which it is employed, and the nature of the cases in which it arises, has ever been carried out in this jurisdiction. This audit conducted a comprehensive review of the current work practices in the area, shedding light on the processes and procedures adopted by AGS in initiating the provisions of section 12. This audit aimed to facilitate accountability, public confidence, and best professional practice within AGS in the exercise of section 12 powers by its members.

### 1.2.2 Report of the Ombudsman for Children

In December 2013, a Special Inquiry was established by Order of the Minister for Justice and Equality, pursuant to section 42 of the Garda Síochána Act 2005. The then serving Ombudsman for Children, Ms Emily Logan, was appointed to inquire into the exercise by AGS of its section 12 powers in relation to two separate instances in October 2013.

In both cases, children in Roma families who had blonde hair were removed by Gardaí from their families, in circumstances where the identities of the children were called into question. The public debate stemming from these cases demonstrated that the use of section 12 by AGS is an issue of “significant public concern”.<sup>7</sup>

Among the recommendations made in her Report, published in July 2014, Ms Logan called for an independent audit of the exercise by AGS of section 12 of the Child Care Act 1991. Necessitated by the need to ensure public accountability and confidence, the Inquiry stated that this audit should include: “*a breakdown of the reasons cited for invoking section 12; a comparison with the number of successful applications for emergency care orders in the District Courts; an examination of the length of time the child was deprived of his or her family environment; and the ethnic background of the children in respect of whom section 12 of the 1991 Act has been invoked.*”<sup>8</sup> Using the method discussed below, the audit addresses the aforementioned recommendations and considers the issues that were raised in the Inquiry in order to provide an accurate picture of the use of section 12 powers among the police force in Ireland. A comparison of the number of successful applications for Emergency Care Orders flowing from a section 12 removal of a child, and a comprehensive examination of the length of time the child was deprived of their family environment, are beyond the scope of this audit, which was confined to the use of section 12 by AGS only.

One issue worth stating at the outset of this audit is that section 12 powers are exercised independently of section 13 of the Child Care Act 1991. Section 13 grants the District Court, on the application of Tusla, the power to make an Emergency Care Order, removing a child into the care of the Child and Family Agency. Though this power contains a similar threshold of “immediate and serious risk to the health or welfare of a

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<sup>7</sup> Report of the Ombudsman for Children, July 2014, para 4.5.1.

<sup>8</sup> Report of the Ombudsman for Children, July 2014, para 4.6.



child” as that found in section 12, the decision-making of the court to grant such an order is fundamentally different in that it necessarily operates within, and is governed by, the evidential and constitutional rules around court proceedings. The foundational difference between sections 12 and 13 of the Child Care Act 1991 is grounded in their distinct operational contexts. When a Garda member exercises his or her power to remove a child under section 12, he or she does so in the context of circumstances that are highly time pressured. While servants of the Executive such as Gardaí have obligations to respect and uphold the constitutional rights of individuals and families, section 12 is envisaged for circumstances where there is insufficient time to seek a section 13 order from a District Court. As such, the power is exercisable on the judgment of the Garda alone, after evaluating the evidence reasonably available to him or her at that time. It is therefore not possible to draw negative inferences from the fact the invocation of section 12 powers does not always lead to an Emergency Care Order application under section 13 of the 1991 Act.

Section 12 of the 1991 Act is a discrete independent power invested in AGS to deal with an immediate and serious risk, a risk to the child that may have abated by the time the matter is referred to Tusla. The fact that Tusla returns the child to the family without applying for an Emergency Care Order does not necessarily indicate that the section 12 power was either correctly or incorrectly invoked.

### **1.2.3 UK study**

In England and Wales, an equivalent power to section 12 of the 1991 Act is afforded to police officers under section 46 of the Children Act 1989. Pursuant to this provision, the police have the power to remove or prevent the removal (for example, from hospital) of any child who would otherwise be likely to suffer significant harm. A study, published in *Protecting Powers* (Wiley, 2007), has been carried out by Professor Judith Masson in respect of the use of police protection powers in the UK. This represents the most extensive study of police protection ever conducted, and the first such study to look at police records. The research carried out involved two stages. Stage 1 involved a survey of officers in charge of Child Protection Units in 16 police forces, which were randomly selected. This took place by telephone and sought to establish the procedures in place for monitoring the use of section 46 of the 1989 Act. In Stage 2, eight of the 16 forces were asked to participate. The researchers analysed records of the use of police protection, and

conducted interviews with officers who had been involved in the most recent cases where section 46 had been employed.

This audit into the use of the corresponding Irish power has taken some guidance from the approach taken in Masson's UK study. In particular, the findings made in the audit have been compared with the conclusions reached in Masson's report in order to ascertain the parallels and differences that exist between jurisdictions. It is worth noting, however, that the audit into section 12 of the 1991 Act is on a much wider scale than the study carried out in the UK, as it performs a comprehensive review of the exercise by AGS of section 12 powers on a national basis. The use of this emergency measure by AGS in the entirety of the Republic of Ireland is analysed and it is the first audit of its kind to take place in this jurisdiction.

#### **1.2.4 Aims of the Audit**

The audit, and the research involved in same, was designed with the following aims:

- (1) to conduct a comprehensive review, employing a combination of quantitative and qualitative research methodologies, of current work practices in the initiation of section 12 of the Child Care Act 1991, including an assessment of the processes and procedures adopted or followed by members of AGS before, during, and after its use;
- (2) to establish the extent of the use of this power and the circumstances in which it is employed;
- (3) to uncover the actions taken by AGS after removing the child to safety;
- (4) to discover "what happens next" by ascertaining the outcome of the use of section 12, both in the short-, and on a longer-term basis with regard to the role of Tusla and any court process;
- (5) to emphasise what works well in the exercise of such emergency measures and to pinpoint any shortcomings that exist, both with a view to informing future policy and practice.

The method described below was employed in order to achieve these aims.

## 1.3 METHOD

The audit was commissioned by the Commissioner of AGS. It involved submitting a summary report of the research findings to AGS for circulation, which has been duly carried out.

In recognition of privacy rights, any personal data used and disclosed was in accordance with the Data Protection Acts 1988 and 2003 and the European Convention on Human Rights Act 2003. The research data used and processed was in accordance with the rights and freedoms enshrined within the European Convention on Human Rights and the EU Charter of Fundamental Rights and Freedoms.

In line with the security obligations placed on a Data Controller under the 1988 Act, appropriate security measures were put in place to prevent accidental or deliberate compromise of the data for the audit and avoid damage. The research data was processed without unreasonable delay and AGS were invited to review the security provided for the conduct of the audit.

All members of AGS were free to talk specifically in interviews about cases that they have been involved in concerning the use of section 12, safe in the knowledge that this was a legitimate disclosure of information, and they were not breaching their Code of Practice.<sup>9</sup> It was communicated to all participating Gardaí that any identifying information about the families involved would not be included in the audit report. In addition, Gardaí were informed that neither they nor their station would be identified in any dissemination of the research conducted.

### 1.3.1 Procedure

The audit encompassed a number of different stages to deliver a complete review of the exercise by members of AGS of their section 12 powers, and to achieve the aims set out above. The audit did not merely look at a short period of time in a vacuum in order to assess the use of this emergency measure. Access to the PULSE system enabled the analysis of quantitative data from 2008 to 2015 to establish patterns, highlight practices

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<sup>9</sup> Data Protection in An Garda Síochána, Code of Practice under the terms of section 13 of the Data Protection Acts 1988 and 2003.

and clarify the circumstances of its use. Notwithstanding this comprehensive review of PULSE data from 2008 to 2015, there was also an in-depth focus on qualitative data from the start of January to the end of December 2014. This component of the audit provided detailed information on the use by Gardaí of their powers under this provision during the course of the most recent calendar year period, from when the audit was commenced. In addition, the audit included an evaluation of instances of section 12 exercise in a particular calendar month in 2015, conducting interviews with members who exercised their power under the 1991 Act during that month, September 2015.

It is worth noting that this study did not simply involve a random sample of Garda stations in Ireland in order to paint a small picture of the presumed general State-wide approach to the use of police powers under this section. Instead, it sought to establish on a comprehensive national scale the actual work practices regarding section 12 across the country, reviewing data gathered in the entire jurisdiction.

### **Audit Stages**

The following stages took place:

#### **1.3.1(i) Stage (1)**

Review of statistical data: From 2008 to 2015, all quantitative statistical data available relating to the use of section 12 was analysed and processed on a monthly basis.

#### **1.3.1(ii) Stage (2)**

2014 study: This stage encompassed a review of all valid cases involving the use by a member of AGS of his or her power pursuant to section 12 of the 1991 Act, during the course of 2014. Three distinct sources of information were examined in relation to this twelve month period:

A) **PULSE:** An extract from the computerised database utilised by AGS as its core information platform was examined in respect of each occasion section 12 powers was exercised in 2014. The PULSE system records not only court convictions, but also incidents, intelligence and “soft information” (i.e. non-court conviction information) and it was a crucial resource for the purposes of this audit.

B) **Questionnaires:** A detailed questionnaire was sent to each Garda station in the jurisdiction. This questionnaire was to be completed by a Garda member who invoked his or her section 12 powers, at any stage during the course of 2014. A questionnaire was required to be completed in each instance section 12 was used. This questionnaire gave the Garda respondents an opportunity to provide an account, in their own words, of the circumstances which led to the exercise of section 12 of the Child Care Act 1991. Garda respondents also had to provide some personal information, including details concerning any training in child protection and diversity they had received. Respondents were required to provide the PULSE incident number for the occasion of use of section 12, and indicate whether or not there exists a paper file relating to that specific invocation of their emergency protective measures.

In addition, Garda respondents were required to answer specific questions relating to the invocation of section 12. These related to the beginning of the process:

*Who initiated the involvement of the Gardai? How many children were removed?;*

the exercising of the power itself:

*Who accompanied the respondent? Was resistance experienced? The grounds for section 12 use?;*

and the aftermath:

*Into whose care was the child placed? Was appropriate feedback received? Was a Tusla notification form completed?*

As well as seeking factual information, the questionnaire provided an opportunity for individual members to give their views, particularly with regard to communication and cooperation with social workers.

C) **Available files:** A complete review of all files available was undertaken in respect of any occasion section 12 powers were employed throughout 2014. This ensured that the requisite demographic data was gathered in relation to the child and his or her

family, if that data was not available elsewhere, including the following details: the child's age and gender, the area in which the family reside, socio-economic background of the family, nationality, disability and whether the family was previously known to AGS. It was also important to establish whether there was a criminal investigation arising out of the circumstances in which the section 12 powers were invoked.

### **1.3.1(iii) Stage (3)**

Interviews: This stage concentrated on instances of section 12 use that occurred during the calendar month September 2015. Focusing on September 2015 enabled Garda members to give a detailed account of his or her invocation of the emergency power under the 1991 Act, while the incident remained fresh in his or her memory. First, those members of AGS who had employed section 12 during that nominated month were ascertained. Next, a random sample of those Gardaí were asked to participate in an interview. This stage allowed the audit team to enrich the data collected from other stages with unique and valuable personal insights from respondents, and helped provide a comprehensive and contemporaneous picture of section 12 use by AGS. These interviews took place face-to-face in Garda stations, and followed a semi-structured interview format. The questions asked were focused on subjective perceptions of Garda respondents in order to examine the necessarily personal nature of Garda perceptions of what constitutes "immediate and serious risk to a child". They included the following: "*Would section 12 have been invoked if an out-of-hours social work service was available?*" "*Do general presumptions operate for Gardaí in their use of emergency protective powers for children?*" "*Is section 12 used to bypass delays in obtaining court orders?*" The interviews were recorded by the audit team who took detailed contemporaneous notes during each interview.

### **1.3.1(iv) Stage (4)**

Focus Groups: In this stage, focus groups were established. These operated to discuss specific questions, such as "*What constitutes imminent and serious risk?*" and "*How serious a risk is neglect?*" This stage was undertaken subsequent to the previous three stages. The discussion topics were informed by the results of the research conducted and data gathered under these previous three stages. These discussion topics in the focus groups were designed to fill gaps in information remaining in the data set after the initial stages,

and also enrich existing data on particular questions in a dynamic and collaborative discursive environment.

Two focus groups were organised. The first involved senior management, including specialist unit officers, while the second focus group consisted of a representative sample of Gardaí who have exercised section 12 powers. These sessions were digitally audio recorded with the consent of the participants, in order to best capture the insights from the group discussions.

### **1.3.2 Overview of Research Data Analysis Methodology**

The audit undertook the following approach to the processing, compilation and analysis of the research data:

- A number of encrypted folders were created by the audit team to store all information gathered in the audit process, using Trucrypt encryption software. These encrypted folders were located in specified catalogued electronic devices.
- All sensitive data, which the audit team was given access to was stored on four electronic devices. The principal device, an encrypted personal computer, was given to the audit team by AGS. This device contained all PULSE data, and all returned case files and completed questionnaires from the questionnaire phase. The other devices were an encrypted memory stick, two computer disks and another two personal computers with an encrypted folder in which all data was stored. Data was transferred via the memory stick to the second personal computer for the questionnaires and case files to be analysed by more than one member of the audit team. The encrypted memory stick containing backups of all data given to the audit team was stored in a secure location by the principal member of the audit team.

For the purposes of this audit, “all sensitive data” includes personal information about any person, including the following: Garda PULSE data, identifying information of any children, parents, or carers with whom AGS had any contact, and any information that might identify members of AGS who participated in the audit. Identifying information includes the names of those persons, where they are from, where they work, etc. In most circumstances, gender identifiers have also been changed to further avoid possible identification of individuals.

- Data from the Garda PULSE system was anonymised, coded<sup>10</sup> and analysed using Microsoft Excel.
- Data from the Questionnaires was anonymised, coded and analysed using Microsoft Excel.
- Data from the Interviews was anonymised, coded and analysed using NVivo qualitative analysis software.
- Data from the Focus Groups was anonymised, coded and analysed using NVivo qualitative analysis software.
- A general analytical framework was developed surrounding the core research questions established at the outset of the audit.
- A grounded theory methodology was employed to develop and expand upon the analytical themes and concepts generated by the core research questions.

### **1.3.3 Data Protection and Confidentiality Procedures**

In order to ensure compliance with data protection and privacy rights of individuals in research subject cases, and the Garda respondents who participated in this audit, a number of security precautions in relation to research data were taken as outlined below:

- Only researchers named in the Data Processing Agreement were given access to research data in any form.
- Named researchers carefully redacted any identifying information in relation to individuals in the research subject cases in each stage of the audit, before research data compilation and analysis began.
- A record was kept tracking the data transferred to and held by each named researcher individually.
- All personal electronic devices used to process, compile and analyse research data were listed in a “personal electronic device” catalogue.
- All “soft” copies containing research data held by named researchers were accessed and stored in encrypted folders on catalogued electronic devices.
- All hard and soft copies of research data were either returned to the Garda Data Controller or destroyed at the conclusion of the audit.

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<sup>10</sup> “Coding” in the context of this audit refers to the process of translating raw information collected through the various methodologies of this audit, and converting it into usable forms of data for analysis.



## **1.4 RESEARCH**

### **1.4.1 Practices in other jurisdictions**

During the conduct of the audit, research was undertaken on approaches adopted in other jurisdictions towards corresponding emergency powers vested in police forces. The following took place:

- 1) An examination of practices in other jurisdictions where a similar police power exists;
- 2) A consideration of literature on international best practice.

Looking at policies, procedures and attitudes elsewhere in the world was informative from an Irish perspective, in particular with regard to shaping future development of policy in this jurisdiction regarding section 12 of the Child Care Act 1991 and its use.

### **1.4.2 Interview of experts**

During the course of the audit, any additional professionals that could provide useful information, opinions or guidance regarding section 12 powers were interviewed.

## **CHAPTER 2:**

## **THE SYSTEM**

## 2.1 OVERVIEW

### 2.1.1 Exceptional Powers

Section 12 of the Child Care Act 1991, as amended, is an exceptional exercise of executive power in advance of a care application to a court by the Child and Family Agency, Tusla. It provides as follows:

12. —(1) Where a member of the Garda Síochána has reasonable grounds for believing that—

(a) there is an immediate and serious risk to the health or welfare of a child, and

(b) it would not be sufficient for the protection of the child from such immediate and serious risk to await the making of an application for an emergency care order by the Child and Family Agency under section 13, ... the member, accompanied by such other persons as may be necessary, may, without warrant, enter (if need be by force) any house or other place (including any building or part of a building, tent, caravan or other temporary or moveable structure, vehicle, vessel, aircraft or hovercraft) and remove the child to safety.

(2) The provisions of subsection (1) are without prejudice to any other powers exercisable by a member of the Garda Síochána.

(3) Where a child is removed by a member of the Garda Síochána in accordance with subsection (1), the child shall as soon as possible be delivered up to the custody of the Child and Family Agency.

(4) Where a child is delivered up to the custody of the Child and Family Agency in accordance with subsection (3), the Agency shall, unless it returns the child to the parent having custody of him or a person acting in loco parentis or an order referred to in section 35 has been made in respect of the child, make application for an emergency care order at the next sitting of the District Court held in the same district court district or, in the event that the next such sitting is not due to be held within three days of the date on which the child is delivered up to the custody of the Agency, at a sitting of the District Court, which has been specially arranged under section 13(4), held within the said three days, and it shall be lawful for the Agency to retain custody of the child pending the hearing of that application.

(5) ...

The prerequisites for the exercise of section 12 powers are that:

- there are **reasonable grounds** underpinning a belief that there is a risk to a child's health or welfare;
- the gravity of the risk is both **immediate and serious** in nature; and
- the risk is such that there is **no time to wait** for an application to the District Court for an emergency care order under section 13 of the 1991 Act.

## 2.1.2 Guidance in Ireland and England and Wales

An Garda Síochána's policy on the use of section 12 of the Child Care Act 1991 is now set out in HQ Directive 48/2013 and the accompanying policy document, entitled *Garda Síochána Policy on the Investigation of Sexual Crime, Crimes against Children and Child Welfare* (2013). This replaces HQ Directive 141/95 (1995), which merely set out the relevant legislative provisions, and which predated the European Convention on Human Rights Act 2003.

The 2013 Policy Statement now provides as follows:

### (8) “Real and immediate”

Guidance can be gleaned from the leading case in the United Kingdom concerning a “real and immediate” threat which is *In re Officer L* [2006] UKHL 36. In this case, the House of Lords said that a real and immediate threat is one that is:

- (a) Objectively verified; and
- (b) Present and continuing. The threshold is a high one. In making this assessment, **police officers should consider all relevant sources of information** and ensure that all decisions are **justified and recorded**.

### (9) “Feasible Operational Steps”

In the event that it is established that a real and immediate threat exists the next issue is what, if anything, the Garda members are required to do. The legal requirement is for Garda members to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid the risk to life.<sup>11</sup> Accurate and detailed recording of relevant decisions and the decision-making process can assist in this regard.

Interesting comparisons can be drawn between section 12 of the Child Care Act 1991 and section 46 of the Children Act 1989 in England and Wales.

The guidance given to Police regarding the exercise of section 46 powers (Home Office Circular 17/2008) is extensive. There had been earlier Home Office guidance both in 1991 and 2003 and it seems that the 2008 guidance was issued after the case of *Langley v Liverpool City Council and Chief Constable of Merseyside Police*.<sup>12</sup>

It is submitted that the most significant difference between the position in England and Wales, and Ireland, is that the continued exercise of the exceptional power in England

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<sup>11</sup> See section 12 of the Child Care Act 1991.

<sup>12</sup> [2005] EWCA Civ 1173.

and Wales must be authorised by a high-ranking police officer. The risk assessment conducted by the initiating officer is subject to internal oversight by the designated officer. Home Office guidance (HOC 17/2008) requires such an officer to be of the rank of Inspector or above.

The Circular provides (paragraph 15) that:

Police protection is an emergency power and should only be used when necessary, the principle being that wherever possible the decision to remove a child/children from a parent should be made by a court.

Paragraph 16 provides that:

All local authorities should have in place local arrangements (through their local Chief Executive and Clerks to the Justices) whereby out-of-hours applications for Emergency Protection Orders (EPOs) may be made speedily and without an excess of bureaucracy. Police protection powers should only be used when this is not possible.

District Courts in Ireland are accessible “out-of-hours” and such applications are made routinely, as can be seen from the number of ‘special sittings’.

There are interesting textual differences between the procedural safeguards in section 12 of the Child Care Act 1991 and section 46 of the Children Act 1989.

Section 46(1) of the Children Act 1989 provides as follows:

Where a constable has reasonable cause to believe that a child would otherwise be likely to suffer significant harm he may; (a) remove the child to suitable accommodation and keep him there, or, (b) take such steps as are reasonable to ensure the child’s removal from any hospital or other place in which he is then being accommodated is prevented.

Subsection (2) provides:

For the purposes of this Act a child with respect to whom a constable has exercised his powers under this section is referred to as having been taken into police protection.

The subsequent subsections lay down the statutory obligations upon the police once a child has come into police protection to alert the relevant local authority, the child and the parents of the steps that have been taken.

Accordingly, section 46 of the Children Act 1989 creates two distinct roles: the “initiating officer” – the constable who initiates police protection – and the “designated officer” who is assigned by the chief officer to carry out enquiries.

Section 46(7) enables the designated officer to apply for an emergency protection order whilst a child is in police protection. The designated officer is an officer appointed in accordance with section 46(3)(e) to inquire into cases where children have been taken into police protection.

This requirement of internal oversight of police protection within the police organisation is an important organisational gatekeeping check on the exercise of section 46 powers. It may be appropriate to consider a similar approach in this jurisdiction in any revised protocols on the exercise of section 12 powers.

### **2.1.3 Importance of Avoiding Role Ambiguity**

In many cases Garda members come upon situations where they have no option but to exercise their powers under section 12 – for example, where they come upon a young child who is found abandoned or wandering with no parent; or where members are called to a domestic dispute/public order incident/crime scene and the parents are incapable of caring for the child.

When exercising such intrusive powers against the family, Garda members must act in a proportionate manner. For example, Garda members must make every effort to engage with a parent and find out if there is a suitable relative or person known to the child who could care for him or her in the period before AGS notify Tusla of its concerns. This facilitates Tusla making a risk assessment, and, if necessary, an application to the District Court for an Emergency Care Order or an Interim Care Order.

Even in an emergency situation, it is desirable, where possible, to work in partnership with a parent. This is necessary to achieve the constitutional/ECHR (European Convention on Human Rights) requirement of proportionality, in any intervention in private family life. As noted in other jurisdictions, parents can, with careful and sympathetic explanation, be brought to agree to regimes of ‘supervision’. Alternatively, parents may, after consultation, agree to the child remaining in hospital or even a short-

term voluntary care arrangement. Where access to a solicitor is available, the parent can have the benefit of legal advice, facilitating a consensual realisation of the goal of family reunification. That said, care is also needed to ensure that the parent is not pressured or coerced into a course of action against his or her consent.<sup>13</sup>

There is also a category of circumstances where Tusla seeks the assistance of AGS and it is in those circumstances that section 12 powers are exercised. It is increasingly important for Tusla and AGS to work together. One area of cooperation involves AGS support for Tusla social workers who must visit locations and deal with mentally unstable, violent, and/or substance-abusing individuals. Social workers generally do not have on-site self-protection and there may indeed be a history of hostility, threats and violence towards social workers. Because of this, and the stabilising effect the presence of a Garda member can have, it is often necessary for AGS members to accompany social workers to conduct their investigations. AGS is also available 24 hours per day, 365 days a year, whereas Tusla social workers are often only available within standard office hours, 9am to 5pm, Monday to Friday.<sup>14</sup> There are a number of national protocols in place between Tusla and AGS to ensure good co-operation, discussed below. However, in terms of section 12 powers, AGS has a separate statutory risk assessment role and responsibility.<sup>15</sup> There is also a formal Child Protection Notification System in place. The 2011 'Children First' guidance<sup>16</sup> recommends the use of Joint AGS/Tusla area action sheets, and that Tusla case files contain a record of the joint action sheet.

There is a danger that AGS could be propelled into bypassing its own risk assessment under section 12 by being influenced by a risk assessment undertaken by Tusla. It is of paramount importance to appreciate that the risk assessment under section 12 is separate and independent of a general welfare risk assessment. Accordingly, AGS risks being exposed to litigation under the 1991 Act, the ECHR and Article 42A of the Constitution, if it does not adopt its own independent risk analysis.

'Role ambiguity' occurs when individuals lack a clear definition of their role expectations

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<sup>13</sup> See *Re A-W & C (Children)* [2013] EWHC B41 (Fam) (07 October 2013), discussed below.

<sup>14</sup> Out-of-hours social work services are provided by Tusla in the greater Dublin area, and Cork. From early 2016 a national out-of-hours service is also now provided on contract by Tusla. All three services serve as a referral service for AGS.

<sup>15</sup> See page 54 of the *Child Protection and Welfare Practice Handbook*.

<sup>16</sup> <<http://www.dcy.gov.ie/documents/Publications/ChildrenFirst.pdf>> (last visited 13 February 2016).

and the requirements/methods to complete their job tasks and obligations. Police officers in every jurisdiction may encounter role ambiguity for a variety of reasons. They are frequently entering sensitive and pressurised situations where there is no possibility for complete information. Therefore, it is difficult to receive clear instructions, or apply particular training to a specific situation. Gupta and Jenkins note “[t]his lack of information may raise the uncertainty regarding expectations associated with the role”.<sup>17</sup>

The training of rank and file members of AGS on the exercise of section 12 powers, and multidisciplinary training afforded to members of AGS, needs to be clear. Moreover, the reporting and review of the exercise of such powers, and the learning opportunities offered by this critical reflection, also demands clarity.

The case of *Langley v Liverpool City Council and Chief Constable of Merseyside Police*<sup>18</sup> focused on the lawfulness of police use of section 46, when County Council social workers could have applied to the courts for a care order. Though Dyson LJ found the section 44 court ordered protective scheme held statutory primacy over the police powers under section 46, he overturned the trial judge’s finding that police use of section 46 was unlawful where an EPO is operative. While an EPO is the preferred means of removing a child at risk from parental custody – due to the oversight of the court under section 44 – in certain circumstances the exercise by police of section 46 may be called for where there are “compelling reasons to do so”.<sup>19</sup> Citing Home Office Circular 44/2003,<sup>20</sup> Dyson LJ held:

[S]ection 46 should be invoked only where it is not practicable to execute an EPO. In deciding whether it is practicable to execute an EPO, the police must always have regard to the paramount need to protect children from significant harm.<sup>21</sup>

However, in the specific case, Dyson LJ did find an Article 8 breach by the police officer, as the mere existence of an EPO is not a sufficiently “compelling reason” for the exercise of section 46. A police officer should assess the instant circumstances independent of any

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<sup>17</sup> Gupta, N & Jenkins, GD, “Dual Career Couples: Stress, Stressors, Strains and Strategies”, in TA Beehr & RS Bhagat (Eds), *Human Stress and Cognition in Organizations: An Integrated Perspective* (Wiley 1985) 141-175; Lewis, SNC & Cooper, CL, “Stress in Dual Earner Families”, in BA Gutek (Ed), (1988) 3 *Women and Work: An Annual Review* 139-168.

<sup>18</sup> [2005] EWCA Civ 1173.

<sup>19</sup> Langley, [35].

<sup>20</sup> Langley, [41].

<sup>21</sup> Langley, [40].



EPO that is in effect. The correct approach is for the police officer to facilitate the County Council in executing the EPO: the preferred means of removing a child from parental custody.

#### **2.1.4 English and Welsh Case Law on Police Exercise of Section 46**

The English and Welsh case law on section 46 is instructive from the perspective of principle, though it is not on all fours with the legislative position in Ireland.

In *X Council v B*,<sup>22</sup> the English High Court focused mainly on Emergency Protection Orders (EPOs), but the judgment is also relevant to the general constraints on intervention in family life by the Executive under the ECHR. The key components of the judgment relevant in Irish law concern Munby J's detailed analysis of the procedural rights of parents in any care proceedings.<sup>23</sup> For example, while the County Council may be exercising parental responsibility for the child under section 33 (Emergency Protection Order) of the Children Act 1989, this does not mean that the Council can automatically exercise such power without consulting or notifying the parents of the child. Any changes to a care plan must include parents in the decision-making: "...the fact that the local authority also has parental responsibility does not deprive the parents of their parental responsibility." The court emphasised that parental rights under Articles 6 and 8 of the ECHR necessitate this procedural requirement on the part of the Council. As EPOs are an extremely harsh, draconian and exceptional example of Executive power, the ECHR requires such powers to be used only in exceptional circumstances. Munby J asserted "the court should adopt a 'non-interventionist' or 'least interventionist' approach" in determining whether to interfere in the autonomy of family decision-making. This underlying conservative philosophy for the role of the State "inherent" in the statutory scheme,<sup>24</sup> combined with the ECHR, requires strict scrutiny by the court of any further limits on parental rights following removal of a child into care. Courts should be conscious of any dangers to the family relations between the parent(s) and a young child. However, while a fair balance needs to be struck between parental and child interests, the best interests of the child are paramount in any balancing exercise.<sup>25</sup> "...a

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<sup>22</sup> [2004] EWHC 2015 (Fam).

<sup>23</sup> See in particular the much-cited 14 principles at [57].

<sup>24</sup> See Johnson J in *B v B (A Minor) (Residence Order)* [1992] 2 FLR 327, 328 – cited by Munby J in *X Council*, [43].

<sup>25</sup> *Johansen v Norway* (1996) 23 EHRR 33.

parent cannot be entitled under Article 8 ECHR to have such measures taken as would harm the child’s health and development.”

According to Munby J, “Article 8 ECHR includes a right for the parent to have measures taken with a view to his or her being reunited with the child and an obligation for the national authorities to take such action.” Adopting a proportionality analysis, Munby J stated that as Article 8 requires the least interventionist approach by the State – other *less intrusive* means should be considered before a child is removed from parental custody. If a removal order is made, it should only be exercised by the relevant authority for as long as is absolutely necessary. Additionally, Munby J emphasised that courts and judges should be available out of normal office hours to hear and evaluate emergency applications: “[s]uch fundamental matters are not to be regulated by the non-availability of courts or judges...”.<sup>26</sup>

Crucially in *X Council*, Munby J was also unsympathetic to the County Council’s defence that the Article 8 breaches (specifically, the failure to provide the parents with contact time with their children while in care) were partially due to limited resources.<sup>27</sup>

The case of *Re X: Emergency Protection Orders*<sup>28</sup> involved serious systemic failures by County Council social services in its pursuit of an EPO, and a flawed understanding of the legal tests governing the legitimate authorisation of EPOs.<sup>29</sup> Given the enormous significance of making EPOs, the High Court emphasised the importance that courts hear evidence from frontline social workers *first hand*; prioritise EPO applications – not forcing the hearing into a busy court list;<sup>30</sup> and that judges (in England and Wales, lay magistrates) be advised of the legal context of such decisions – specifically Munby J’s 14 principles.<sup>31</sup> McFarlane J also highlighted the heightened scrutiny courts and social

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<sup>26</sup> *X Council*, [49].

<sup>27</sup> *X Council*, [88].

<sup>28</sup> [2006] EWHC 510.

<sup>29</sup> *Re X: EPOs*, at [80].

<sup>30</sup> *Re X: EPOs*, at [91].

<sup>31</sup> *Re X: EPOs*, at [101]. The full 14 principles are found at [57] in *X Council* and are provided here in full: “i) An EPO, summarily removing a child from his parents, is a “draconian” and “extremely harsh” measure, requiring “exceptional justification” and “extraordinarily compelling reasons”. Such an order should not be made unless the FPC is satisfied that it is both necessary and proportionate and that no other less radical form of order will achieve the essential end of promoting the welfare of the child. Separation is only to be contemplated if immediate separation is essential to secure the child’s safety; “imminent danger” must be “actually established”.

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ii) Both the local authority which seeks and the FPC which makes an EPO assume a heavy burden of responsibility. It is important that both the local authority and the FPC approach every application for an EPO with an anxious awareness of the extreme gravity of the relief being sought and a scrupulous regard for the Convention rights of both the child and the parents.

iii) Any order must provide for the least interventionist solution consistent with the preservation of the child's immediate safety.

iv) If the real purpose of the local authority's application is to enable it to have the child assessed then consideration should be given to whether that objective cannot equally effectively, and more proportionately, be achieved by an application for, or by the making of, a CAO under section 43 of the Act.

v) No EPO should be made for any longer than is absolutely necessary to protect the child. Where the EPO is made on an ex parte (without notice) application very careful consideration should be given to the need to ensure that the initial order is made for the shortest possible period commensurate with the preservation of the child's immediate safety.

vi) The evidence in support of the application for an EPO must be full, detailed, precise and compelling. Unparticularised generalities will not suffice. The sources of hearsay evidence must be identified. Expressions of opinion must be supported by detailed evidence and properly articulated reasoning.

vii) Save in wholly exceptional cases, parents must be given adequate prior notice of the date, time and place of any application by a local authority for an EPO. They must also be given proper notice of the evidence the local authority is relying upon.

viii) Where the application for an EPO is made ex parte the local authority must make out a compelling case for applying without first giving the parents notice. An ex parte application will normally be appropriate only if the case is genuinely one of emergency or other great urgency – and even then it should normally be possible to give some kind of albeit informal notice to the parents – or if there are compelling reasons to believe that the child's welfare will be compromised if the parents are alerted in advance to what is going on.

ix) The evidential burden on the local authority is even heavier if the application is made ex parte. Those who seek relief ex parte are under a duty to make the fullest and most candid and frank disclosure of all the relevant circumstances known to them. This duty is not confined to the material facts: it extends to all relevant matters, whether of fact or of law.

x) Section 45(7)(b) permits the FPC to hear oral evidence. But it is important that those who are not present should nonetheless be able to know what oral evidence and other materials have been put before the FPC. It is therefore particularly important that the FPC complies meticulously with the mandatory requirements of rules 20, 21(5) and 21(6) of the Family Proceedings Courts (Children Act 1989) Rules 1991. The FPC must "keep a note of the substance of the oral evidence" and must also record in writing not merely its reasons but also any findings of fact.

xi) The mere fact that the FPC is under the obligations imposed by rules 21(5), 21(6) and 21(8), is no reason why the local authority should not immediately, on request, inform the parents of exactly what has gone on in their absence. Parents against whom an EPO is made ex parte are entitled to be given, if they ask, proper information as to what happened at the hearing and to be told, if they ask, (i) exactly what documents, bundles or other evidential materials were lodged with the FPC either before or during the course of the hearing and (ii) what legal authorities were cited to the FPC. The local authority's legal representatives should respond forthwith to any reasonable request from the parents or their legal representatives either for copies of the materials read by the FPC or for information about what took place at the hearing. It will therefore be prudent for those acting for the local authority in such a case to keep a proper note of the proceedings, lest they otherwise find themselves embarrassed by a proper

services must afford to the EPO application process, when parents are not present and legally advised. In that case, the local authority's legal advisor was unsure whether there were sufficient grounds for the risk threshold of "significant harm" under section 31 to be met, but the social worker in court went ahead and sought an EPO from the court. McFarlane J found due diligence failures by the County Council and the court under the Act and the ECHR, where the court was not provided with the minutes of the most recent case conference, and where it did not receive evidence from a medical expert, even though the EPO was sought on medical grounds. These procedural and evidential failings at the application hearing made it very difficult for the parents to challenge the EPO, thereby violating their Article 6 and 8 ECHR rights. McFarlane J found the social workers had sought the EPO principally to have the child medically assessed – a gross misuse of the protective power under the Children Act 1989.

In *A v East Sussex County Council (ESCC) & Ors*,<sup>32</sup> the English High Court again critically examined the use of section 46 by police to take a child into care, where police were acting in coordination with the respondent local authority's social workers. Consistent with the Article 6 and 8 ECHR requirements of proportionality, Hedley J's general

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request for information which they are unable to provide.

xii) Section 44(5)(b) provides that the local authority may exercise its parental responsibility only in such manner "as is reasonably required to safeguard or promote the welfare of the child". Section 44(5)(a) provides that the local authority shall exercise its power of removal under section 44(4)(b)(i) "only ... in order to safeguard the welfare of the child." The local authority must apply its mind very carefully to whether removal is essential in order to secure the child's immediate safety. The mere fact that the local authority has obtained an EPO is not of itself enough. The FPC decides whether to make an EPO. But the local authority decides whether to remove. The local authority, even after it has obtained an EPO, is under an obligation to consider less drastic alternatives to emergency removal. Section 44(5) requires a process within the local authority whereby there is a further consideration of the action to be taken after the EPO has been obtained. Though no procedure is specified, it will obviously be prudent for local authorities to have in place procedures to ensure both that the required decision-making actually takes place and that it is appropriately documented.

xiii) Consistently with the local authority's positive obligation under Article 8 to take appropriate action to reunite parent and child, sections 44(10)(a) and 44(11)(a) impose on the local authority a mandatory obligation to return a child who it has removed under section 44(4)(b)(i) to the parent from whom the child was removed if "it appears to [the local authority] that it is safe for the child to be returned." This imposes on the local authority a continuing duty to keep the case under review day by day so as to ensure that parent and child are separated for no longer than is necessary to secure the child's safety. In this, as in other respects, the local authority is under a duty to exercise exceptional diligence.

xiv) Section 44(13) requires the local authority, subject only to any direction given by the FPC under section 44(6), to allow a child who is subject to an EPO "reasonable contact" with his parents. Arrangements for contact must be driven by the needs of the family, not stunted by lack of resources.

<sup>32</sup> [2010] EWCA Civ 743.

guidance to County Council social workers was to choose the least distressing option for the mother and child in the circumstances, to manage the particular risks as the social workers perceived them. Hedley J emphasised the first priority of social and police services in child protection scenarios should always be to attempt to work in partnership with the child's parents.<sup>33</sup> As in the decisions summarised above, the High Court was sympathetic to the precautionary logic employed by social workers and police in child protection circumstances, and advised restraint when critically evaluating the perceptions of actors in high-stakes, time-sensitive scenarios; hindsight should not be excessively harsh:

There has been now for some time heightened public concerns about child protection and it is not right to criticise ESCC for taking what with the benefit of hindsight might appear an unduly cautious or even heavy approach. In my judgment ESCC were entitled to conclude that the exercise of statutory powers was necessary to protect B.<sup>34</sup>

Hedley J concluded by offering a piercing contextualised insight into the operation of all systems of child protection:

Social workers in these situations are in a very difficult place. If they take no action and something goes wrong, inevitable and heavy criticism will follow. If they take action which ultimately turns out to have been unnecessary, they will have caused distress to an already distressed parent. On the other hand they are also invested with or have access to very draconian powers and it is vital that, if child protection is to command public respect and agreement, such powers must be exercised lawfully and proportionately and that the exercise of such powers should be the subject of public scrutiny. This litigation demonstrates that child protection only comes at a cost: to an innocent parent who is subject to it based on an emergency assessment of risk and to public authorities who have had to account in a judicial setting for their exercise of power. It is, however, a cost that has inevitably to be exacted if the most vulnerable members of our society, dependent children, are to be protected by the state.<sup>35</sup>

In summary, in *A v ESCC* it was held that removal by police to protect children should be a measure of last resort where other procedures could not be implemented without delay.

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<sup>33</sup> *A v East Sussex*, at [9].

<sup>34</sup> *A v East Sussex*, at [15].

<sup>35</sup> *A v East Sussex*, at [21].

The more recent decision of *Re A-W & C (Children)*<sup>36</sup> developed the *Langley* jurisprudence and examined the interplay between sections 44 and 46 of the Children Act 1989. Though not named as respondents, the police were directly implicated in the respondent Council's handling of this case, as the applicant mother argued their exercise of section 46 in this case was both deeply inappropriate in the circumstances, and unlawful under the Human Rights Act 1998 (HRA). In this case, the parents had been generally cooperative with social services, but had, following independent legal advice, refused to agree to an accommodation order (provided for under section 20 of the Children Act). Citing *Surrey County Council v M, F & E*,<sup>37</sup> Singleton J emphasised that the threat of section 46 to coerce parental agreement to a section 20 procedure was deeply inappropriate, and represented an attempt by police and social services to circumvent the section 44 EPO process. As in *Langley*, though it was open to the social workers to apply for an EPO (the local court could have accommodated an application hearing), the police and social workers opted instead for the police to exercise section 46.

The court applied Articles 6 and 8 of the ECHR to the draconian powers of police under the Children Act 1989, and found the Convention obliges police to ensure not only that removal was absolutely necessary, but also that the *means of removal* was absolutely necessary: "There was a duty, it seems to me, not just on the social worker but on the police themselves to look at the route into protection."<sup>38</sup>

In *Kiam v Crown Prosecution Service*,<sup>39</sup> the English High Court held that taking a child into police protection under section 46 of the Children Act 1989 was not unlawful in circumstances where it was too late to obtain an EPO.

### 2.1.5 **Tusla**

In 2013 Tusla (CFA) issued a "best practice" guidance, which is published on the Internet.

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<sup>36</sup> [2013] EWHC B41.

<sup>37</sup> [2012] EWHC [2400].

<sup>38</sup> *Re A-W & C*, at [38].

<sup>39</sup> [2014] EWHC 1606.

### 2.1.6 The Court Process

What is similar in both section 12 and section 46 is that removal under both provisions is envisaged as but the first step in a process, which may later include an application for an Emergency Protection Order/Emergency Care Order/Interim Care Order.

Whether section 12 is exercised properly or not is not determined in the District Court, as this is a discrete independent provision exercised by AGS. The District Court is merely involved in determining whether to grant an Emergency Care Order (ECO) under section 13, and the case law in that regard is clear. The risk must be both immediate and serious and the intervention must be proportionate to the risk. The District Court Rules have been changed to ensure that a parent's Constitutional and Convention rights to fair procedures are protected.

### 2.1.7 The District Court

First instance hearings in the District Court in respect of ECOs are not infrequent. Such cases take a considerable time at hearing given the high threshold necessary to satisfy section 13 of the 1991 Act. On occasion, Tusla and AGS persuade the parent to consent to a voluntary arrangement to obviate a determination under section 13.<sup>40</sup>

A detailed review of the relevant case law reveals that only a small number of ECOs have been challenged through Judicial Review/Article 40 High Court hearings or appeals. Many of the decisions are only reported at the hearing of the Care Order. As previously stated, the threshold criteria for section 13 applications is a high one which must be established evidentially, and fair procedures must be afforded by Tusla and the Court. It is vitally important that:

- the parent(s) knows the reason for the application;
- SI No 143 of 2015 is applied ensuring the procedural rights of the parent(s);
- the parent(s) or the person in *loco parentis* is legally represented;
- the parent(s) have the minimum notice period under the Rules of Court;
- if the parent(s) operate under a disability that they have an advocate/translation facility etc.;
- where appropriate the Vienna Convention obligation is discharged by the Child and

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<sup>40</sup> See *Child and Family Agency and NK (Care Order - Proportionality - Likelihood of Future Harm - Reception into Voluntary Care)* [2014] IEDC 14.

Family Agency;

- where the order is made *ex parte* (for particular exceptional reasons) the grounding affidavit addresses fully the reason for not affording notice to the parents;
- the parents are aware of their right to come to court on short notice to discharge the Emergency Care Order.

### 2.1.8 **Irish Jurisprudence**

The Irish courts' approach to interpreting the Child Care Act 1991, and applying Articles 40, 41 and 42 of the Constitution to child care cases, is comprehensively set out in the cases identified below.

The case of *State (D and D) v Groarke*<sup>41</sup> considered the rights of parents to natural justice when the State brings care proceedings to remove a child from her family. The Supreme Court set aside care orders made by the District Court on the basis that the procedures employed by the District Court breached the parents' right to natural justice when dealing with Executive bodies. Finlay CJ, for the unanimous court, also found that parents have a general right<sup>42</sup> to know the location of their children throughout child care proceedings; such access – aside from exceptional cases, for example where the child is at risk of being abducted from care by the parent – was considered by the court to be “a very necessary ingredient in the welfare of the child”.

In *Eastern Health Board v McDonnell*,<sup>43</sup> the High Court was called upon to interpret the Child Care Act 1991, the boundaries and distinctions between the jurisdictions of the District Court who issued and supervised care orders under the Act, and the Health Boards who carried out the care orders and assumed parental responsibility for the care of the child. Distinguishing English case law on the interpretation of similar provisions in the Children Act 1989, McCracken J emphasised the significance of the Irish Constitution's explicit protection of family rights, and implicit protection of the rights of children (now explicit following the insertion of Article 42A), and how that impacted on

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<sup>41</sup> [1990] 1 IR 305.

<sup>42</sup> The courts did not recognise the formal corollary right of children to have access to their parents until the judgment of Carroll J in *MD v GD* [1992] FLJ 34. In *MD*, Carroll J found that as the welfare of the child was the paramount consideration – questions of access should privilege the child's rights, rather than the parent's. G Shannon, *Child Law* (2nd ed, Thomson Reuters 2010), at [12–62]. It is suggested that in the post Article 42A context, this approach is now expressly constitutionally obliged.

<sup>43</sup> [1999] IEHC 123; [1999] 1 IR 174; [1999] 2 ILRM 382.



the question of competing jurisdictions under the Act. The court held that by virtue of the Constitution, but also express elements of the statutory framework, the District Court maintained on-going jurisdiction to review and supervise the Health Board's undertaking of parental responsibilities for a child. The Constitution envisages the courts as the upholder of the Constitutional rights of the child – not Health Boards, or the successor to the Health Boards, the Child and Family Agency.

In *W v Health Service Executive*,<sup>44</sup> the High Court examined whether Article 40.4.2 was an appropriate means for parents, from whose care the child had been removed, to challenge the operation of care orders – in this case an Interim Care Order (ICO). The Court held that once such an order was lawfully made, Article 40.4.2 was not engaged. Peart J also explored the differences between section 17 ICOs, and full Care Orders under section 18 – specifically the varying evidential threshold authorising the continuing removal of the child from the custody of its parents:

In the circumstances of an urgent application for an interim order, it is clear that the Oireachtas has decided that a lower threshold of proof is required in order to obtain an interim order, as time may not permit for the gathering of all witnesses and evidence for the purpose of a full care order application.<sup>45</sup>

Under the time-limited section 17 ICO, the District Court must be satisfied that there is “reasonable cause to believe” that offending circumstances exist justifying removal of the child. While under the open-ended section 18 Care Order, the District Court must be satisfied those offending circumstances actually do exist, the lower threshold for section 17 intervention reflects the immediacy of Executive action demanded in certain circumstances.

Noting the central importance of the family in the Irish Constitutional order, Peart J emphasised it is “...only in very exceptional circumstances that the right of a child to the company and care of his parents within the family should be overridden.”<sup>46</sup>

In *JG & Ors v The Child & Family Agency*,<sup>47</sup> the applicant parents sought High Court relief restricting Tusla from continuing its investigations into alleged child abuse in the family.

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<sup>44</sup> [2014] IEHC 8.

<sup>45</sup> *W v HSE*, at [11].

<sup>46</sup> *W v HSE*, at [44].

The parents argued that Tusla’s conduct in investigating alleged child abuse had breached their constitutional rights to fair procedures (also known as “Constitutional Justice”).<sup>48</sup> Given the seriousness of the claims being made against the parents, O’Malley J agreed that aspects of Tusla’s conduct in its investigation had breached the constitutional rights of the parents to be given an opportunity to respond to those allegations before any findings were made by Tusla.<sup>49</sup> Detailing Tusla’s own policy document<sup>50</sup> on the operation of such investigations, O’Malley J noted that the parents’ right to constitutional fair procedures required Tusla to act with impartiality; to give the parents details of each allegation in advance and in writing; to give advance notice of each stage in the investigation process and in writing; to keep the parents informed of any developments in the investigation; and to give the parents sufficient time to respond to those allegations.<sup>51</sup> Even, as was alleged by Tusla in this case, where alleged abuser parents refuse to cooperate with an investigation, they are constitutionally entitled to be kept informed in writing of every stage, and given time to respond to each stage and finding.

However, as Tusla is statutorily charged with ensuring the welfare of children at risk of serious harm, O’Malley J rejected the suggestion that the body could – similar to when the Director of Public Prosecutions is prohibited from taking prosecutions due to unfairness to the accused – be enjoined from investigating alleged child abuse. That said, the judge did suggest Tusla might, in a very rare case, be enjoined from taking a particular care order application due to abuse of process.<sup>52</sup>

Interestingly, in relation to whether non-statutory case conference procedures could be judicially reviewed, O’Malley J found that as such processes were significant to the statutory functions of Tusla, they had legal effect, and as such are an interference in the autonomy of the family. Case conferences were accordingly found reviewable by the High Court.<sup>53</sup> The judge concluded that the parental rights to constitutional fair procedures were also operative during case conference processes.<sup>54</sup>

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<sup>47</sup> [2015] IEHC 172.

<sup>48</sup> See *In Re Haughey* [1971] IR 217 and *Dellway Investments v NAMA* [2011] IESC 4.

<sup>49</sup> *JG*, at [54].

<sup>50</sup> “Policy & Procedures for Responding to Allegations of Child Abuse & Neglect”, *JG*, at [43].

<sup>51</sup> *JG*, at [55].

<sup>52</sup> *JG*, at [96].

<sup>53</sup> *JG*, at [103].

<sup>54</sup> *JG*, at [104].

The case of *A & X & Y (suing through their mother and next friend Ms A) v CFA* involved an application for judicial review taken by the applicants in respect of various decisions and actions taken on behalf of Tusla.<sup>55</sup> Ms A was in a long-term, non-marital relationship with her partner and they had two children. Various allegations were made against Ms A's partner, which purportedly placed her children's welfare at risk. Tusla staff attended at Ms A's home with members of AGS and the Tusla staff recommended that Ms A leave the home and obtain safe accommodation. Ms A was also advised that if she did not bring the children to a place of safety, Tusla would consider making application for Child X and Child Y to be placed in care. Ms A had felt that the departure from her home would be short-term, but it turned out to be much longer.

A child protection case conference took place about four weeks after Ms A had moved to safe accommodation. At that conference a decision was made to place the children's names on the Child Protection Notification System (CPNS).

The applicant sought various reliefs including an order of *certiorari* in respect of the decision at two child protection case conferences to continue to keep the family separated, and the decision to place the children on the CPNS. Further declaratory relief was sought that Ms A's rights were violated by not allowing her bring a lawyer to the child protection case conferences.

In considering the question of whether the actions of a child protection conference are judicially reviewable, Barrett J disagreed with the judgment of O'Malley J in *JG v Child and Family Agency and Others*.<sup>56</sup> The Court cited O'Malley J's view previously alluded to in this section of the audit that a

...finding by the statutory body charged with the protection of children in the State that a child is at risk to the extent justifying this measure cannot be described simply as part of an investigation process. It may be that access to the system is restricted to a small number of professional persons – however, it is, in my view, an interference with the autonomy of the family and something that very few parents would welcome. It cannot be said to be without legal effect, since it gives access to private information about the family to persons who would not otherwise be entitled to that information.

Barrett J stated at paragraphs 15 and 16:

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<sup>55</sup> [2015] IEHC 679.

<sup>56</sup> [2015] IEHC 172.

This Court finds itself in the uncomfortable position that, with all due respect, it cannot agree with this particular finding of the court in *JG*. Why so? Take, for example – the example is not drawn from the facts of this case – a child who goes today to the Gardaí and says ‘Last night I saw my father punch my mother’. That complaint will be entered into the Gardaí’s PULSE system and, the court understands from counsel for the CFA, will always remain on that system, even when the event is later fully dealt with. Is the retention of such detail an “*interference with the autonomy of the family*”? No. It is the expected action of a competent police force. Why then is the CFA’s maintenance of the CPNS any different? If anything, the CPNS seems to be something that is highly desirable, enabling the CFA, and the limited categories of person who are able to access the CPNS, to bring an informed and refined response to any interactions with a particular child, instead of coming afresh to that child each time s/he comes under the radar of, e.g., the CFA and/or the Gardaí. Contrary to the view expressed by O’Malley J, this Court respectfully considers that most parents *would* consider it to be – sadly – both necessary and desirable that to prevent ‘damage’ occurring to vulnerable children, the State, acting through the medium of the CFA, should maintain a confidential list of vulnerable children whom it encounters, provided that access to such list is suitably restricted. After all, the great risk with an entity as large as the State is that a child could come to the attention respectively of, e.g., the Gardaí and the CFA, giving them cumulative knowledge that the child is highly vulnerable but not giving them individually enough knowledge to recognise that this is so.

It also does not appear to this Court, again with all due respect, that inclusion of a child’s name “*gives access to private information about the family to persons who would not otherwise be entitled to that information.*” At the moment in time that the child is included on the register, the CFA is undoubtedly entitled to that information. Provided the CFA shares that information, and legally it is entitled to share that information, in a manner consistent with the obligations incumbent upon it under the Data Protection Acts, it is not sharing that information with people who are unentitled to that information.

The Court did not consider that the investigatory matters at issue in the within application were properly the subject of judicial review and the court declined to grant the relief sought.

The Court then went on to consider the claim that Ms A’s rights were violated by not allowing her to bring a lawyer to the child protection case conference. The court expressed considerable unease with Tusla’s request to Ms A not to bring a legal representative to the child protection case conference. With respect to the facts of this case, the court commented:

- (i) Ms A is, with all respect to her, a vulnerable person facing a traumatic situation; and
- (ii) she comes from a so-called ‘ordinary’ background and so, rightly or wrongly, may feel herself to be, and may be, at a considerable disadvantage when in the presence of a number of qualified professionals. It is in

precisely such circumstances that a person like Ms A would naturally turn to a solicitor and want that solicitor to attend a Child Protection Conference with her.

In *Child and Family Agency (formerly Health Service Executive) v OA*,<sup>57</sup> the Supreme Court addressed the question of costs in child care cases where the parental challenge to an application by the Child and Family Agency is “unsuccessful”. Noting the constitutional right to fair procedures and Article 42 includes a right to legal representation in the District Court, MacMenamin J set out various principles governing the awarding of costs. In particular, he noted the atypical nature of such proceedings, and the inappropriateness of applying the traditional rules of costs following the event.<sup>58</sup> Generally, where parents employ a private solicitor to represent them, they will be awarded costs where the CFA “acted capriciously, arbitrarily or unreasonably in commencing or maintaining the proceedings”; where “the outcome was particularly clear or compelling”; where it would be particularly unjust towards the parents to award costs against them; and the court held that the District Court must give reasons for its decision to award costs.<sup>59</sup>

### **2.1.9 Emergency Powers and State Intervention under the Irish Constitution**

The Supreme Court jurisprudence provides useful guidance on the governance of exercise of emergency powers and State intervention under the Constitution.

In *North Western Health Board v W (H)*,<sup>60</sup> a seminal judgment on family autonomy and the Irish Constitution, a majority of the Supreme Court (Keane CJ dissenting) found Articles 40, 41 and 42 (Article 42.5 in particular) placed a very high threshold for constitutionally legitimate State intervention in the marital family’s decision-making autonomy under section 3 of the Child Care Act 1991. Under the *NWHB* reasoning, the State, under Article 42.5, could only interfere in the authority of the marital family to determine the appropriate upbringing of their children, where there was a serious “physical or moral”<sup>61</sup> failure of the parents in their duties towards the child. While various members of the majority found the parents’ refusal to permit a PKU test on their child “[u]nwise and

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<sup>57</sup> [2015] IESC 52.

<sup>58</sup> *OA*, at [48].

<sup>59</sup> *OA*, at [49].

<sup>60</sup> [2001] IESC 90 (8 November 2001).

<sup>61</sup> *NWHB*, at [145].

disturbing”,<sup>62</sup> and potentially harmful for the child, the court found it was within the legitimate decision-making authority of the marital family.

In *Western Health Board v KM*,<sup>63</sup> a consultative case stated from the District Court, the Supreme Court addressed appropriate constructions of sections 18, 36 and 47 of the Child Care Act 1991. Specifically, the Supreme Court addressed questions of whether a Health Board (a power now exercised by Tusla) charged with caring for a child, or the District Court could place that child in the care of a relative outside the State, and whether that placement could be time-limited. The court determined that a Health Board could not, under section 36 place a child outside the State, but the District Court, under section 47, could do so – and that placement could be time-limited.

In *N & Anor v Health Service Executive & Ors*,<sup>64</sup> the Supreme Court reinforced the significance of marital over non-marital families in the Constitution, and the threshold for legitimate State incursions into the decision-making autonomy of the marital family under Article 42.5. In this disputed adoption case, the Supreme Court overruled the High Court which had, under section 3 of the Adoption Act 1974, ordered that a two-year-old child remain with her putative adoptive parents, and not be returned to her objecting birth parents. The child’s birth parents had married during the adoption process – an adoption process to which the then unmarried birth mother had initially consented to – and withdrawn their consent to the adoption. The Supreme Court found Article 42.5<sup>65</sup> required reading “best interests of the child” under section 3 of the 1974, as presumptively being raised by the married birth parents of the child. The court found this presumption remained even where there was compelling evidence that the removal of the child from her putative adoptive parents could result in lasting psychological harm for the child. As in the *NWHB* case, the Supreme Court held this presumption could only be pierced by the State under Article 42.5 in exceptional cases of “moral or physical” failure by the marital family – a threshold not met in that case.

A new Article 42A.2.1° has been inserted in the Constitution since the *NWHB* decision. This amendment now places a greater focus on the effects of the parental failure on the

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<sup>62</sup> *NWHB*, at [231] (Murray J).

<sup>63</sup> [2001] IESC 104.

<sup>64</sup> [2006] IESC 60 (13 November 2006).

<sup>65</sup> In line with the *Re JH* [1985] IR 375 authority on “best interests of the child” under the Constitution.

child. It will be interesting to see what impact this may have on the invocation of section 12 powers.

Article 42A.4.1° places the best interests test on a constitutional footing, emphasising that the child's welfare and well-being is the cardinal principle to which the court should direct itself in the proceedings specified in the section. While this is in keeping with what is already contained in existing legislative provisions, the raising of this principle to a constitutional status arguably places a fresh emphasis in Irish law on this issue.

It is important to note that the best interests test has, as stated above, been read in light of two constitutional presumptions. These presumptions flow from Articles 41 and 42 of the Constitution, and arise in cases where marital parents are involved. The first of these is that marital parents are presumed to act, in the decisions they make, in the best interests of their children. Decisions made by marital parents have thus not been displaced unless the parents have in exceptional cases failed in their duty towards the child, or unless compelling reasons existed to justify an alternative outcome.<sup>66</sup> That is not to say that parental decision-making rights necessarily override the rights of children, but rather the courts are reluctant to intervene too readily to overturn what parents regard as being in their children's best interests.<sup>67</sup>

The second presumption is that a child's best interests are generally best served in the custody of its marital parents.<sup>68</sup> This presumption has been rebutted in exceptional cases where parents have failed in their duty towards their child, or where compelling reasons existed justifying the grant of custody to a third party.<sup>69</sup> A similar, though somewhat weaker presumption, has arisen in cases involving a non-marital child, the interests of whom have been presumed to be best served in the custody of its mother.

In these cases, the best interests of the child have been interpreted as requiring respect for the decisions of parents and as favouring custody for the parents. As Articles 41 and 42 will continue to protect the rights of the family and the rights and duties of marital

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<sup>66</sup> *North Western Health Board v HW* [2001] 3 IR 622.

<sup>67</sup> Where the welfare of the child is seriously endangered, the court may override the decision of a parent. See for instance, *In the matter of Baby AB: Children's University Hospital, Temple Street v CD and EF* [2011] IEHC 1 and *Re Baby B*, High Court, Birmingham J, 28th December, 2007.

<sup>68</sup> *Re JH and N and N v Health Service Executive* [2006] IESC 60.

<sup>69</sup> See for instance *FN v CO* [2004] 4 IR 311.

parents in respect of their children, it is possible that the courts will continue to apply the same presumptions in the future, harmonising the provisions of Article 42A.4.1° with the safeguards in Articles 41 and 42. Nonetheless, by reference to Article 42A.2.1°, it is likely that the test for rebutting these presumptions will change, with the result that the circumstances in which the State may intervene will be different. In particular, as stated above, Article 42A.2.1° places greater emphasis on the effect of parental failure on children, such that a more child-centred approach may be envisaged in such cases.

### **Recommendation**

*Given the now express constitutional status of children's rights in the Irish legal order, it is an opportune time to weave the constitutional rights of children (as well as other fundamental rights holders in our constitutional order) into operational guidelines for policing. In this way, express reference to those rights, and their implications for policing practice, should be a core part of all Garda policy on child protection operations and training.*



**CHAPTER 3:**

**REVIEW AND ANALYSIS OF DATA  
RECORDED ON PULSE  
FROM 2008 TO 2015**

### 3.1 INTRODUCTION

As outlined in chapters 1 and 2, far-reaching child protection powers are exercised by AGS through the use of section 12 of the Child Care Act 1991. The specific circumstances for the use of these powers are prescribed in the legislation, as set out in detail in paragraph 1.2.1 above.

A key aspect in auditing the exercise of these powers included an examination of Garda PULSE records, the Garda electronic system of recording data. In particular, a careful review was undertaken of numerical, geographical and other statistics for the period from 2008 to 2015 inclusive, the details of which are set out at paragraph 3.3 below. More detailed information for all section 12 incidents which occurred from January 2014 to December 2014 inclusive was also reviewed, to include the circumstances in which the power was invoked and details of the children involved. The results of this review are set out at paragraphs 3.4 to 3.9 below.

The PULSE data provides a rich and useful source of information and insight into the situations in which section 12 is invoked by AGS. The contemporaneous reporting of incidents provides a clear picture of events as they transpired. However, this is subject to the limitations of the data review, as outlined below.

The aim in analysing the above data was largely twofold, namely to gain a better understanding of the circumstances surrounding the use of section 12 in practice and to conduct a detailed statistical examination of this data. Subject to the limitations set out at paragraph 3.2.4 below, the analysis was a source of useful quantitative and qualitative statistical information.

Where examples are given with regard to particular incidents in this chapter, every care has been taken to extract any identifying information and individual PULSE incident references or numbers have also been omitted for that reason. Rather, each incident or example is referred to with sequential numbering. It should be noted that the successor to the HSE is Tusla and that the majority of data entries refer to the HSE rather than to Tusla.

## **3.2 GARDA PULSE DATABASE**

The database system employed by AGS is known as PULSE (an acronym for Police Using Leading Systems Effectively). It is described as a relational database system, meaning a database which has been designed to recognise links or relations between relevant entries.

PULSE comprises seventeen operational and integrated system areas to include recording of crime, traffic management and child welfare.

### **3.2.1 Data recorded on PULSE**

For each section 12 incident reported in 2014, it appears that the PULSE database currently allows for the following information to be recorded by AGS:

- Date and time the incident occurred;
- Date and time the incident was reported;
- Relevant AGS Region, Division, District and Station;
- Location where section 12 incident occurred, i.e. place from where child or children were removed;
- Any contributing factor(s), to include consumption of alcohol or other substances;
- Narrative relating to the incident in general terms (see further below);
- Other information specific to AGS reporting, to include PULSE identifying information, GPS coordinates, and other matters.

For each child or children to whom the above section 12 incidents relate, the following information may be recorded by AGS:

- Name of child or children;
- Age(s) at the time of the incident;
- Date(s) of birth;
- Gender;
- Nationality;

- Appearance, to include any identifying features;
- Home circumstances and/or living arrangements;
- Any disability, mental or physical;
- Details of any prior incidents, criminal conduct or other reports by AGS relating to the child or children, whether as offender, victim, witness or otherwise. These include missing person reports, theft of property, criminal damage and assaults.

The method of recording entries on PULSE is set out in the next paragraph.

### **3.2.2 Method of recording entries on PULSE**

AGS operates a 24/7 crime and incident recording service known as the GISC (Garda Information Services Centre). This central facility is located in Castlebar, County Mayo and provides a call centre service to oversee most data entry on PULSE.

According to information received from AGS, there are two HQ Directives relating to the GISC. HQ Directive 018/2007 refers to the establishment of the GISC, where all Gardaí are required to enter all incidents (except sexual crime incidents, which includes child welfare incidents) on PULSE by telephoning the GISC. HQ Directive 116/2011 refers to the recording of Sexual Crime Incidents (including child welfare incidents) on PULSE by the GISC.

Child welfare incidents are given the same classification as sexual incidents for audit and Key Performance Indicator (KPI) functions on PULSE.

All operational Gardaí have their own personal issue digital Tetra radio, which includes a limited mobile telephone function. The GISC can be telephoned by Gardaí who are on patrol to have incidents recorded on PULSE. The Garda gives the information over the telephone while the GISC operator inputs the data onto the newly created PULSE incident. The Garda also rings the GISC to have any updates entered onto a PULSE incident. When particularly busy out on patrol, Gardaí may wait until they return to the Garda station before ringing the GISC to create/update PULSE incidents.

In accordance with the Garda Síochána Policy on the Investigation of Sexual Crime, Crimes Against Children and Child Welfare (HQ Directive 48/2013, section 5.2.2)

Gardaí are required to record all incidents immediately upon becoming aware of same. HQ Directive 46/2014 also refers to the need to record child abuse incidents immediately.

The GISC operators are trained to know what is required to be recorded on PULSE for each incident type/category and suggest what the most appropriate category of PULSE incident is used. However, the Garda is ultimately responsible for the category used and the accuracy of data on the incident.

### 3.2.3 Data furnished by AGS for the purposes of the Audit

The data provided by AGS for the purposes of the audit comprised the following:

#### **Tranche 1:**

In the first place, the audit was provided with an extract from PULSE by way of Excel workbook on 24 July 2015. This comprised four separate Excel worksheets, which were summarised by AGS as follows:

Worksheet	Contents	Information Gaps
S12 Incidents 2014	List of 595 incidents <b>reported</b> in 2014. Includes incidents marked as <b>invalid</b> and the reason for invalidation.	Does not include information relating to the <b>MO, Weapons</b> field or <b>reporting Garda</b>
S12 Children	List of 504 children who are linked to these incidents with link type " <b>HSE Notification Concerning</b> "	If a child is incorrectly linked as a <b>witness</b> , or has <b>multiple</b> links, they may not appear on this list
S12 Incidents All People	List of all people linked to the 595 incidents and their link types (If a child has been linked to an incident by an incorrect or multiple link type, you will find them here)	Does not drill into what constitutes a <b>multiple link</b>
S12 Children All Incidents	Lists all incidents associated with the 504 children linked to S12 incidents with link type "HSE Notification Concerning", whether the incident was before or after the S12 incident.	If a child is incorrectly linked as a <b>witness</b> , or has <b>multiple</b> links, their additional incidents may not appear on this list

Very extensive data was provided in this regard to include:

- Particulars relating to each of 595 section 12 incidents recorded in 2014, to include the time and date the incident occurred, Garda Region, Division, District and Station, location of the incident and a narrative or summary account of what transpired;
- Particulars of 504 children being the subject of section 12 invocation in 2014, to include their nationality, date of birth, gender, home circumstances, any physical or mental disability and religion; and

- Lists of all people and other incidents recorded on PULSE, being linked with these children, whether the incident arose prior to or subsequent to section 12 being invoked in 2014. In this regard, several thousands of data fields were provided for review and analysis. One worksheet alone, namely “Section 12 Children All Incidents” contained in excess of 135,000 data fields or cells to be reviewed. Each other worksheet also contained very significant data and information to be examined.

Upon receipt of this data, it was necessary to structure the extensive data and endeavour to extract relevant qualitative and quantitative statistical data, where it was possible to do so in the circumstances. It was necessary in this regard to try to link the separate sheets together, where possible. In doing so, the aim was to be in a position to answer the main questions posed by the audit and all matters set out at paragraphs 3.4 to 3.9 below.

Due to the difficulties in reading and analysing the data in the format provided which required extensive and time-consuming cross-referencing between the various worksheets, AGS was also requested to provide printouts of each PULSE incident which would contain particulars with regard to the child and the incident in one location. These were provided in December 2015.

Following extensive review and analysis of all data and documentation over a period of months, it was apparent that a number of significant anomalies existed in the information and documentation provided. These included the following:

- Difficulty in reconciling the number of valid section 12 incidents as furnished by AGS (see further at paragraph 3.5.1 below);
- Omissions with regard to the children the subject of section 12, namely:
  - Particulars with regard to 504 children only were furnished. While a small number of children were the subject of section 12 on more than one occasion in 2014, a significant gap still remained in the data review regarding the 595 reported incidents in 2014; and

- Particulars with regard to prior or subsequent history on PULSE for children were not included in 31 instances.

In addition, a substantial difficulty in extracting complete and reliable statistical information was evident, in circumstances where data entries (including nationality) had not been completed in many instances and where much of the detail to be analysed was contained in the narrative or summary entries. Other than some clear data fields, the narratives were the main source of information in almost all incidents. As set out in paragraph 3.2.4 below, these entries vary significantly with regard to the content and level of detail provided, which rendered the task of distilling a full and reliable data set problematic.

While it had originally been hoped to complete the review of data and report accordingly in January 2016, this did not prove possible in the light of these anomalies and omissions. As a result, these queries were set out fully in correspondence to AGS of 19 January 2016 and repeated in a subsequent exchange of correspondence with AGS.

Further data was received from AGS on 18 March 2016 to address some of the unresolved queries, but this did not deal with all matters arising. As a result, further correspondence was forwarded to AGS on 20 March 2016 to again set out the outstanding information and anomalies for the avoidance of any doubt.

## **Tranche 2:**

The audit was provided with historical statistics with regard to the operation of section 12 from January 2008 to December 2014 inclusive, on 10 September 2015.

This data provided particulars with regard to the number of times section 12 was invoked in each of these months, in addition to providing a breakdown according to Garda Region, Division, District and Station.

The outcome of this review is set out at paragraph 3.3 below.

### **Tranche 3:**

At the request of the audit, AGS provided statistics with regard to the operation of section 12 from January to December 2015 inclusive, on 18 January 2016. These figures were requested so that the audit would have the benefit of the most up to date statistics available.

This data provided particulars with regard to the number of times section 12 was invoked in each month of 2015, in addition to providing a breakdown according to Garda Region, Division, District and Station.

The outcome of this review is set out at paragraph 3.3 below.

### **Tranche 4:**

Finally, the audit was provided with a further extensive set of data on 18 May 2016, which comprised a full reiteration of the dataset provided in Tranche 1, with additions and amendments, arising from the queries which had been raised on 19 January 2016 and subsequently. This effectively superseded in its entirety the data originally furnished in July 2015, which had already been reviewed and analysed in detail in the context of the audit.

As a result, it was necessary to again conduct a review of several hundreds of thousands of data entries *ab initio*, to ensure that the data review undertaken by the audit was accurate in all respects and properly captured both the quantitative and qualitative data sets, insofar as it was possible to do so, given the obvious limitations to the data as provided.

The outcome of the review in this regard is set out at paragraphs 3.4 to 3.9 below. While additional data was provided with regard to children – particulars with regard to 541 children were furnished – a significant deficit in data remained in relation to all other children. There also remains a difficulty in reconciling the number of valid incidents which occurred in 2014. (See further at paragraph 3.5.1 below.)



### **3.2.4 Limitations of data review**

A significant number of logistical and practical difficulties were encountered in reviewing the PULSE database.

In the first place, large numbers of data entry fields were either left blank or were not fully completed. This aspect of the audit is, therefore, relying on the extent of detail provided by each reporting Garda, further details of which are set out in paragraph 3.2.1 above. Considerable gaps and omissions are found, for example, with regard to the children involved, to include their nationality and living circumstances. It should also be noted that the audit was not furnished with particulars for all children who were the subject of section 12 powers in 2014. As a result, it is important to state that this data source cannot be said to be entirely accurate, due to the absence of recorded information for many incidents. The review of this data source should, therefore, be viewed in light of these limitations.

In large part, the majority of the information which was relied upon was found in the Narrative entries field, which appear to be utilised to capture a more comprehensive level of instant detail on the database as a PULSE incident log contains only a limited number of designated fields. However, these narrative entries vary significantly with regard to the content and level of detail provided. There is little consistency in the information provided or the method of reporting. For example, most narratives do not provide any information with regard to the specific evidence available to AGS prior to invoking the section or any critical evaluation of the evidence available and/or risk assessment, having regard to the provisions of the legislation. This made the task of assessing the actions of AGS in this light considerably more difficult.

It should also be noted that while some of the data review represents an extraction of factual data from the PULSE data provided by AGS, for example the number of section 12 orders made and the dates/times the section was invoked, other data is presented according to the audit's classification of these incidents and the grounds upon which section 12 was invoked.

One further limitation related to the presentation of the data where a number of the incidents as recorded were subsequently invalidated, whether by reason of duplication or

otherwise. In addition, very significant work to cross-reference the data as furnished was required, in circumstances where the database of incidents did not actually contain the names of the children in question. As a result, it was necessary to review the relevant PULSE database numbers and ‘work backwards’ to establish the name of the child and, from that point, establish age, home circumstances and other relevant information.

A key limitation and qualification of the PULSE review undertaken by this audit is that the audit was furnished by AGS with a relevant extract of PULSE relating to section 12 incidents, without access to the entire PULSE database. For this reason, a written assurance was sought from AGS that all data and information provided by AGS throughout the course of the audit represents a full and complete account of all section 12 incidents and related children.<sup>70</sup>

It should be stated that the detailed data furnished related to a twelve-month period, being the period from January to December 2014. It reflects patterns and trends with regard to the operation of section 12 by AGS during this period.

In summary, it is the audit’s conclusion that the difficulties encountered by the audit in examining PULSE data in relation to section 12 use may reflect problems with the collection and management of operational information by AGS. Though members of AGS made genuine efforts to facilitate this component of the audit, the process was undermined by the foundational systems and technologies involved in the Garda information system. As emphasised throughout this audit, these problems with regard to data management pose obstacles for both evidence-based operational policing, and wider organisational accountability to the public AGS serves.

### **3.3 SUMMARY OF STATISTICS FROM 2008 TO 2015**

The statistics furnished by AGS relating to the period from January 2008 to December 2015 inclusive show the number of times section 12 was invoked by AGS. It should be noted that this metric is assumed from the information provided as the norm (including this metric) was not provided in the PULSE information furnished to the audit.

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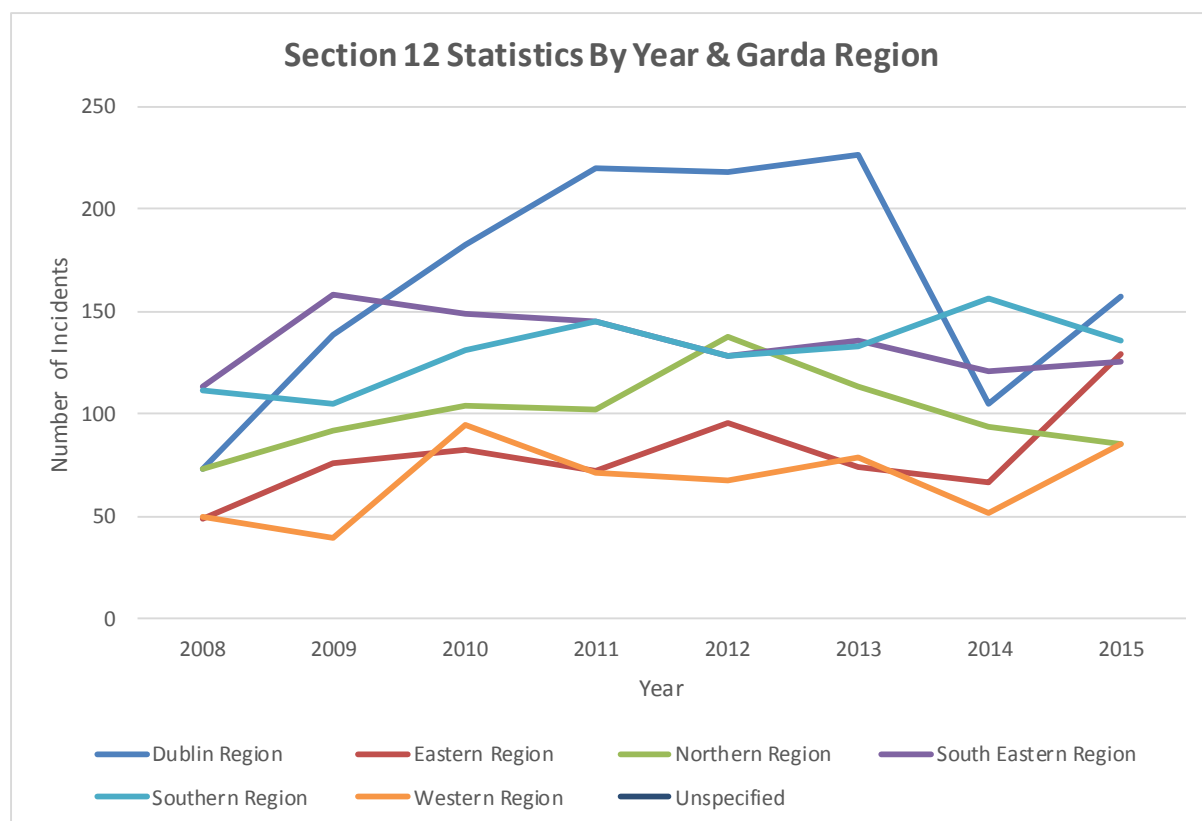
<sup>70</sup> See Appendix 5.

The following table shows the number of section 12 incidents for each year according to Garda Region, as follows:

**Section 12 Statistics By Garda Region**

	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>
Dublin Region	73	139	183	220	218	227	105	157
Eastern Region	49	76	83	72	96	74	67	129
Northern Region	73	92	104	102	138	113	94	85
South Eastern Region	113	158	149	145	128	136	121	126
Southern Region	112	105	131	145	128	133	156	136
Western Region	50	40	95	71	68	79	52	85
Unspecified				1				
<b>Total</b>	<b>470</b>	<b>610</b>	<b>745</b>	<b>756</b>	<b>776</b>	<b>762</b>	<b>595</b>	<b>718</b>

The following graph shows the figures according to the relevant Garda Region:



The decrease in numbers of section 12 invocations in 2014, both having regard to preceding years and the subsequent figures for 2015, is noteworthy. In the absence of detailed PULSE records for all section 12 incidents occurring since 2008, it is not possible to state with certainty the reason or reasons why this occurred. However, it is interesting to note that this reduction occurred following the appointment of the Ombudsman for Children to investigate two separate instances in October 2013. It should also be noted that the Ombudsman's Report was published in July 2014.

The significant fall in figures for all Dublin Districts in 2014 is also noteworthy, when considered in the light of averages for other years. On the other hand, a considerable increase in section 12 incidents in the Southern Region is evident, being the only Garda Region where this occurred in 2014. It is not possible from a review of the data provided to explain the reason for this, as the audit was provided with a qualitative set of data for incidents which occurred in 2014 only.

Another interesting feature of these figures is those divisions which have consistently had lower instances of section 12 incidents from 2009 to 2015. These include the Eastern and Western Regions. On the other hand, the numbers for both the Southern and South Eastern Regions are higher than might be expected. For example, the number of section 12 incidents in these regions in 2014 was higher than in all Dublin Districts.

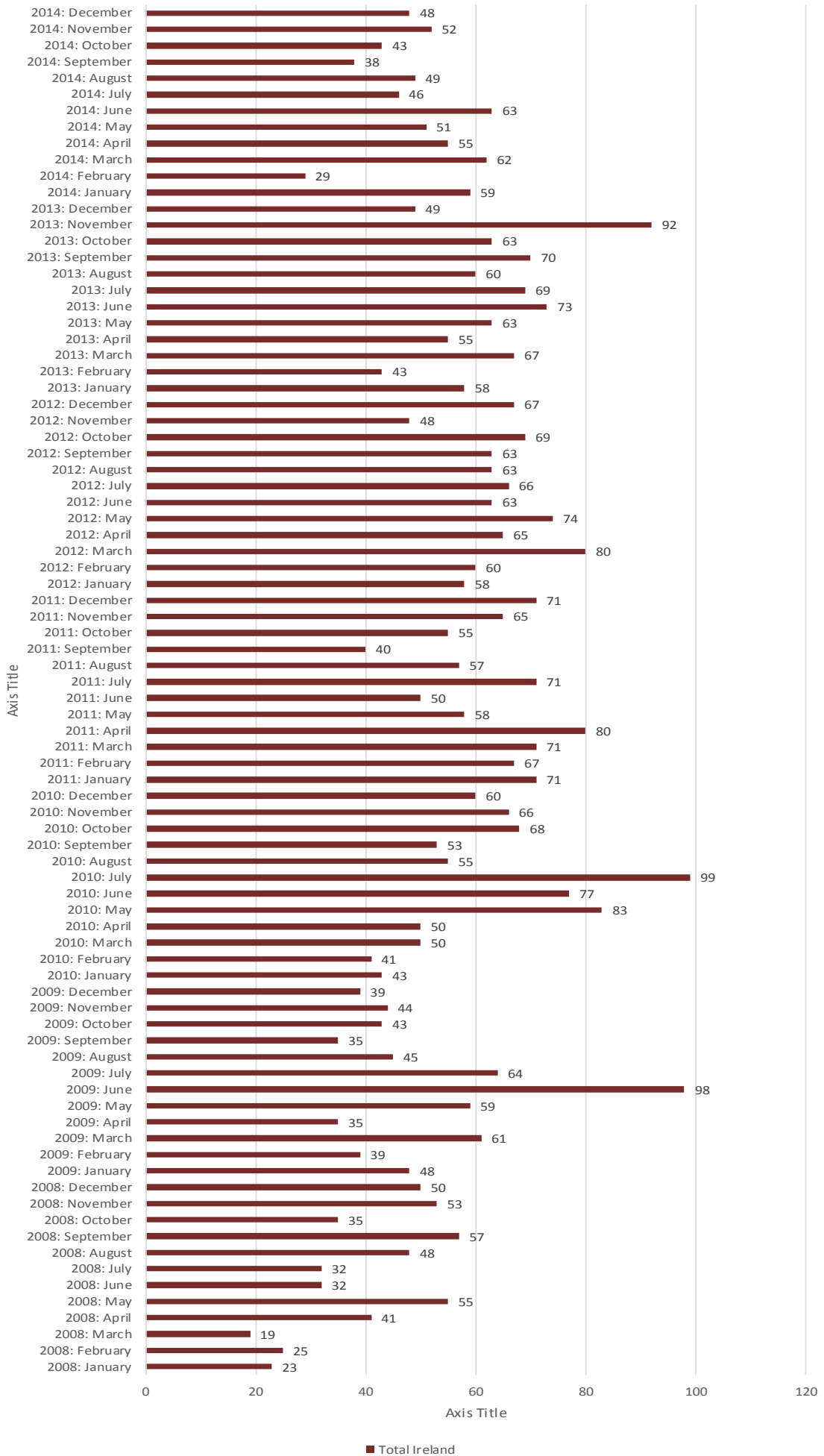
Full details of the review of section 12 incidents which occurred in 2014 are set out in paragraphs 3.4 to 3.9 below.

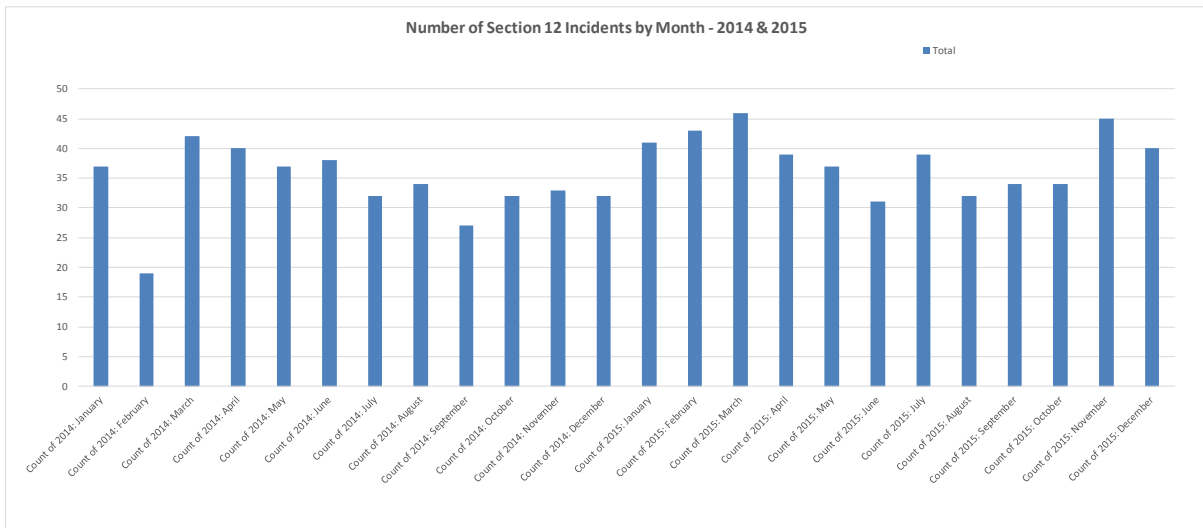
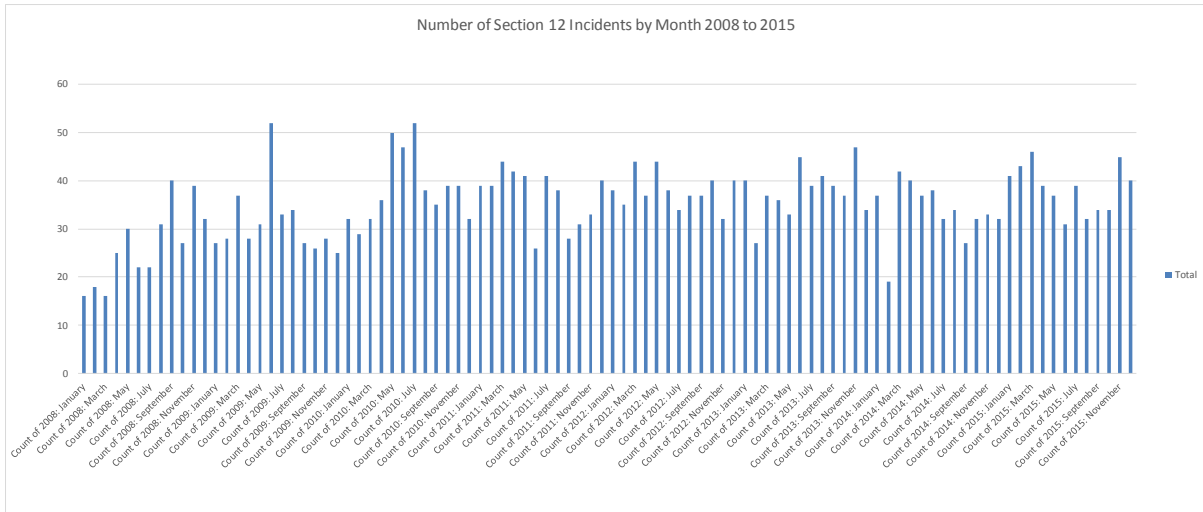
The following table shows the above statistics broken down according to Garda Region and Division for each year from 2008 to 2015 inclusive.

<b>Summary of Section 12 Statistics by Garda Region &amp; Division</b>								
	2008	2009	2010	2011	2012	2013	2014	2015
<b>Dublin Region</b>	<b>73</b>	<b>139</b>	<b>183</b>	<b>220</b>	<b>218</b>	<b>227</b>	<b>105</b>	<b>157</b>
D.M.R. Eastern	6	7	13	7	4	16	9	5
D.M.R. North Central	15	17	21	26	36	31	14	41
D.M.R. Northern	15	28	48	45	51	43	25	48
D.M.R. South Central	9	13	18	15	10	44	20	14
D.M.R. Southern	8	21	33	56	32	32	23	29
D.M.R. Western	20	53	50	71	85	61	14	20
<b>Eastern Region</b>	<b>49</b>	<b>76</b>	<b>83</b>	<b>72</b>	<b>96</b>	<b>74</b>	<b>67</b>	<b>129</b>
Carlow/Kildare	3	9	0	0	0	0	0	10
Kildare Div	1	7	21	9	27	18	18	14
Laois/Offaly	14	24	17	29	32	17	21	35
Longford/Westmeath	9	0	0	0	0	0	0	8
Louth/Meath	9	0	0	0	0	0	0	27
Meath Div	6	13	22	12	20	13	17	13
Westmeath Div	2	8	17	15	14	19	3	0
Wicklow Div	5	15	6	7	3	7	8	22
<b>Northern Region</b>	<b>73</b>	<b>92</b>	<b>104</b>	<b>102</b>	<b>138</b>	<b>113</b>	<b>94</b>	<b>85</b>
Cavan/Monaghan	15	31	29	30	59	23	20	25
Donegal	38	29	32	37	19	27	30	28
Louth Div	9	26	36	27	46	54	39	29
Sligo/Leitrim	11	6	7	8	14	9	5	3
<b>Not Assigned Region</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>South Eastern Region</b>	<b>113</b>	<b>158</b>	<b>149</b>	<b>145</b>	<b>128</b>	<b>136</b>	<b>121</b>	<b>126</b>
Kilkenny/Carlow	2	12	34	24	26	29	11	16
Tipperary	57	56	62	50	37	57	33	30
Waterford Div	7	31	28	27	24	22	31	27
Waterford/Kilkenny	18	5	0	0	0	0	0	0
Wexford Div	23	54	25	44	41	28	46	35
Wexford/Wicklow	6	0	0	0	0	0	0	18
<b>Southern Region</b>	<b>112</b>	<b>105</b>	<b>131</b>	<b>145</b>	<b>128</b>	<b>133</b>	<b>156</b>	<b>136</b>
Cork City	15	25	31	32	41	31	44	56
Cork North	19	20	11	24	24	20	45	29
Cork West	12	8	8	18	15	11	21	13
Kerry	11	7	29	23	25	30	14	15
Limerick	55	45	52	48	23	41	32	23
<b>Western Region</b>	<b>50</b>	<b>40</b>	<b>95</b>	<b>71</b>	<b>68</b>	<b>79</b>	<b>52</b>	<b>85</b>
Clare	7	8	32	13	9	21	16	18
Galway Div	25	20	39	28	36	30	22	37
Galway West	3	0	0	0	0	0	0	0
Mayo	5	10	10	13	16	16	6	17
Roscommon/Galway (East)	8	0	0	0	0	0	0	4
Roscommon/Longford Div	2	2	14	17	7	12	8	9
<b>Total</b>	<b>470</b>	<b>610</b>	<b>745</b>	<b>756</b>	<b>776</b>	<b>762</b>	<b>595</b>	<b>718</b>

The following graphs show the number of incidents broken down according to each individual month. It is interesting to see that more incidents appear to occur at different times, to include holiday periods during the year.

### Total Ireland Incidents by Month





### 3.4 DETAILED REVIEW OF STATISTICS FROM JANUARY TO DECEMBER 2014

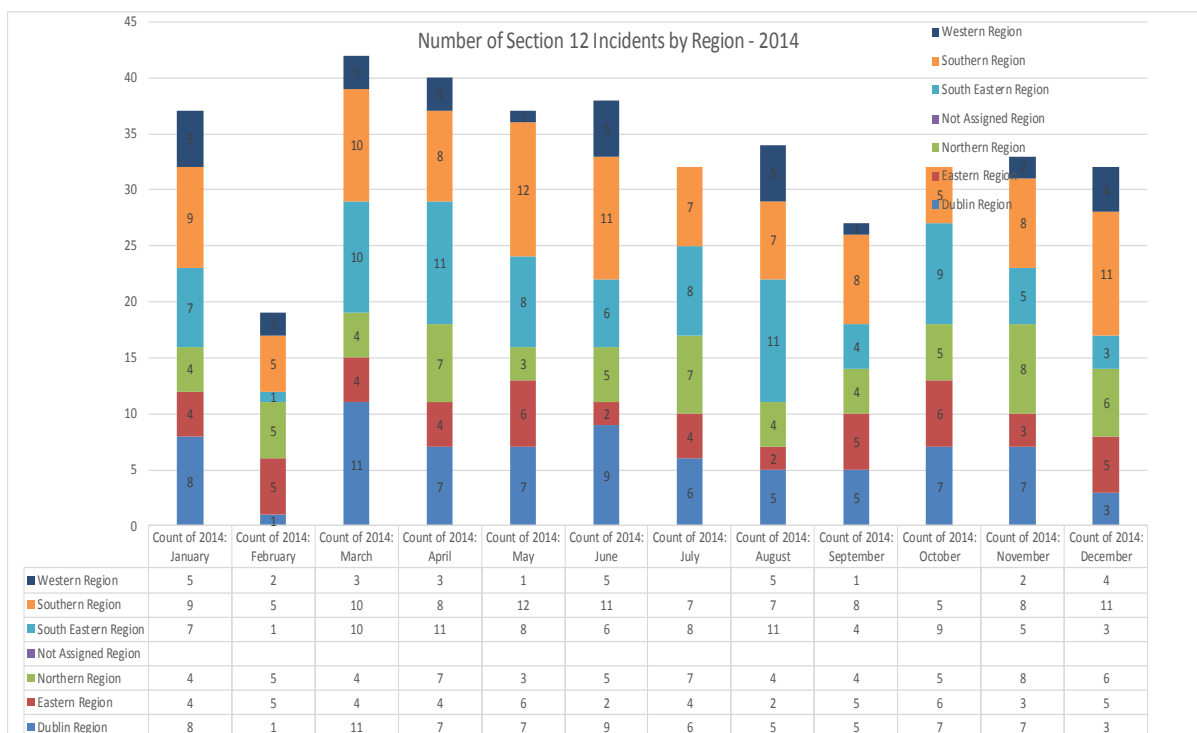
An in-depth analysis was carried out on details of the 595 section 12 incidents recorded by AGS between January and December 2014 inclusive, together with information concerning the children to whom these incidents related, and their families or other caregivers. The audit was also furnished with extraneous information relating to these incidents and children, to include prior and subsequent contact with AGS, where recorded on PULSE. In many cases, these related to instances of criminal activity and conduct.



### **3.5 NUMBER OF SECTION 12 INCIDENTS IN 2014**

The following chart and graph set out the number of times section 12 was invoked by AGS in 2014, according to the relevant Garda Region.

<b>Summary of Section 12 Statistics</b>	
	<b>2014</b>
<b>Dublin Region</b>	<b>105</b>
D.M.R. Eastern	9
D.M.R. North Central	14
D.M.R. Northern	25
D.M.R. South Central	20
D.M.R. Southern	23
D.M.R. Western	14
<b>Eastern Region</b>	<b>67</b>
Carlow/Kildare	0
Kildare Div	18
Laois/Offaly	21
Longford/Westmeath	0
Louth/Meath	0
Meath Div	17
Westmeath Div	3
Wicklow Div	8
<b>Northern Region</b>	<b>94</b>
Cavan/Monaghan	20
Donegal	30
Louth Div	39
Sligo/Leitrim	5
<b>Not Assigned Region</b>	<b>0</b>
<b>South Eastern Region</b>	<b>121</b>
Kilkenny/Carlow	11
Tipperary	33
Waterford Div	31
Waterford/Kilkenny	0
Wexford Div	46
Wexford/Wicklow	0
<b>Southern Region</b>	<b>156</b>
Cork City	44
Cork North	45
Cork West	21
Kerry	14
Limerick	32
<b>Western Region</b>	<b>52</b>
Clare	16
Galway Div	22
Galway West	0
Mayo	6
Roscommon/Galway (East)	0
Roscommon/Longford Div	8
<b>Total</b>	<b>595</b>



It is evident that section 12 powers were invoked most frequently in the Southern Region in 2014, with a total of 156 cases. This figure is of particular note when compared with figures for the Dublin Metropolitan Region with a total of 105 cases.

### 3.5.1 Number of Valid Incidents

The review of all data provided by AGS disclosed a total of 560 valid incidents for 2014, of a total of 595 recorded incidents. It should be noted that this figure differed from the official figure furnished by AGS of 577 valid incidents in 2014.

The invalidated and/or excluded incidents were excluded from review by the audit for the following reasons:

<b>Reason for Exclusion</b>	<b>Number of incidents</b>
Officially invalidated by AGS	8 incidents
Duplicate incident recorded	1 incident
Section 12 was not, in fact, invoked. These	10 incidents

include situations where the assistance of AGS was sought to execute a care or other order. There is also one incident recorded in 2014 where AGS declined to invoke section 12. See further at paragraph 3.9 below.	
The incident occurred in a previous year, although recorded in 2014. It should be noted that 2 of these incidents dated from 2008, 10 incidents dated from 2009 and 4 incidents dated from 2010. This raises an obvious question as to why the incidents were not recorded at the time they occurred.	16 incidents
<b>Total number of incidents excluded from review</b>	<b>30 incidents</b>

### 3.6 CHILDREN

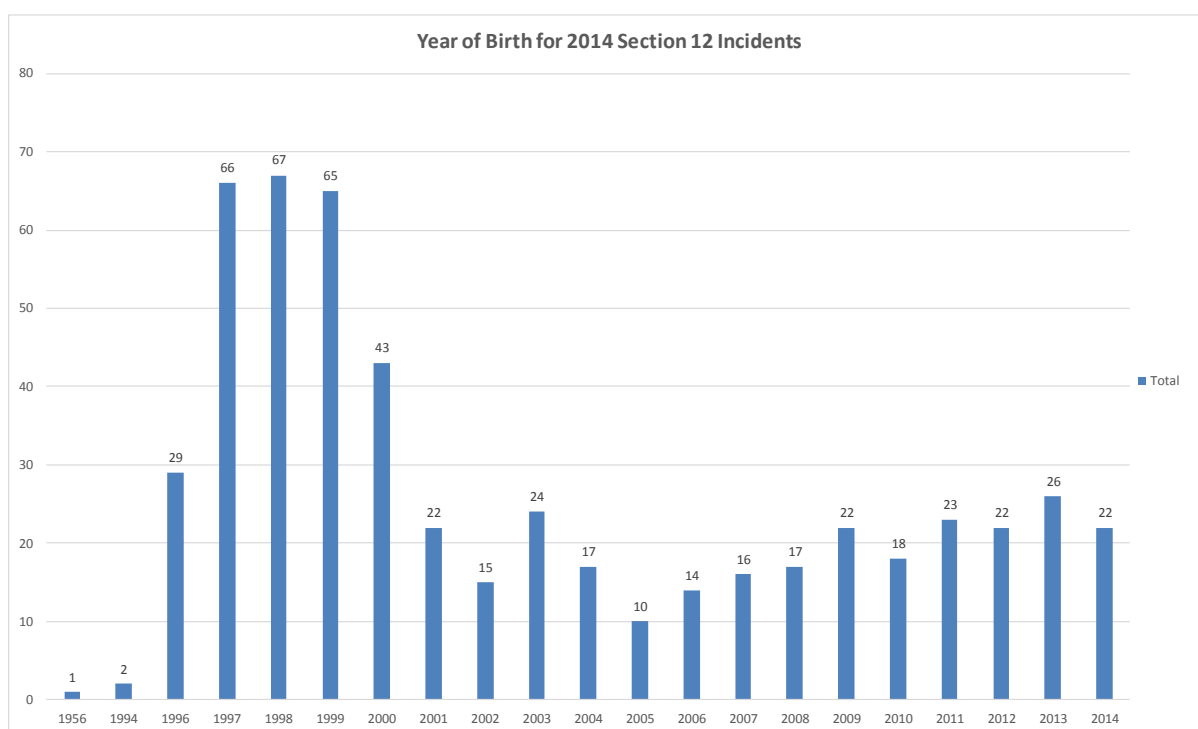
The children in respect of whom the section 12 powers are invoked are the centre of this review. Considerable time was spent in fully reviewing and analysing the circumstances surrounding the use of these powers, together with gathering information about the children at the heart of the process.

The audit was furnished by AGS with particulars of 541 children and the relating data was analysed under the headings set out in the following paragraphs. As explained in paragraph 3.2.4, the data provided is incomplete as the data shows a total of 560 valid incidents. It should also be noted that two such incidents refer to more than one child being the subject of section 12. However, as each incident is recorded in respect of one child only, it is not possible to analyse this question in greater detail.

Notwithstanding the inevitable difficulty presented by the omission of some necessary data by AGS, having requested the information over a period of several months, the data was analysed under the following categories.

### 3.6.1 Age(s) of children

The following graph sets out the age profile of the children in question, as disclosed in the PULSE records as furnished.



This shows a broad range of ages from 0 to 18 years, with the highest percentage relating to children from 16 to 18 years inclusive<sup>71</sup> i.e. those born between 1996 and 1998.

It is noteworthy that some 54 percent of these children are aged between 13 and 18 years. Paragraph 3.8.4 below discusses this further.

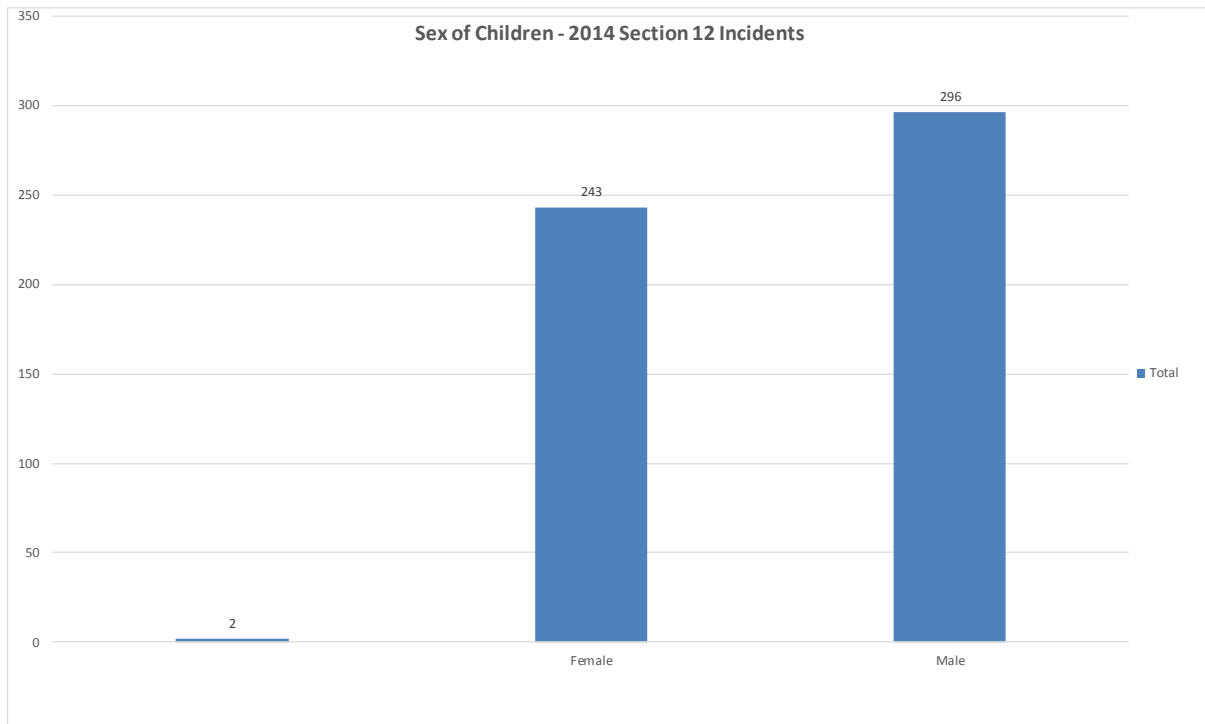
### 3.6.2 Gender/Sex of children

The following graph sets out the gender/sex of children being the subject of the invocation of section 12 powers. Both categories are recorded on PULSE with similar

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<sup>71</sup> It should be noted that the reference to children aged over 18 is an error as these have been incorrectly classified by AGS on PULSE.

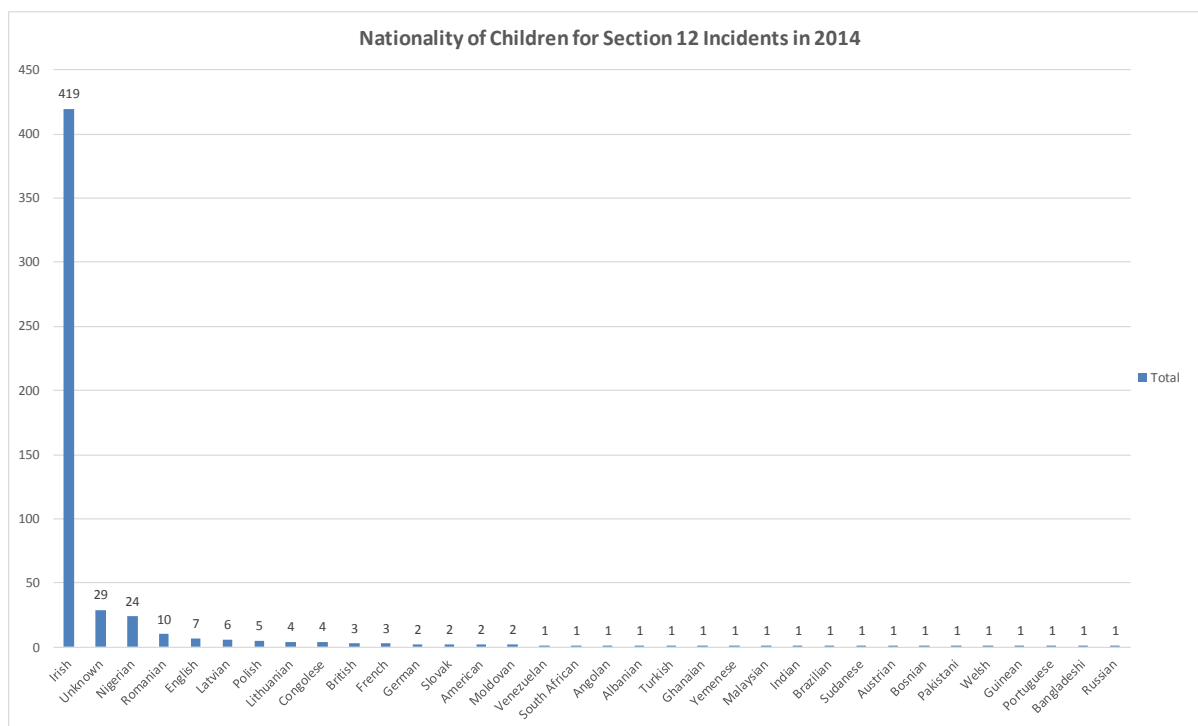
results. There is a higher proportion of male children, being represented at 54.7% and female children represented at 44.9%.



The reference to two “Unspecified” cases arises in this context as no sex or gender is recorded by AGS in these cases. Both children appear to be foreign nationals (Indian and unknown/unspecified) and their sex is not otherwise clear from other entries on the database, as provided.

### 3.6.3 Nationality

The following graph sets out details of the nationality of these children, where recorded on the PULSE database.



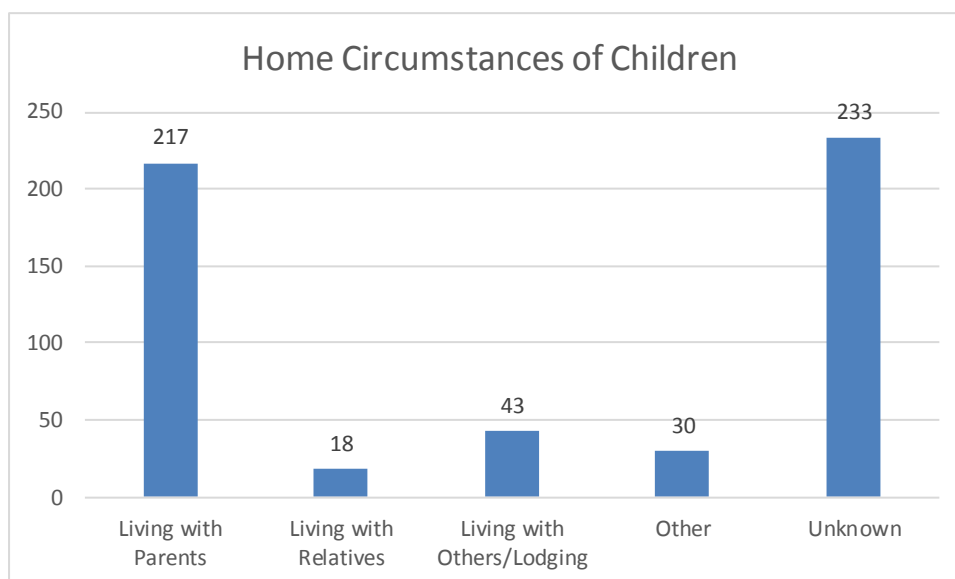
The review of this information was instructive in many respects. In the first place, it revealed a large percentage of the children, over 77.4%, being of Irish nationality. The foreign-national children in respect of whom details were provided were drawn from a large cross-section of nationalities, as set out above, including Eastern European, African and Asian nationalities. The largest foreign-national grouping comprised Nigerian children, being 24 children or 4.4% of the total children involved. Some 10 children were of Romanian nationality, representing 1.8% of the total children involved.

However, it should also be noted and factored into account that in 29 instances (or 5.4% of the total number of children involved), the nationality of the child is not recorded by AGS on PULSE. This is a crucial factor which has relevance with regard to the analysis and review undertaken in the course of this audit.

### 3.6.4 **Home circumstances**

The following graph shows the “Home Circumstances” of the children in question as recorded by Gardaí on the PULSE database. This is the term used by AGS and the categories referred to below are as recorded on PULSE. As in other categories, the database shows a high percentage of children with no relevant information recorded - 233 cases - at 43% of the children subject to section 12 powers as recorded in 2014. Of the entries which make reference to this field, the majority relate to children living with

their parents (217 children), with lesser numbers living with relatives (18 children) or others or in other accommodation (73 children).



The review of the data undertaken in the course of the audit has also endeavoured to extract relevant information regarding the home or living circumstances of the children being the subject of section 12 invocations. Such review was undertaken on the basis of the narratives and other PULSE entries. The results are set out at paragraph 3.8.7 below.

### **3.6.5 Mental or physical disability**

No circumstances of mental or physical disability were recorded on the PULSE database in respect of the children subject to section 12 in 2014.

### **3.6.6 Religion**

Reference to the religion of a child was made only once in relation to these children, being a child of Roman Catholic faith. No record of religion is made in any other case.

### **3.6.7 Narratives**

The narratives recorded by AGS provide the most useful information with regard to the use of section 12 in each specific incident arising in 2014. For the most part, they broadly set out the circumstances surrounding the use of section 12 by AGS in the form of a summary, similar to an “attendance note” or noted record. However, as outlined above, the narratives vary significantly with regard to the content and level of detail provided.



### **3.7 GROUNDS UPON WHICH SECTION 12 WAS INVOKED**

The circumstances of cases where section 12 was invoked during 2014 are many and varied.

These include neglect of the child(ren) by parents or other caregivers, family disputes, help invoked by the child himself or herself or by his or her parents or caregivers, circumstances of abuse and threatened suicide.

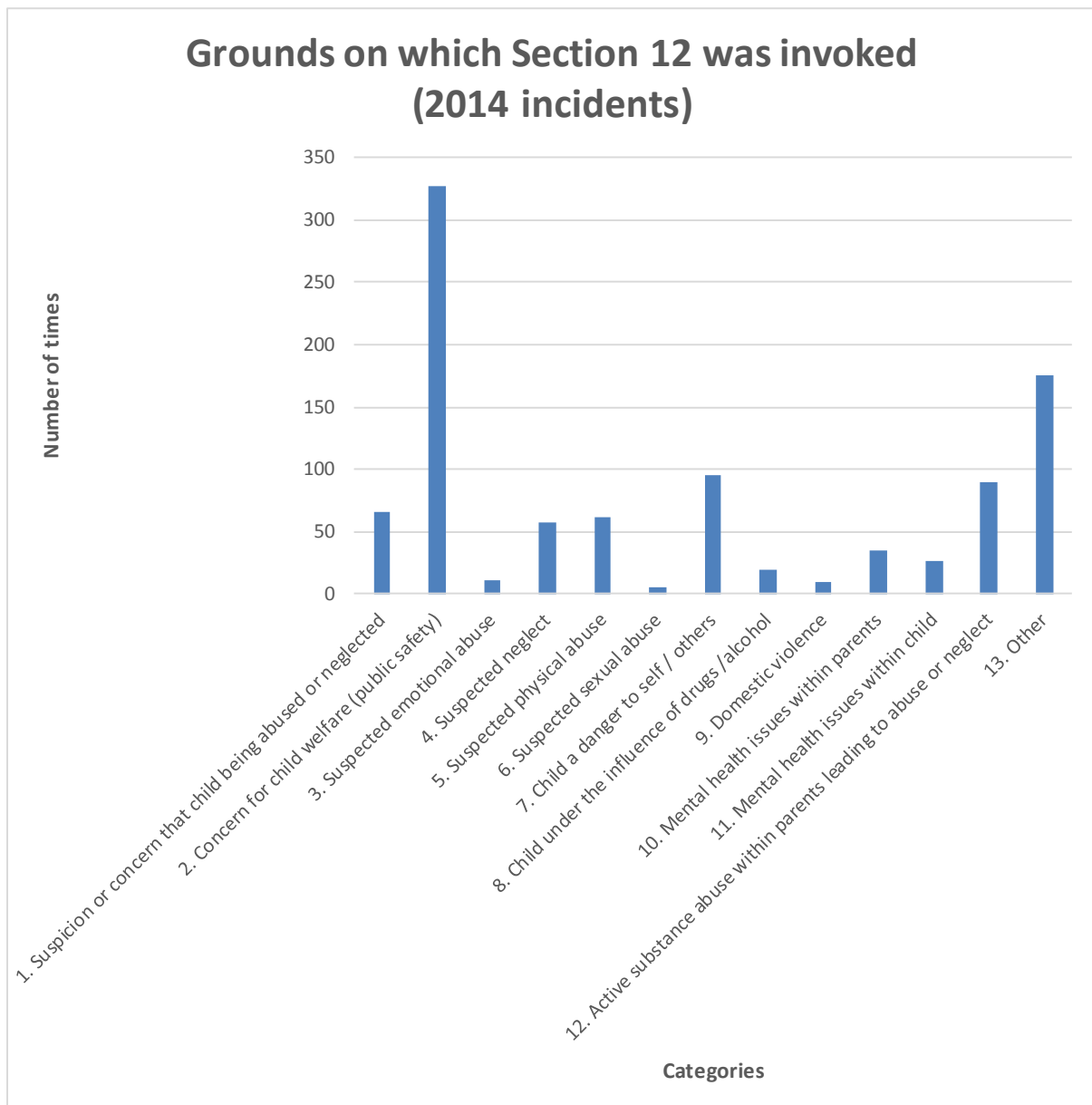
The grounds upon which the section 12 power was invoked in each of the 560 valid recorded incidents in 2014 were analysed in the following categories in the context of this audit.

1. Suspicion or concern that the child is being abused or neglected;
2. Concern for child welfare (public safety);
3. Suspected emotional abuse;
4. Suspected neglect;
5. Suspected physical abuse;
6. Suspected sexual abuse;
7. Child a danger to self/others;
8. Child under the influence of drugs/alcohol;
9. Domestic Violence;
10. Mental health issues within child;
11. Mental health issues within parent(s);
12. Active substance abuse within parents leading to abuse or neglect; and
13. Other.

In this context, it should be noted that the data in the following paragraphs has been analysed and presented according to the audit's classification of these incidents to assess and categorise the grounds upon which section 12 was invoked. As these categories do not form part of PULSE, all available information was ascertained from the Narratives, insofar as possible.

Each ground is discussed in detail in paragraphs 3.7.1 to 3.7.14 below, in addition to providing examples of incidents where section 12 was invoked by AGS in 2014. In 271 incidents, two grounds were noted, and 72 incidents demonstrated three or more grounds. It is inevitable that there would be potential for overlap among these broadly defined categories, given the nature of the circumstances as they present to AGS.

The following graph sets out the various broad grounds upon which section 12 was invoked by AGS in 2014.



### 3.7.1 Suspicion or concern that the child is being abused or neglected

A considerable number of cases fell within this ground and a large number of circumstances arose in this context.

The following are some examples of the wide-ranging circumstances which occurred in 2014, as disclosed on PULSE.

#### **Example 1:**

Gardaí received an anonymous call that a young child had been locked out of her home and was crying. The narrative further records “upon arrival of Gardaí, the child was now in the home with the mother. Gardaí spoke to [the] mother. Whilst conversation was taking place, the child was trying to ask its mother a question from a book she [had]. Each time the child approached, the mother pushed the child away more forcibly each time. The child had a cut and a bruise under the left eye. When the baby in the house started crying uncontrollably, young child appeared frightened. Mother’s social worker contacted.”

The narrative further records that the social worker said that he/she would “link in with mother” the following day. Unhappy with this situation, section 12 was invoked by the Garda members and contact was made with Five Rivers, a private provider of foster care<sup>72</sup>, to secure suitable accommodation for the child.

#### **Example 2:**

The narrative for this incident describes in detail the circumstances which arose. “Received call from HSE (Tusla) requesting assistance with a child removed from [name of hospital]. While awaiting an x-ray in a&e, the child was removed by her brother who has previously admitted to social workers of assaulting the child. Assisted by [Garda station] unit [numbers], observed suspect vehicle on [address] heading into [Apartment name]. Attended apt [number], child found behind a curtain in the living room which is her bedroom where she sleeps on the floor. She was in a distressed state. Brother extremely agitated and aggressive towards gardaí. Brother initially denied that the sister was in the flat and he was also denying any medical treatment to her. Gardaí believed

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<sup>72</sup> A further discussion with regard to the operation of private providers in this area is set out at paragraph 6.2.14.

that the child was in immediate and serious risk of harm due to agitated state of her brother and took the child from the apt under section 12 child care act and placed her into the care of social workers [names] who in turn placed her in secure safe accommodation in [location]. Emergency care order to be sought by HSE (Tusla) on Monday morning.”

It emerged from further incidents on PULSE, however, that the child was subsequently returned to the care of her brother by the HSE (Tusla). In addition, it appears that the social workers, when requesting the Gardaí to deal with any calls from this child “as a priority”, refused to confirm to Gardaí whether an application for an emergency care order had, in fact, been made.

**Example 3:**

The circumstances surrounding the invocation of section 12 in this incident are described as follows in the narrative: “Following a 999 call to [name] [Garda Station] from an anon source voicing concern in relation to above child, Gardaí attended scene. After knocking on the door for several minutes Gardaí entered the apartment upon invitation from Mr. [name]. The apt was littered with rubbish, there were soiled nappies all over the floor, excrement on the floor, broken furniture everywhere, no bedding on the beds. The child was running round in a soiled nappy with dried excrement on her clothes. The child is almost 4 years of age but is unable to speak. Mr [name] appeared agitated & was complaining of a sore hand - when asked by Gardaí what had happened he admitted sustaining the injury from punching a wall in his apt a couple of days previous. Garda [name] had serious concerns regarding the child’s welfare & as a result invoked section 12 of the Child Care Act 1991.”

**Example 4:**

An immediate risk to the safety and welfare of two children arose in a case where, as noted by the narrative, Gardaí were called to a disturbance at a house where they “observed a male on the balcony covered in blood. Refused to answer door to gardaí. Heard a child crying inside apartment, door forced and entry gained to apartment, blood and broken glass all over the apartment. 2 males located in the apartment had been fighting with broken bottles. Children dirty and appeared neglected, concerns for their welfare as it was an unsafe environment. Section 12 child care act invoked.”

**Example 5:**

Section 12 was invoked in relation to three children in the following circumstances. The mother of the children, who was pregnant at the time, had been brought to hospital “while holding a knife to her stomach”. The narrative to this incident states that an Emergency Care Order was subsequently granted in the District Court when the mother withdrew her consent to the children remaining in care on a voluntary basis.

**3.7.2 Concern for child welfare (public safety)**

This broad-based ground can be said to encompass many section 12 incidents which arose in the course of 2014.

**Example 6:**

The narrative to one incident discloses the circumstances in which section 12 was invoked for the safety of a young baby, in the following terms. “[R]eceived call of intoxicated female slapping her child at [fast food restaurant]. Met female. There was a strong smell of alcohol and she was clearly intoxicated. Female abusive & threatening towards gardaí. Staff and witnesses at location informed gardaí female was slapping child hard, dragging baby/child across wet ground, throwing baby into the air in a care free manner causing concern. Baby had no food, baby was sucking on chips (baby only 8mths to 9mths old). Female indicated that she felt suicidal and was on medication for same. Gardaí concerned for [baby’s] safety. Section 12 of the child care act invoked. Mother and baby brought back to the station. When in station baby taken out of buggy & discovered baby had no nappy or any under garments on, (no pants or socks etc.). Baby saturated from self urination & from pouring rain. Baby appeared malnourished. Garda [name] provided baby with food & nappies from local shop. HSE (Tusla) contacted ...”.

**Example 7:**

Gardaí located a child who was in the State illegally, having been abandoned by her mother and invoked section 12.

**Example 8:**

Section 12 was also invoked in a case where child trafficking was alleged and emergency care for the child in question was found by Gardaí.

### **3.7.3 Suspected emotional abuse**

A limited number of cases fell within this ground as a sole basis for invoking section 12, although this source of abuse might be said to arise in very many cases. As in other categories, the potential for overlap clearly emerges in these circumstances.

#### **Example 9:**

Gardaí invoked section 12 in a case where a child had told his father that his “mother had told him that she was going to burn down the house and take him to heaven.” As the mother appeared to have had custody of the child, Five Rivers was contacted and arranged foster care for the child. HSE (Tusla) was also informed by the Gardaí.

### **3.7.4 Suspected neglect**

This ground again encompasses wide-ranging circumstances, to include those where Gardaí were notified of children left alone for periods of time, sometimes overnight or for longer periods of time. In many of these cases, the living conditions were also deemed unsuitable and to pose a risk to the health, safety and/or welfare of children.

#### **Example 10:**

A postman found a one-year-old child “wandering unaccompanied in a housing estate. Child had gone out onto main road”. The Gardaí were called and they invoked section 12 when they located the child’s mother in an intoxicated state and unable to care for the child.

#### **Example 11:**

Following receipt of anonymous information, Gardaí found two children, aged 2 and 6 years old, “unsupervised and watching television while the mother had been out drinking for the night.” Section 12 was invoked and the children were brought to the Garda station as a place of safety.

#### **Example 12:**

Gardaí were “alerted by [a] neighbour [of] the possibility of a 5 year old boy home alone. Gardaí gained entry through an unlocked garage door which led in to the kitchen. On inspection of the house no adults were home. Front and back doors were locked. All blinds were closed and a 5 year old boy was locked in an upstairs back bedroom. The key

was in the outside of the door. Gardaí removed the child for his own safety to [name] hospital.”

It subsequently appeared from entries on PULSE that the child was reunited with his mother the following day by the HSE (Tusla), with a “review team in place...they do not suspect immediate risk to the child’s safety”.

**Example 13:**

In another case, as noted by the narrative, a “7 month old infant child was found by security staff in [a] buggy unattended adjacent to ticket kiosk at main entrance to [shopping centre], taken into the possession of security personnel at shopping centre at 3.10 pm at which time they commenced trying to locate child’s guardian and called gardaí. Search for the said guardian continued by both garda personnel and security personnel on garda arrival at 3.50 pm onwards, this included examination of cctv footage at shopping centre. At 4.25 pm having been unsuccessful in locating a guardian for the abandoned infant section 12 of the child care act was invoked and the infant was conveyed to [name] garda station... gardaí ... at 4.40 pm received a call from the infant’s guardian and child’s mother met with HSE (Tusla) social worker ... later at [name] garda station.” The PULSE records subsequently note that the child was left in the care of the said guardian and mother.

**Example 14:**

Gardaí discovered a seven-month-old child who had been left alone at home while her mother went out at night. Section 12 was invoked.

**Example 15:**

In another case, Gardaí received a report that “three young children aged approx. 5, 2 & less than a year old were reported to be wandering around the [name] area unsupervised. The children were almost hit by a bus and a taxi while crossing the street. The 5 year old led them to the [name] hotel where staff alerted gardaí.” Section 12 was invoked in relation to the children who were brought to the Garda station before being released to the HSE (Tusla).

**Example 16:**

Gardaí were notified that a child was “wandering in a housing estate” at approximately 2.00 am. This child was aged seven years. Gardaí attended at the scene and the narrative discloses that they “found child and called to child’s home, front door and back door ajar, nobody at home. Enquiries made to locate child’s mother and found same in local nightclub, highly intoxicated.” As a result, section 12 was invoked and the child was placed into emergency foster care.

**3.7.5 Suspected physical abuse**

There were many instances of suspected physical abuse in the context of section 12 being invoked by Gardaí throughout 2014.

**Example 17:**

Section 12 was invoked in a case where a child presented himself to a Garda Station stating that he had been beaten by an older sibling and his mother. The narrative noted that he was “scared to be at home now and sought refuge at the station.” Medical attention was arranged by the Gardaí which disclosed “evidence of being hit by a belt on his back with some cuts, bruises & welts on his back”. Foster care was arranged for the child with Five Rivers and the Gardaí attended at the home in question to assess whether other siblings were also at risk.

**Example 18:**

Section 12 was invoked in a case involving a three-year-old child with “bruises and handprints on body”. Crèche staff had notified social workers of their concern, who in turn notified Gardaí. Medical advice confirmed the likelihood of physical violence and the narrative notes “Gardaí invoked section 12 on the request of social workers”, further noting that the “social workers will attend court on Monday for a sec 13 care order”. It should be noted that this incident took place on a Friday evening after 6pm. However, later entries on PULSE appear to show that the child was returned to its family that Monday after a case conference had been held.

**Example 19:**

The narrative to this incident records the following: “Child went to school & reported that [he had] been whipped with a stick at home and as a result had marks. HSE (Tusla)



was called by school & contacted gardaí. Gardaí called to scene with social workers. Kids were in fear and gardaí were informed that parents regularly beat the kids. There was a bloody school uniform & blood on the floor & kids state this was caused by mother hitting daughter. Kids had not been fed since this morning. S.12 invoked in presence of social workers. HSE (Tusla) social worker is [name]. Five rivers contacted & are seeking accommodation for the children.”

**Example 20:**

Section 12 was invoked in relation to a child whose father had allegedly hit him with a bedside locker following an argument.

**Example 21:**

In another case involving suspected physical abuse, section 12 was invoked for the protection of a child and her siblings. The child’s mother admitted that she had “grabbed [the child] by her ponytail and punched her six times in the head. This incident occurred in front of 3 of the [child’s] younger siblings.”

**Example 22:**

Section 12 was invoked by AGS in a case where a father had been shaking a new-born baby in hospital.

**3.7.6 Suspected sexual abuse**

A limited number of cases appear to fall within this ground as a sole basis for invoking section 12 during 2014.

**Example 23:**

Sexual abuse was alleged by a child in one case to have been perpetrated by her father. The child’s brother also alleged physical abuse on the part of the father. Section 12 was invoked for the protection of the child, who was then brought to hospital by Gardaí.

It does not appear from the PULSE records as furnished that section 12 was invoked by the Gardaí in relation to the child’s brother and it is possible that he was aged 18 years or over at this time or perhaps it was deemed unnecessary to invoke section 12 in the

circumstances. The situation is unclear from PULSE. The records indicate, however, that emergency accommodation was organised for him by Gardaí.

**Example 24:**

In another incident, enquiries made by Gardaí disclosed that both the boyfriend of a child's mother and another person living in the same house were registered sex offenders. Section 12 was invoked for the safety of the child in question. This incident arose from suspicion aroused when Gardaí saw a child with two women in a public place at 1.40am and a man in their company "walked away when approached" by Gardaí.

**3.7.7 Child a danger to self/others**

Many incidents in this category portray a situation where the parents are seeking the removal of a child whose behaviour is aggressive, dangerous and difficult to manage. It should also be noted that of the 560 valid incidents of section 12 in 2014, the assistance of the Gardaí was initially sought by parents and/or other caregivers in 112 of these cases and by foster carers/residential care staff in 28 cases, representing 25 per cent of the total number of valid incidents.

These circumstances include a child physically attacking family members, or in some cases presenting a danger to foster home members or care staff. However, many of these cases also include circumstances where the child was at risk of self-harm.

**Example 25:**

Gardaí were called to a residential care home by staff who were no longer able to manage the behaviour of a child. When the Gardaí attended at the scene, the staff were being threatened with a broken chair by the child. The narrative further states that the child was brought to the local social work office "who then referred [to the Gardaí] to bring [the] child to paediatric unit in hospital".

**Example 26:**

In a further case, a child had thrown a rock through the window of his mother's house and threatened his mother and her partner. The mother was afraid for her son to remain in her house and section 12 was invoked.

**Example 27:**

Members of AGS located a child who had gone missing from a care home, in a public playground where she was threatening to commit suicide. It was necessary for the Gardaí to spend considerable time trying to locate the child throughout the area in question, with the narrative noting “the child had a history of self-harm, suffocation and stabbing herself.” Section 12 was invoked and the child was brought to the relevant Garda station where the Gardaí arranged for a medical doctor to attend.

**Example 28:**

Section 12 was invoked by Gardaí in a case where, as noted in the narrative, a “13 year old youth attempted to hang himself. Mother discovered him attempting and contacted gardaí.” The Gardaí brought the child to hospital for medical attention.

**3.7.8 Child under influence of drugs/alcohol**

Circumstances where a child or children are under the influence of drugs/alcohol are prevalent, particularly in the case of older children. As in other categories, these circumstances may be said to overlap considerably with other grounds, to include where a child presents a risk to him/herself and/or to others.

**Example 29:**

Gardaí were contacted by family members in one incident where a child was under the influence of drugs and “breaking up the house at his family residence”. Following the invocation of section 12, the incident further notes that two members of AGS “had to remain in the hospital overnight as [the child] was extremely violent and it took a number of hours and several nursing staff to counter the effects of the drugs he had taken.”

**3.7.9 Domestic violence**

A limited number of cases appear to fall within this ground as a sole basis for invoking section 12 during 2014, although the existence of domestic violence is a factor in a number of cases.

**Example 30:**

In one such case, the mother of three children was hospitalised following a domestic assault and the father was arrested. Section 12 was invoked “for the safety of the children” prior to his return home.

**Example 31:**

The following case is an example of an overlap of circumstances to include domestic violence and intoxication. The narrative to this incident contains the following information: “While responding to call of domestic violence gardaí discovered mum and dad very intoxicated, no heating in the house, house was freezing, it transpired that mum had the baby in the pub all day. As a result, section 12 was invoked and [child name] was removed from the house and was left with an aunt.”

**3.7.10 Mental health issues within child**

There were several incidences of the above ground in the context of section 12 being invoked by AGS throughout 2014.

**Example 32:**

In one such incident, a child contacted Childline to say that he wished to end his life. The Gardaí called to his address and invoked section 12, following which they arranged for medical assistance and brought the child to hospital. It is also clear from subsequent related entries on PULSE that the Gardaí maintained contact with the family of the child afterwards and took an active interest in the well-being of the child.

**Example 33:**

A further incident followed a child contacting Childline stating “she had a bag over her head and wanted to commit suicide”. When Gardaí attended at the house, she repeated her wish to self-harm to the Gardaí who invoked section 12 and brought the child to hospital.

**Example 34:**

Gardaí were also called to the family home in one incident where a child subject to ongoing medical attention had locked himself in his bedroom with knives. He subsequently ran from the house through his bedroom window and the Gardaí spent

considerable time liaising both with Five Rivers and medical doctors to locate a place of safety for him.

**Example 35:**

Another incident where several grounds were in existence arose where a child presented as suicidal to her GP. When contacted by the child's social workers, Gardaí found the child in a distressed state, her father was intoxicated and unable to care for her and her mother refused to have her stay with her. As a result, the child was brought to hospital when Five Rivers was unable to find suitable accommodation for her.

Section 12 was again invoked in this case some three days later when the child discharged herself from hospital and was subsequently found wandering on a public road.

**Example 36:**

Section 12 was also invoked in relation to a child who presented with mental health issues following attempts to "throw herself into the river". Gardaí invoked both the Mental Health Act 2001 and section 12, when the child was refused involuntary admission to hospital due to intoxication with drugs and alcohol. The child's foster mother also refused the return of the child "for fear of her safety overnight". It appears from later PULSE entries concerning this child that she was brought to hospital as a place of safety following the invocation of section 12 by AGS.

**Example 37:**

In another case section 12 was invoked in relation to a child who threatened to "kill her mother in her sleep and then kill herself".

**3.7.11 Mental Health issues within parent(s)**

There are also several examples of cases falling within this ground, whether solely or jointly with one or other grounds.

**Example 38:**

In one incident, the narrative notes that the "mother of children expressed to HSE [Tusla] staff that she was suicidal and had thoughts of taking the children's lives. Gardaí were called to the home, where the mother also disclosed this to [a] Garda. There was

immediate risk to the children and section 12 was invoked. Mother went voluntarily to [name] Hospital. Tusla to seek emergency care order in the morning.”

**Example 39:**

Gardaí were contacted by a mental health nurse in relation to a mother who was “struggling emotionally with the care of her 14 week old daughter.” The narrative further notes “following lengthy discussions with nurse, social worker [name] and mother, gardaí felt it was in the best interests of the child to be placed in emergency foster care for the night”.

**Example 40:**

In another incident, the narrative notes that a “female [was] found by fellow resident [in an apartment] in a distressed state, allegedly attempted suicide by hanging, gardaí also noted self-inflicted cut marks to her left arm that were a few days old, female heavily intoxicated, two children in house at time, female eventually agreed to go voluntarily to [named hospital] for assessment, section 12 invoked, taken into HSE (Tusla) care.”

**Example 41:**

Gardaí were called to attend at a train station in one incident where a mother was threatening to commit suicide. Her two-year-old son was with her at the time and Gardaí invoked section 12 for his safety and welfare.

**Example 42:**

In another incident, section 12 was invoked in relation to children whose mother had told her family support worker “that she was going to shoot her two children and shoot herself”. The narrative further noted “when gardaí invoked the act mother admitted that she had stated about killing her children but informed gardaí that it was lies, that she just wanted to get help. Children taken in the care of social workers and mother arrested under mental treatment act. Mother is eight and half months pregnant. Doctor called to make assessment.”

**Example 43:**

Gardaí were called to a house where a child had “a number of stab wounds” and the child’s mother was detained under the Mental Health Act 2001. Section 12 was invoked by the Gardaí and the child was brought to hospital for treatment.

**Example 44:**

A further case raised a concern with regard to mental health issues within a foster parent who had threatened suicide, following which the Gardaí invoked section 12 for the protection of two foster children.

**3.7.12 Active substance abuse within parents leading to abuse or neglect**

This ground appeared in a very significant number of section 12 incidents which arose in 2014, giving rise to a wide range of situations involving neglect, physical and emotional abuse and concern for child welfare generally.

**Example 45:**

In one case, AGS invoked section 12 where they found two young children in living conditions which were described in the narrative in the following terms: “Call regarding the condition of house where 2 children are residing. Gardaí attended house and examined same. Gardaí observed a number of syringes lying in bedroom of house. Bathroom toilet was blocked. Flies all over bathroom and around house. No clothes on children’s bed. No heating in house.” This incident occurred during the winter months.

**Example 46:**

It is worth quoting the narrative to this incident in full, as follows. “[Investigating] member discovered child in house with aunts and uncle. There was blood on the floor and signs of alcohol having been consumed on the premises. The child showed signs of neglect, she was in need of a bath and was wearing a nappy which was very soggy and soiled. Member was aware that a care plan had been agreed between [name of social worker] and the parents that morning in relation to the welfare of the child and the parents had failed to adhere to the care plan and in fact had evaded contact with social workers. Member was present in house that am, along with the social workers, and had observed the conditions which caused concern for them, namely the filthy condition of house; the lack of food in the house; the intoxicated condition of both the mother and

father (both showed signs of having engaged in a drinking binge the previous night). Member also aware that family members caring for child were aware that a care plan had been agreed. They actively participated in an effort to frustrate [Social Work] dept. and were evasive as to whereabouts of parents. Interaction with social work department had resulted from mother of child presenting at a&e department this morning with injuries which she had sustained as a result of an assault by her husband (No complaint forthcoming - mother disclosed this to hospital staff but informed Gardaí that she fell). Child handed over to ... social worker..."

**Example 47:**

Similar circumstances presented in a case where Gardaí were called to a house following reports of a domestic dispute. As noted in the narrative, "gardaí to scene - on arrival spoke to both parties who were highly intoxicated - 4 year old child awake on a mattress on sitting room floor in front of open fire - section 12 child care act invoked - parents started to threaten to kill each other and very volatile situation - child in care of the hse (Tusla) and placed in to the care of foster parent - mother attempted to overdose with tablets and was arrested under mental health act ...".

**Example 48:**

There were several other incidents where intoxication was a feature, to include a case where a mother arrived to school in an intoxicated state to collect her children.

**Example 49:**

A further incident concerned a mother who was found intoxicated at a LUAS stop late at night with two young children.

**Example 50:**

In another incident, it was reported to Gardaí that "a drunk male was cycling with a young child on the crossbar". The narrative further states that Gardaí "found male in [place] with young child. Father of child extremely intoxicated not fit to have a child in his care. Attempts made to contact the mother. Mother was found in an extremely intoxicated state also." The child, who was two years old, was placed in emergency foster care by Tusla following section 12 being invoked by AGS.



**Example 51:**

Gardaí were called by a witness who had observed “a number of males and females drinking in [place], 2 year old present, child was observed drinking from open beer container. [Gardaí] arrived at scene, spoke to mother of child who was intoxicated. [Gardaí] concerned for the welfare of the child subsequently invoked section 12 child care act”.

**Example 52:**

Gardaí were contacted with regard to a drunk female at a fast food restaurant. The narrative notes “on arrival [Gardaí] met with very drunk female, unable to stand unaided. Also there was 2 week old baby and baby’s father. Baby’s father advised to go home with the baby but out on the street failed to do so. He was out on the street with the buggy, male arrested, became very aggressive, lashed out at gardaí, pepper spray deployed, s12 care order invoked.” The baby was brought by Gardaí to a nearby hospital as a place of safety.

**Example 53:**

Section 12 was also invoked following receipt of a 999 call in relation to a three-year-old child who had been left unattended in a buggy by her parents who were intoxicated. The narrative noted “the mother was highly intoxicated and barely able to stand or speak”.

**Example 54:**

Similar circumstances presented in a case where, as noted in the narrative, “[a] member of public [notified Gardaí] in relation to a female pushing a buggy with a child in it, that was nearly hit by a bus in [name] city centre, female was heading in the direction of the [name] pub on [name] street, gardaí stopped female pushing a buggy on [name] street, she was attempting to gain access to her apartment, but was unable to do so, due to the door being locked from inside, allegedly by the female’s partner, female was clearly intoxicated, bottles of [beer] were found in the buggy, mother and child transported to a place of safety at [name] hospital ... , section 12 care order invoked by garda [name], child placed in the care of the hse (Tusla).” The child was one-year-old at the time of this incident.

**Example 55:**

In another incident, the narrative notes “Gardaí found 1 year old child in house unattended. Her father and 2 friends were smoking heroin in an adjoining room.”

**Example 56:**

Gardaí “[o]bserved [a] female in custody of a young baby while also in the company of 3 others injecting heroin. Female admitted she had also used heroin that day. Gardaí believe there was a serious & immediate risk to the child well-being.” Section 12 was invoked in relation to the child who was then aged just six months old.

**Example 57:**

Gardaí invoked section 12 in a case where a “very intoxicated” mother was found lying on the footpath in a busy urban area holding a ten-month-old child.

**Example 58:**

Section 12 was invoked in relation to three young children whose mother was found “slumped over in the driver’s seat [of a car], unconscious.” The mother was arrested for drunk driving and the children were brought to the Garda station before being handed to the care of Tusla.

**Example 59:**

Gardaí gained access to a house where a three-year-old child was in the care of her “highly intoxicated” father. The narrative notes that the “child clung to Garda [name] and looked in fear of her father”. Due to the circumstances, section 12 was invoked and the child was brought to the Garda station.

**Example 60:**

Section 12 was invoked in relation to an eight-year-old child whose mother was found at home “in a highly intoxicated state. House was very unkept with signs of drug taking and excessive drinking. 8 yr old child in the house was vomiting and visibly ill.” This child was brought to hospital by Gardaí.

### **3.7.13 Other**

A range of situations are evident in this category to include children who were homeless and children who were located by Gardaí, having been reported as missing from foster care or their families.

This category also includes children who refuse to return to the care of their parents, foster care or other residential care. The reasons for such refusal, where stated in the narrative, are many, including fear of physical or emotional violence.

In many other cases, the parents, foster carers or a residential care centre, or both, refuse to accept the return of a child or children. This often arises in situations involving violent or aggressive behaviour, where the child is under the influence of alcohol or drugs or following one or more periods where the child ran away from the home. This ground was also apparent in situations involving mental health issues of children, for example, where parents and/or foster carers were concerned about the risk of self-harm being perpetrated by the child. In many cases, parents, foster carers and residential care centres were also anxious to ensure the physical and emotional safety of other family members, children or staff.

In some cases, a situation arose where both the child was unwilling to stay in the existing accommodation and the parents and/or foster carers also wished the child to leave.

This ground also includes situations where there is no one available or willing to care for a child or children. Incidents in 2014, for example, disclosed such circumstances where a parent was under arrest or had been admitted to hospital in varying circumstances, including heroin overdose and domestic violence.

The provision of assistance to authorities outside the jurisdiction by Gardaí also arose in some cases, in particular Interpol. The assistance of Gardaí in international matters of this nature arose in six incidents in 2014.

#### **Example 61:**

In one case, Gardaí were called to a premises having been alerted to concerns for a nine-year-old child believed to be homeless. Gardaí found the mother “sitting on the stairs in

the apartments while her child was with a couple upstairs who had taken the child into their apartment out of concern for the child”.

**Example 62:**

Gardaí received reports relating to “3 children found sleeping in back of parent’s car. Parents gave false names for themselves & children. Parents could not give current address. Kids were both hungry & in dirty clothing. Obvious neglect noted. Section 12 of the Child Care Act invoked.”

**Example 63:**

A further example was found in a case where a “homeless and vulnerable juvenile [was] found in an intoxicated state, nowhere to go”. Section 12 was invoked for the safety of the child who was later placed in the care of Tusla.

**Example 64:**

Section 12 was invoked in relation to a child who had been reported to be “staggering along the road in bare feet and crying...she may have taken overdose” and was lying on a footpath when located by Gardaí. The narrative further states that neither the child’s parents nor foster carers “were willing to accept care or responsibility of this child”. As a result, the child was brought to hospital as a place of safety.

**Example 65:**

In liaison with the relevant UK authorities, a “high risk missing person...in the care of United Kingdom health services” was located by Gardaí. It should be noted that as Tusla indicated it was not in a position to assist in the matter for a number of days, the Gardaí made contact with Five Rivers who arranged emergency accommodation for the child.

**Example 66:**

Section 12 was invoked in relation to a new-born baby in a case, where the narrative records “mum fled from the UK as care plan had been put in place for child to be taken into care of the state on being born. Arrived in the [name] hospital with no medical history and in heavy labour. Information received from the UK social work dept. suggests mum suffers from mental health illness and is a drug user, and previously had 2

children taken into care. On speaking to mum she came across as incoherent and ... [name of Garda] formed the opinion to invoke section 12 for the child.”

**Example 67:**

In another incident, Gardaí were also called by Tusla to “invoke [section 12] to remove a baby from the mother’s care into a place of safety (nicu) [neonatal intensive care unit] ... HSE [Tusla] had concerns for the baby’s welfare.”

**Example 68:**

The assistance of Gardaí was requested by Interpol in the case of a child who had been removed from England without the consent of his father. The narrative records the “serious concerns expressed [by] Interpol regarding welfare and safety of child...believed to be at high risk”. Section 12 was invoked and the child was taken into emergency care by Tusla social workers, following which PULSE notes the attendance of members of the Gardaí at subsequent court proceedings involving the child.

**Example 69:**

Another section 12 incident involved the provision of assistance by Gardaí to Interpol in a case where a child had been reported missing from England and was subsequently returned pursuant to the Brussels II*bis* Regulation.<sup>73</sup> This regulation governs international jurisdiction within the European Union in matters of child abduction and certain child protection matters.

**Example 70:**

Section 12 was invoked by Gardaí in a case where the mother of a six-week-old baby had been admitted for psychiatric treatment, leaving no one willing or available to look after the child.

**Example 71:**

A further case involved the voluntary closure of a private care company, leaving a 12-year-old child with nowhere to stay. In spite of extensive efforts made by Gardaí to

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<sup>73</sup> Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000.

secure alternative accommodation, both with a social worker and Five Rivers, the child was ultimately brought to hospital as the only available place of safety.

**Example 72:**

Section 12 was invoked by Gardaí in relation to a child whose father wished to discharge him from hospital against medical advice. The child remained in hospital for ongoing medical treatment following the invocation of section 12. While a social worker was also referred to in the narrative, it is presumed that section 12 was invoked, rather than seeking an emergency care order, as this incident occurred on a Sunday.

**3.7.14 No known reason for invocation of section 12**

In a number of cases, no ground is disclosed in the narrative, for example, one case where the narrative simply states “section 12 child care act invoked in relation to above children”.

Where it was possible to locate the reason for removal from a review of and cross-referencing other entries on PULSE furnished by AGS, the incident was classified accordingly. In other cases, it was necessary to record that the reason for removal was unknown. These cases have been classified in the category “Other” and there were 15 such incidents noted in 2014.

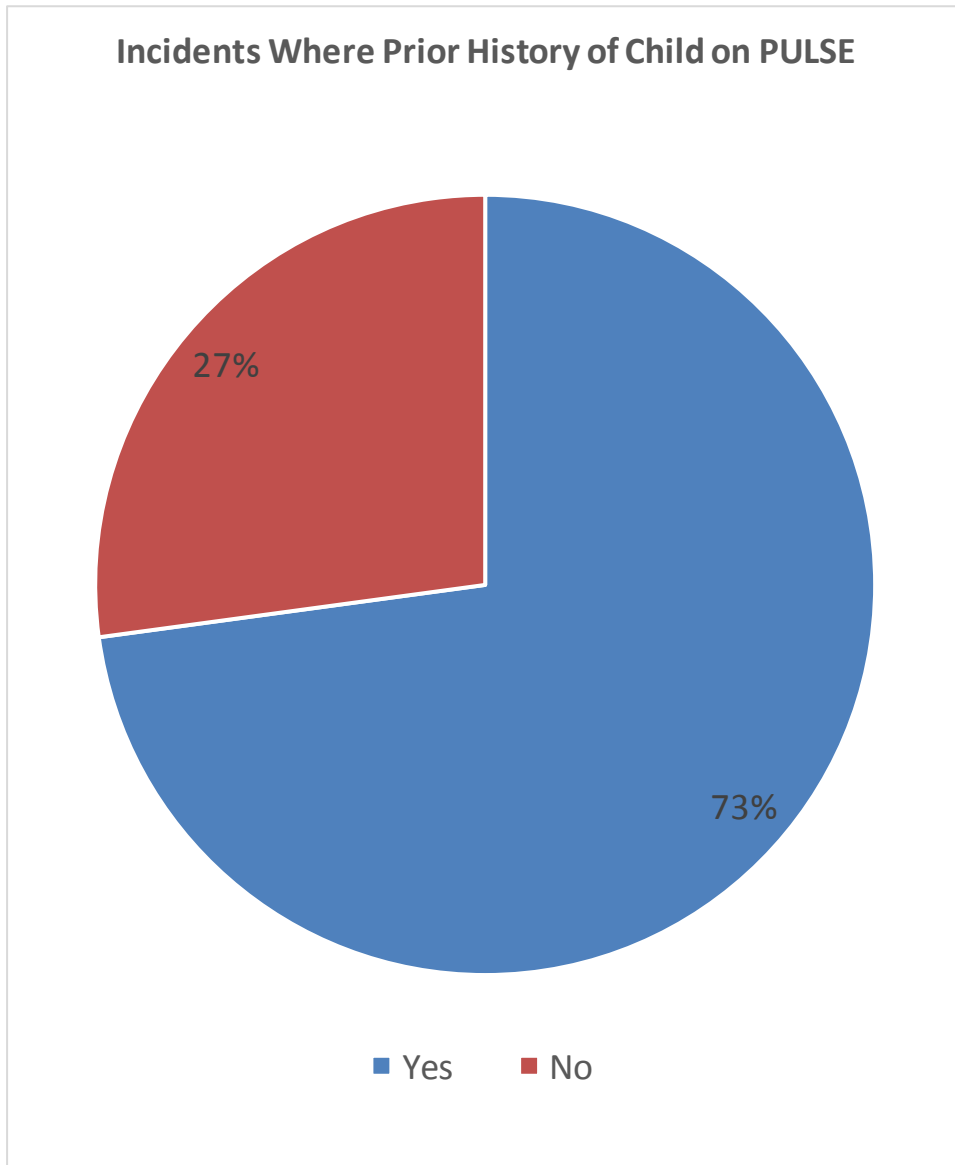
The review of cases also disclosed one incident where the invocation of section 12 was uncertain in the circumstances. The narrative noted that a “youth presented himself at [name] a + e. stating he had an altercation with his father. No visible signs of injury. Hospital contacted gardaí. Gardaí invoked section 12 child care act. Gardaí called to address and parents informed. Child to remain at hospital until arrival of social services. Garda believes on the balance of probability that no offence was disclosed. HSE (Tusla) to be contacted. Name of social worker to be added. Other children present in the house.”

**3.8 OTHER INFORMATION**

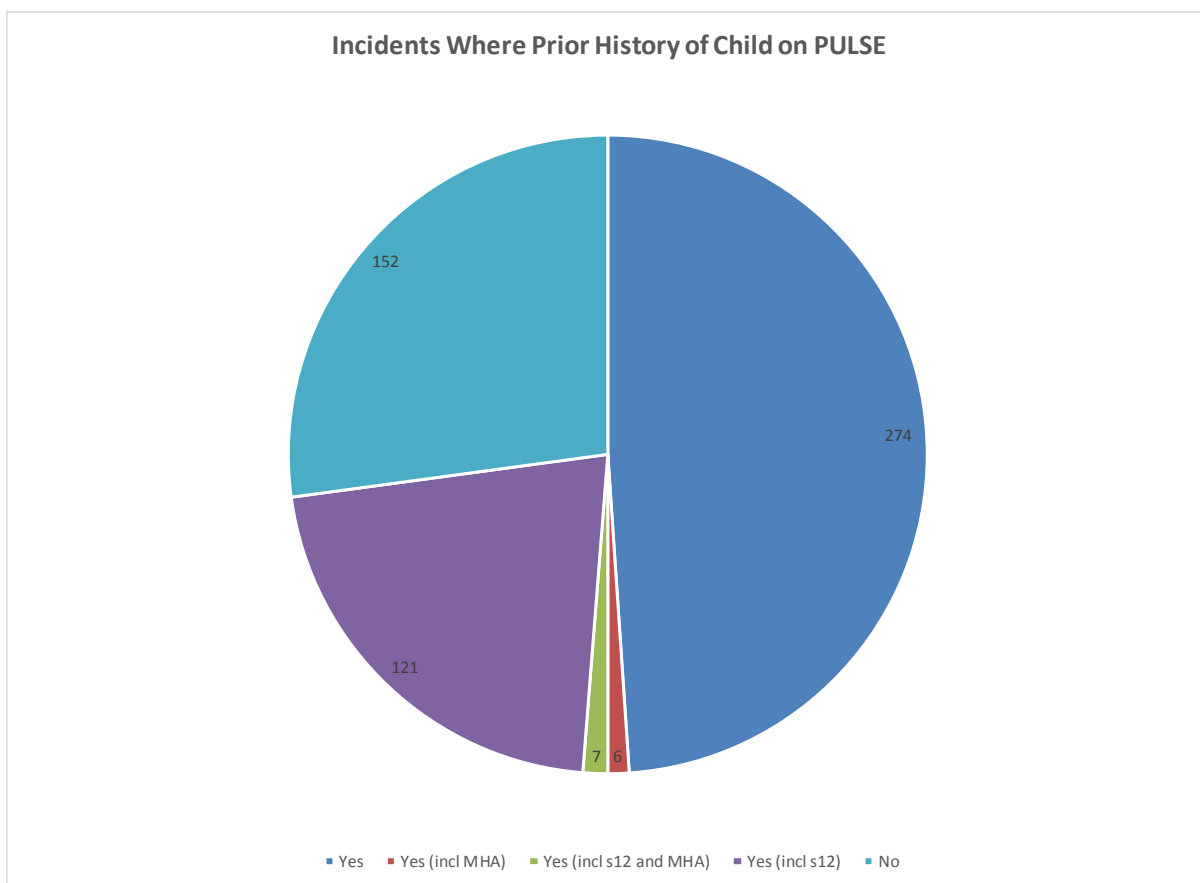
In addition to the grounds upon which section 12 was invoked, the PULSE data was also analysed to extract other information, as set out in the following paragraphs.

### 3.8.1 Prior history of child on PULSE

In the majority of cases where section 12 was invoked, a prior history of contact with AGS is evident. These situations include prior situations where AGS have been involved with the child, his or her family and other caregivers.



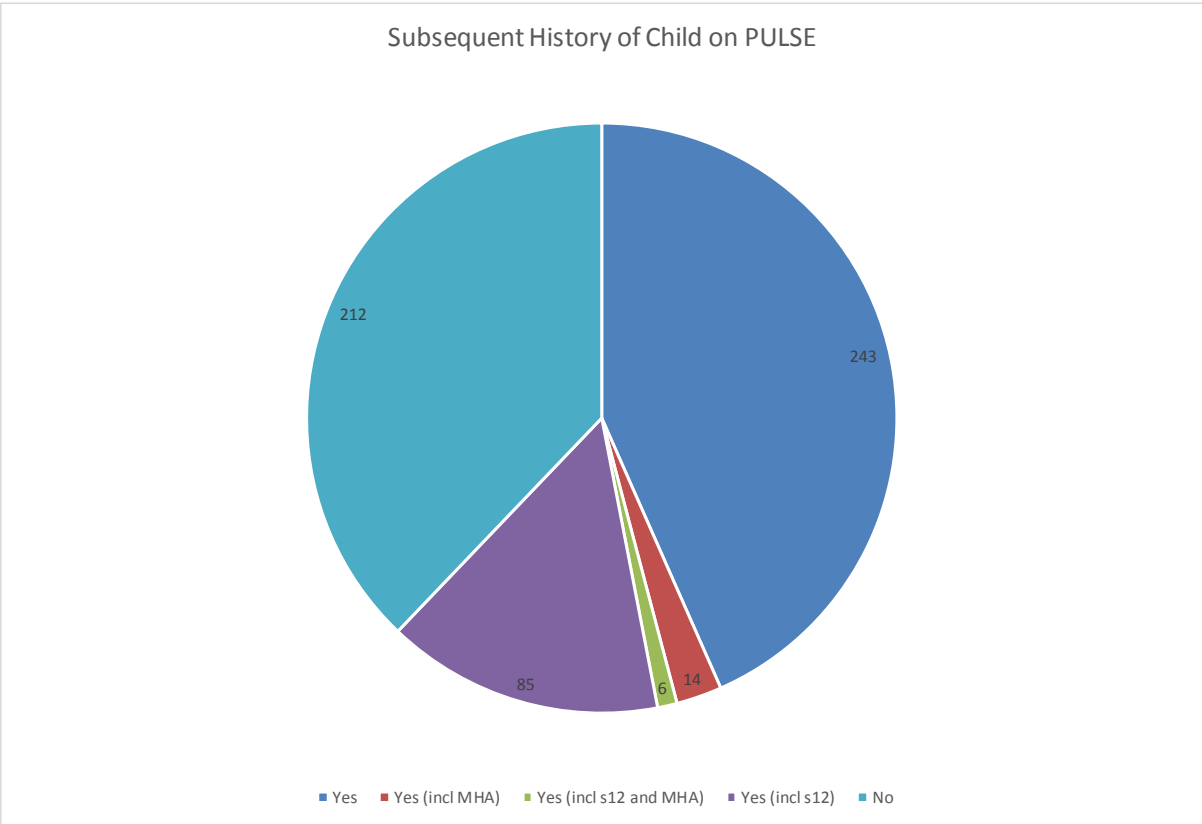
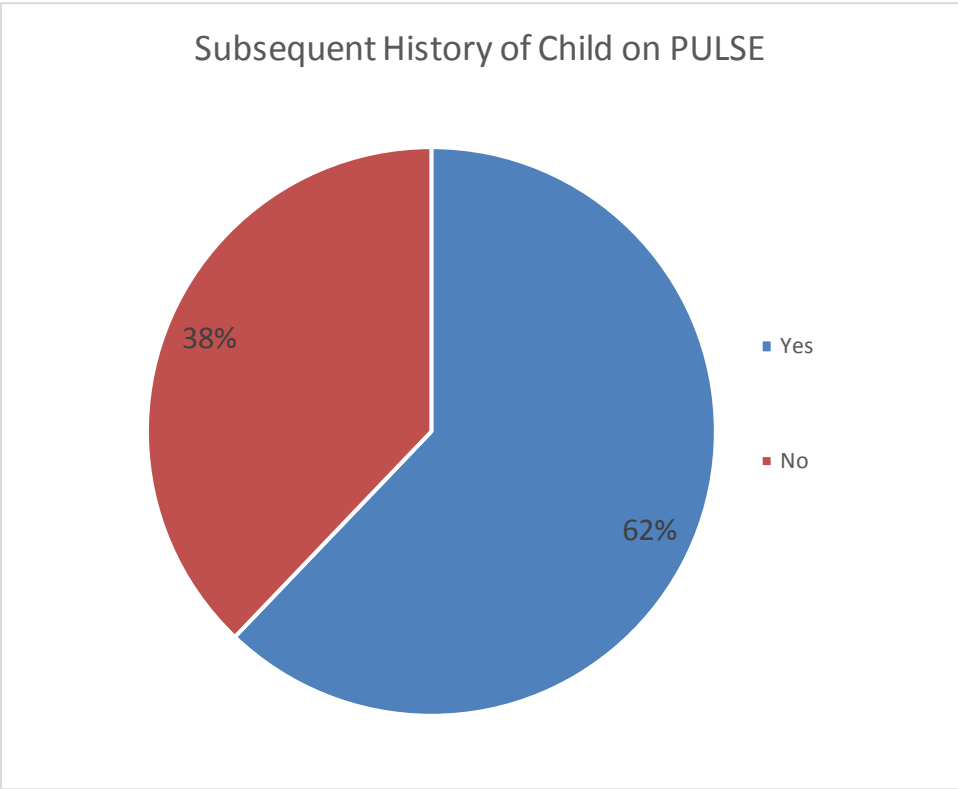
The following graph contains more detailed information with regard to children where a prior history appears on PULSE. This includes children who have previously been the subject of one or more section 12 incidents or where the Mental Health Act 2001 has been applied, or both. In many cases, PULSE records involvement in criminal activity and other situations where the child or children came to the attention of AGS.



### **3.8.2 Subsequent history of child on PULSE**

The following graphs show those children where one or more entries appear on PULSE, subsequent to the invocation of section 12 by AGS during 2014. This includes children who have subsequently been the subject of one or more section 12 incidents or where the Mental Health Act 2001 has been applied, or both. In many cases, PULSE records follow-up visits and meetings with social workers or other third parties. PULSE also records any involvement in criminal activity and other situations where the child or children subsequently came to the attention of AGS.





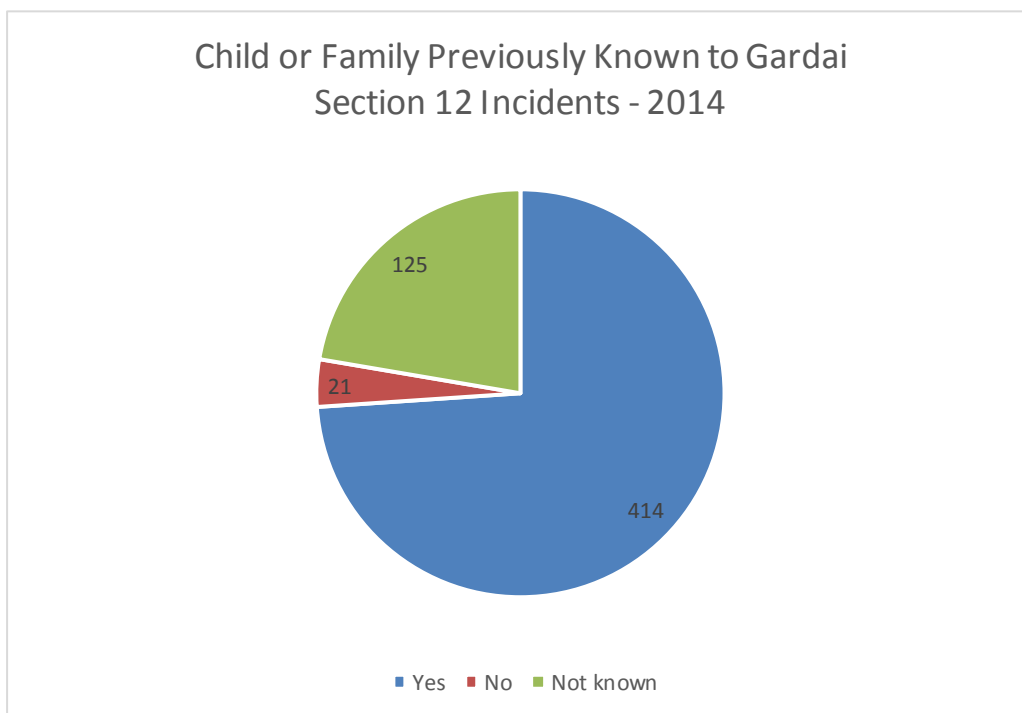
In one case, it appears that section 12 was invoked on two occasions on the same day in relation to the same child. Its narrative notes “section 12 child care act invoked in

relation to above children, released into care of HSE (Tusla).” This incident occurred at 12.30pm. It appears from a review of information on PULSE that the child subsequently left the care of Tusla and section 12 was again invoked at 7.30pm when the child was located in a public place. As Five Rivers was unwilling to provide accommodation due to his violent behaviour and drug/alcohol consumption, the child was brought to hospital as a place of safety.

### 3.8.3 Child or family previously known to Gardaí

In the majority of cases (73.9%), the review of PULSE shows that the child or the family, or both, were known to Gardaí prior to the specific invocation of section 12 in 2014.

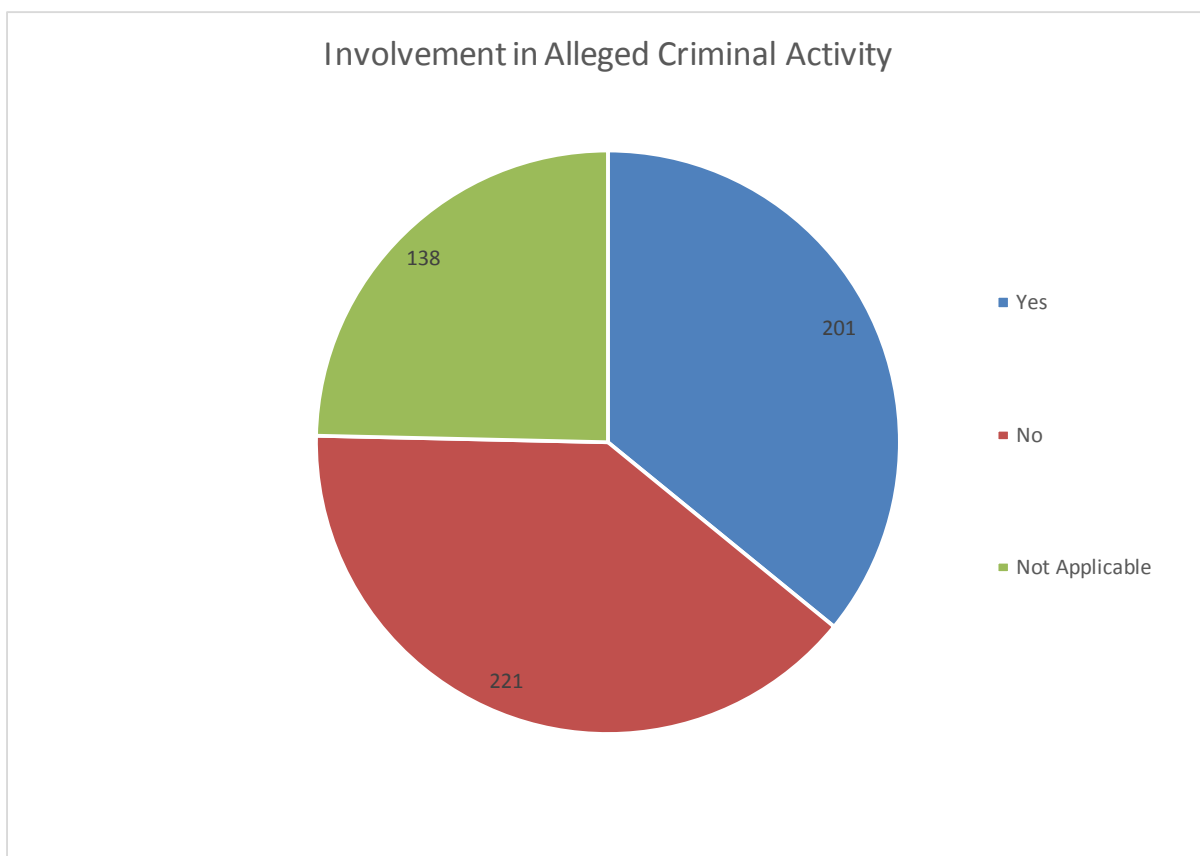
The following graph sets out the results of the review as follows.



### 3.8.4 Criminal activity

Insofar as possible to do so, the PULSE data was reviewed to assess whether, and to what extent, any child the subject of a section 12 power was also involved in alleged criminal activity.

The results reveal a high proportion of cases of children aged 13 and upwards where such circumstances arise, as set out in the following graph.

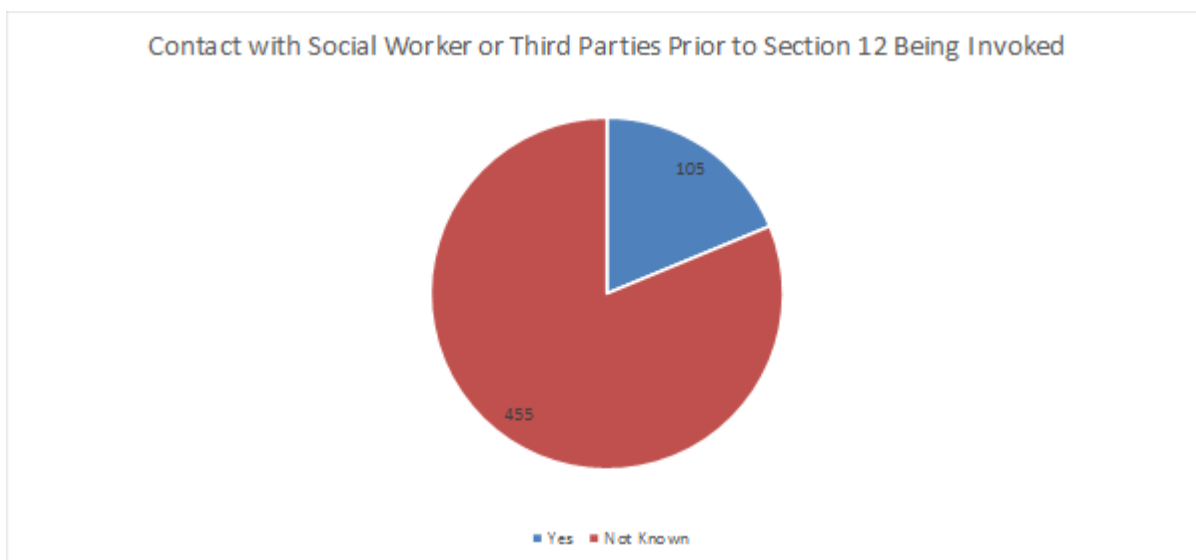


**3.8.5 Consultation with social worker or others prior to section 12 being invoked**

The audit considered the question as to whether the relevant member or members of AGS had any contact with a social worker or third parties prior to invoking the power under section 12. This was relevant to an analysis and review of Garda actions when considering invoking the power.

The following graph shows the results of this review, according to the extract of PULSE data furnished to the audit.

Difficulties in analysing this data presented in circumstances where the majority of the narratives do not contain any information regarding this question and there does not appear to be a specific data field to capture it.



As shown in this graph, the majority of incidents (81%) are silent as to whether AGS had any contact with social workers or other third parties, prior to exercising section 12. It may be presumed that there was no contact of this nature. However, in the absence of any recorded detail in this regard, it is impossible to say with certainty. In cases where such contact occurred, this often arose where Gardaí were contacted by social workers or where social workers were present when section 12 was invoked. In other cases, Gardaí consulted with ambulance and medical personnel, foster and other care home staff, an interpreter and others, including Garda colleagues.

It is certainly possible that such consultation took place in other cases, but this data and intelligence is not captured on PULSE. Unfortunately, due to the inherent limitations to the PULSE data review for this aspect of the audit, it is simply not possible to assess the level of engagement by AGS with social workers or other third parties prior to the invocation of section 12.

### **3.8.6 Socio-economic background of the child and family**

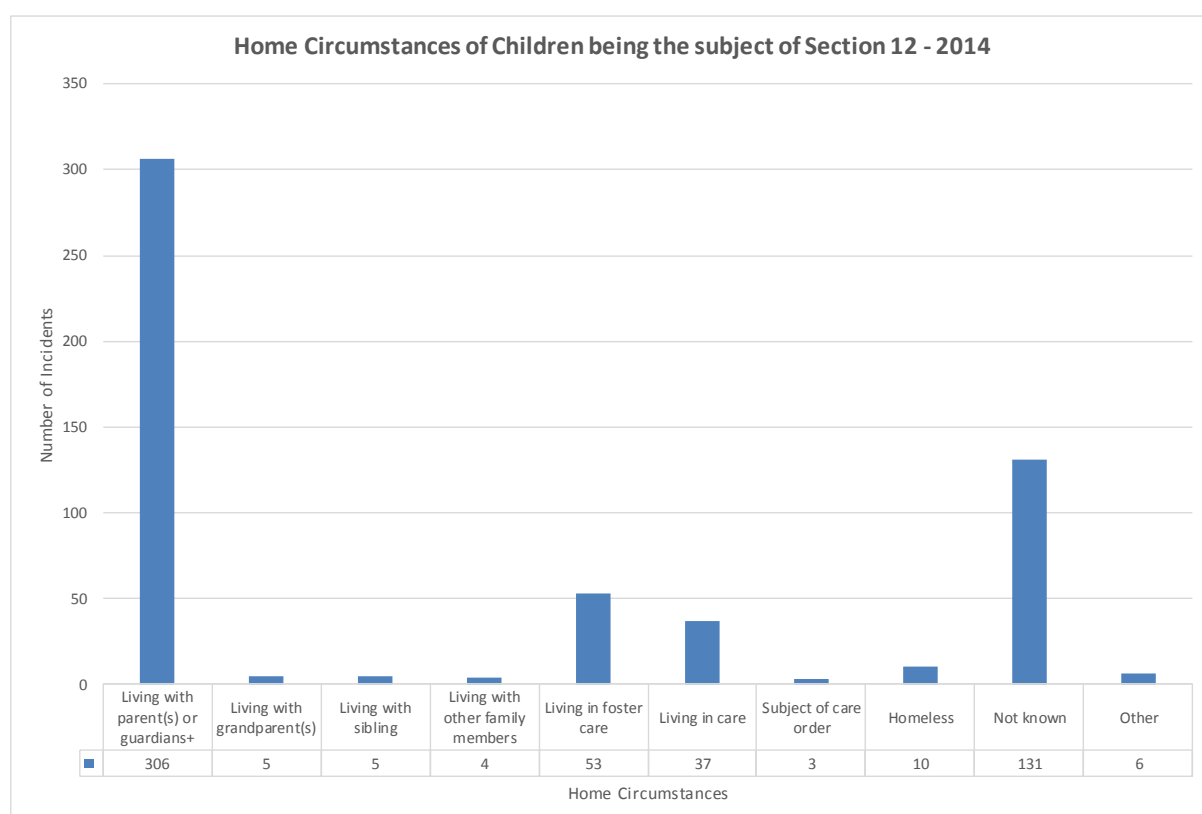
The socio-economic background of the child subject to section 12 or his or her family is not routinely recorded by AGS. In the few incidents recorded in 2014 where any information to this effect is available, such was gleaned from a detailed analysis of narratives and surrounding entries on PULSE with regard to other incidents and people.

In seven of these cases, it appears that the child being the subject of section 12 was a member of the Travelling Community. Two other children are described as residing in a “transitional housing project”. However, this term is not otherwise clarified or defined.

### 3.8.7 Home circumstances

Where data was recorded on PULSE with regard to the home circumstances of children, this was analysed with a view to ascertaining the living arrangements of children being the subject of section 12 powers.

This data showed a majority of children (54.6%) living with parents or other guardians. 16.7% of these children were living in foster care or other residential care. However, these figures must be considered in the light of some 131 incidents (being 23.4%) where the home or living circumstances are not known, as they are not recorded on PULSE.



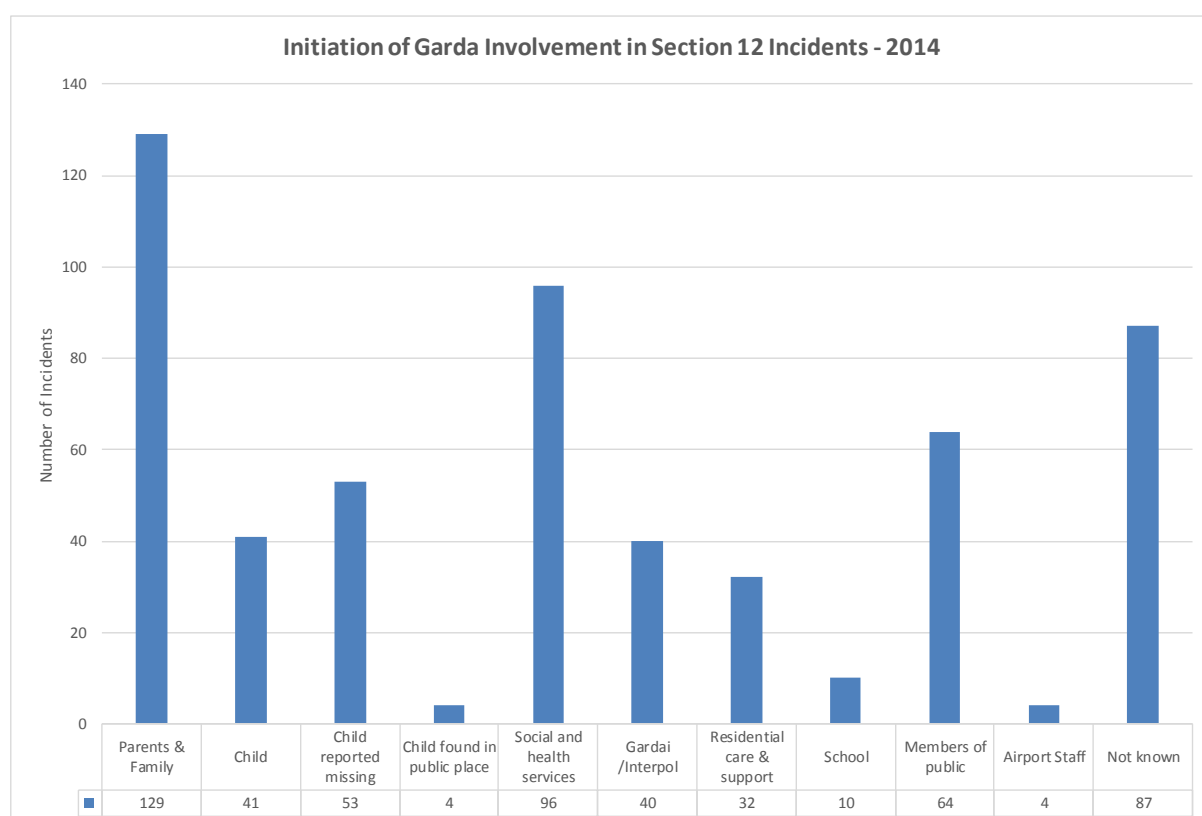
### 3.8.8 Initiation of Garda involvement

The data provided by AGS was analysed to establish the history to section 12 being invoked in the incidents under review. This data showed that the assistance of AGS in these matters was invoked by parents and other family members in 129 cases, being 23%

of the incidents. Garda assistance was invoked by the child or children themselves in 41 cases, i.e. 7.3% of incidents. Many incidents (9.5%) also arose as a result of a child being reported missing.

Section 12 was instigated by the Gardaí in numerous cases, to include circumstances where a child had been released from arrest and where Gardaí were attending to criminal or other incidents involving the parents of a child or children.

The assistance of Gardaí was also sought by airport authorities in relation to 4 children according to PULSE records for section 12 incidents in 2014. In one such example where section 12 was invoked, Gardaí were notified by airport authorities in relation to a child who was travelling with a male to whom she was unrelated and in possession of a forged passport.



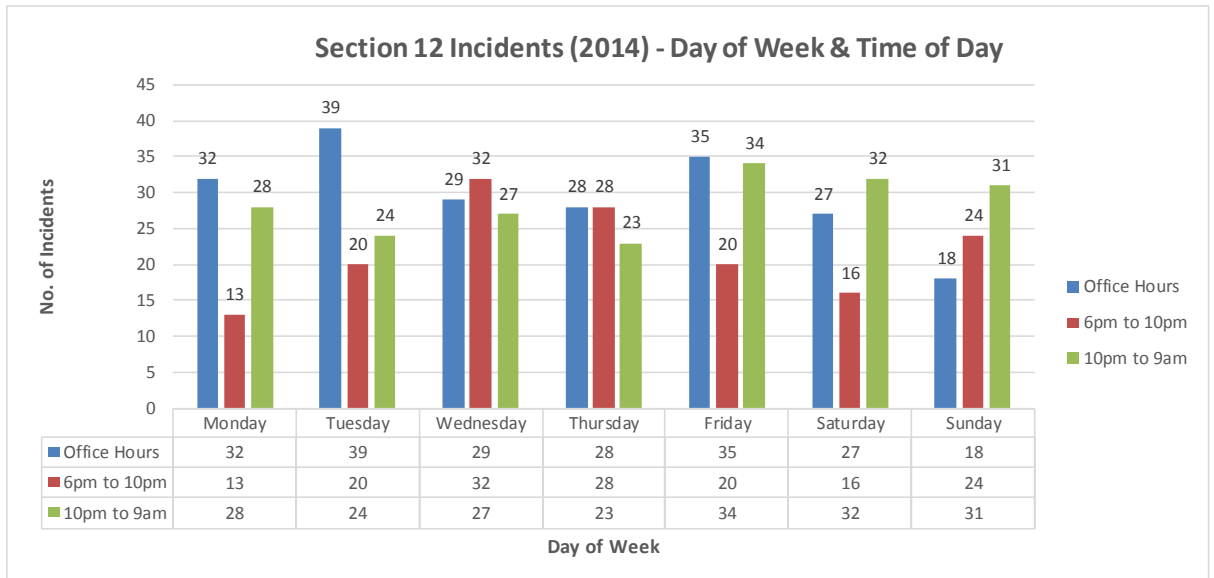
### **3.8.9 Time of day section 12 was invoked**

The PULSE entries were examined and categorised according to the time section 12 was invoked, as follows:

- (1) During Office Hours;

- (2) 6.00pm to 10.00pm; and
- (3) 10.00pm to 9.00am, including weekends.

The review of PULSE records is set out in the following graph:



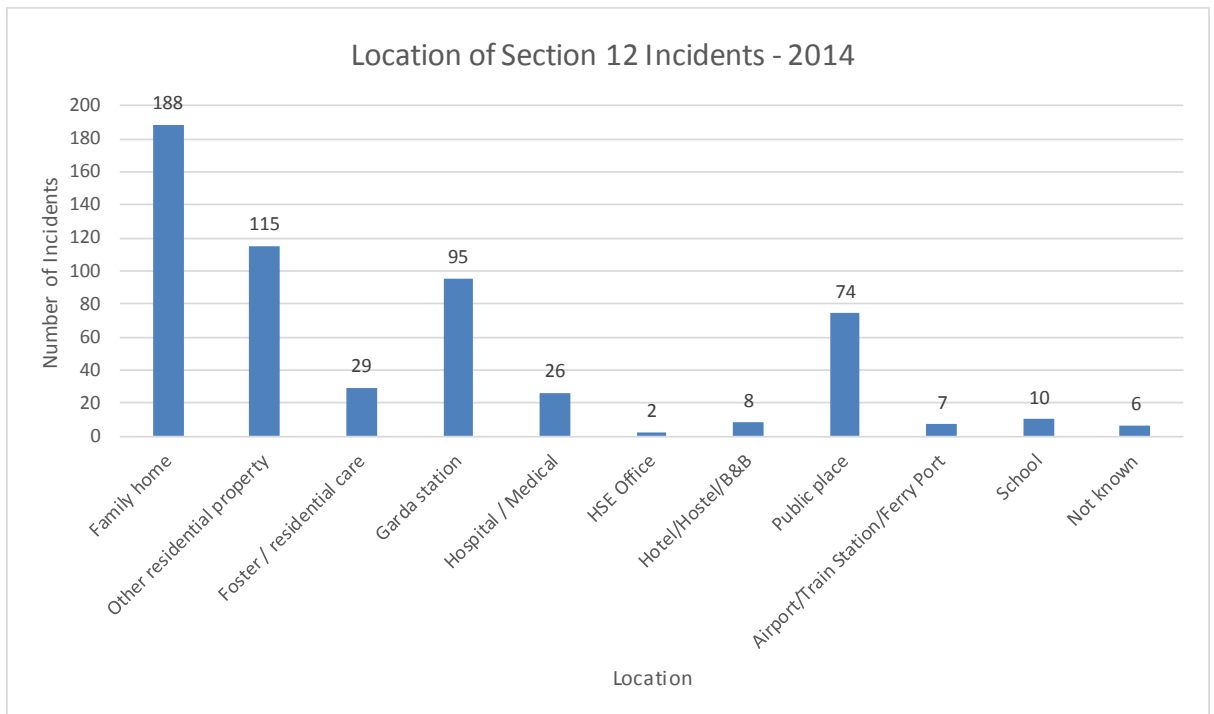
The following table also shows the percentage of incidents which occurred during office hours (29%) and those which occurred out of hours, including during weekends (71%).

Section 12 Incidents (2014)		
	No. Incidents	% of Total
Out of Hours - Weekdays	249	44%
Out of Hours - Weekends	148	26%
<b>Total - Out of Hours</b>	<b>397</b>	<b>71%</b>
Total - Office Hours	163	29%
<b>Total Incidents</b>	<b>560</b>	<b>100%</b>

### 3.8.10 Location of section 12 incident

The following graph shows the many locations where section 12 was invoked by AGS during 2014.

The majority of these incidents occurred in what might be described as a family home or other residential property (54.1%). Some 95 incidents (17%) occurred at a Garda Station.



### 3.8.11 Tusla out-of-hours service

One of the key issues which emerged throughout the audit is the role of AGS and the invocation of section 12 orders within the wider context of the child protection system.

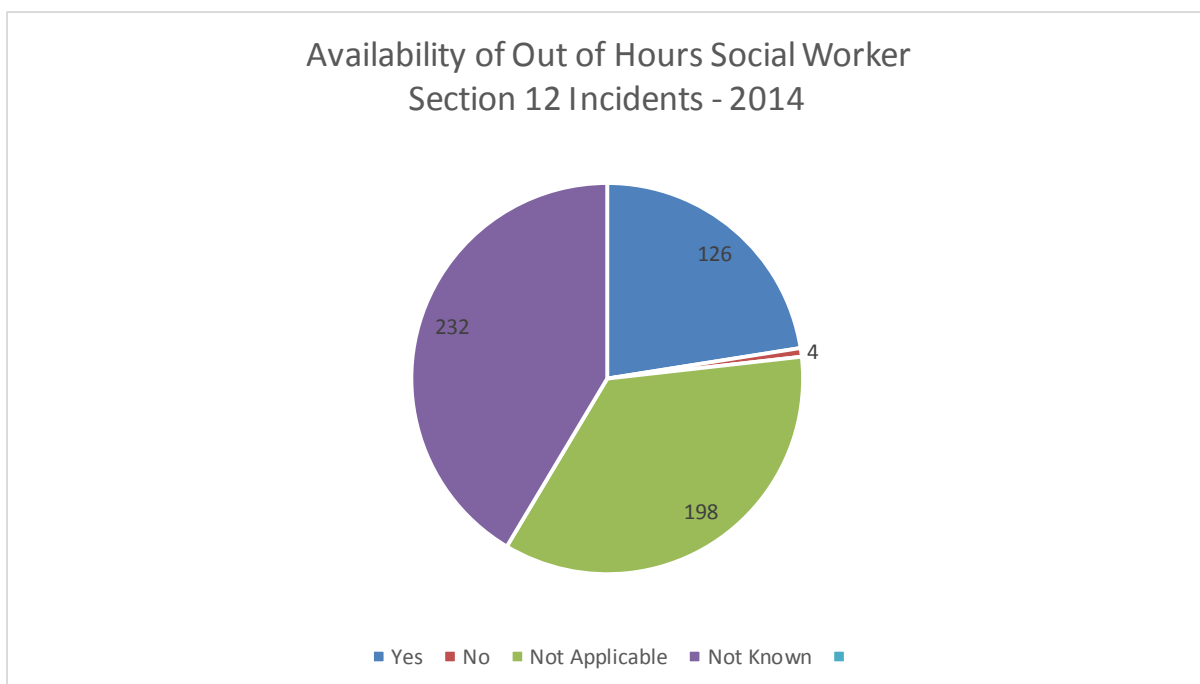
As a result, the PULSE data was analysed to establish, insofar as possible from the data received, the links, relationship and communication with social workers and other relevant persons.

This yielded important information with regard to the operation of the child protection system in general outside office hours and according to geographical regions.

In particular, the data was reviewed to establish whether, in the cases of incidents which occurred outside of office hours or during weekends, a social worker was available to Gardaí. The following graph shows the results of this review.

Unfortunately, the incidents as recorded on PULSE do not disclose the position in 232 cases (41.4%) and this question is, therefore, unknown. While it may be presumed in many of these cases that no such out-of-hours service was available, the position cannot be stated with certainty in the absence of clear information and data to this effect.





The following further examples from the data recorded on PULSE may be instructive in this regard.

**Example 73:**

In one incident, the narrative notes that Five Rivers was unable to locate a place for a child and, as a result, the child was brought to a local hospital as a place of safety.

**Example 74:**

One further incident reveals how Gardaí were contacted by hospital staff with regard to a child who had been discharged as she no longer needed medical attention and the hospital refused to allow her back to the hospital. Section 12 was invoked and the child was brought to the Garda station where the narrative notes “Gardaí sat with [child] for six hours until a social worker arrived from Dublin”. The child was then taken into the care of the social worker. It is noteworthy that this incident occurred in a large urban Garda station during office hours.

See also paragraph 3.9 below for further commentary.

It is also clear from the review of data undertaken that confusion among some members of AGS exists with regard to the role of both the HSE (Tusla) and private providers, in particular Five Rivers. This largely occurs in cases arising out-of-hours.

In one incident, the narrative refers to Gardaí contacting “out-of-hours HSE Five Rivers”. Another incident refers to a child being placed in the care of Tusla, while also referring to being in contact with Five Rivers. This incident occurred out-of-hours.

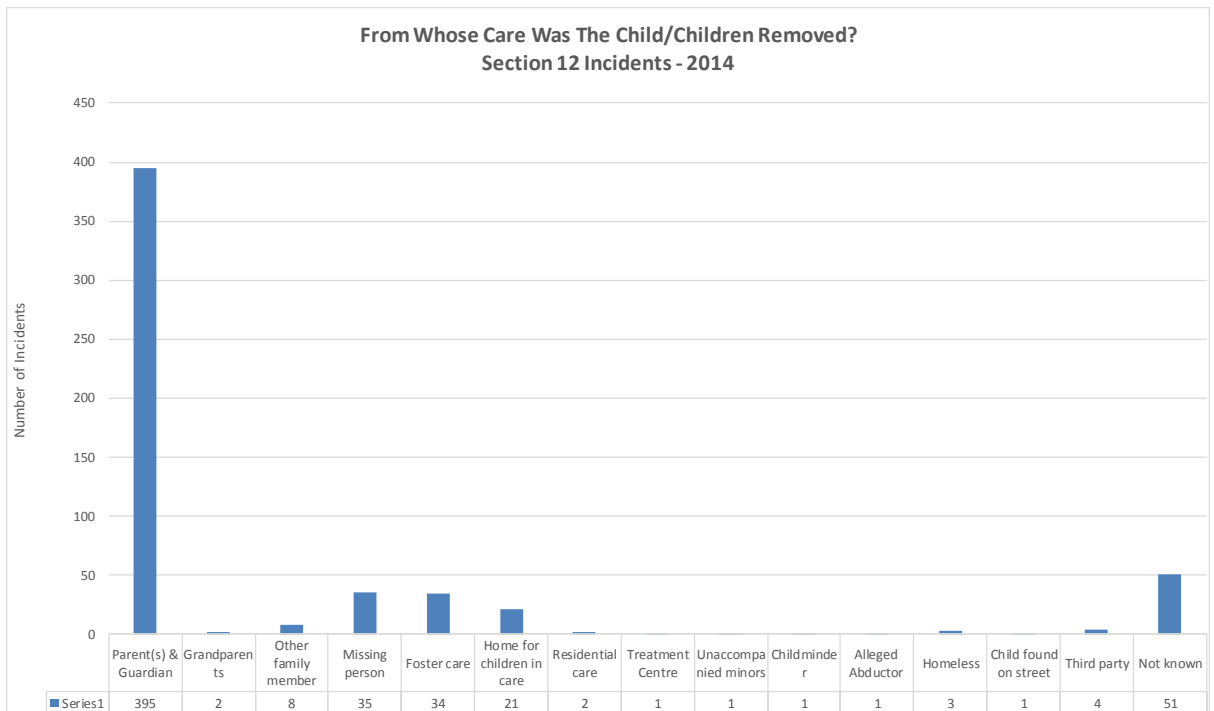
A further example illustrates the frequent confusion in the roles fulfilled by Tusla and/or private providers, where it is stated that Gardaí “contacted [Five] rivers in connection with HSE to find alternative accommodation for [name of child]”. The child in question was ultimately brought to a hospital as a place of safety. Similarly, another incident noted that a “child [was] dropped to five rivers to [name] at [time] and is now in the care of HSE [Tusla].”

Another narrative notes “Gardaí contacted Five Rivers (24 hour emergency HSE line)”. Reference is also made to “Five Rivers HSE ... out-of-hours services” being contacted in another incident.

A further incident stated “Five Rivers out-of-hours HSE service [was] contacted”. Another example refers to “Three Rivers”.

### **3.8.12 Person(s) from whom the child or children were removed**

The following graph sets out the results of the data review with regard to the person or persons from whom the child or children were removed by Gardaí when exercising their power under section 12.

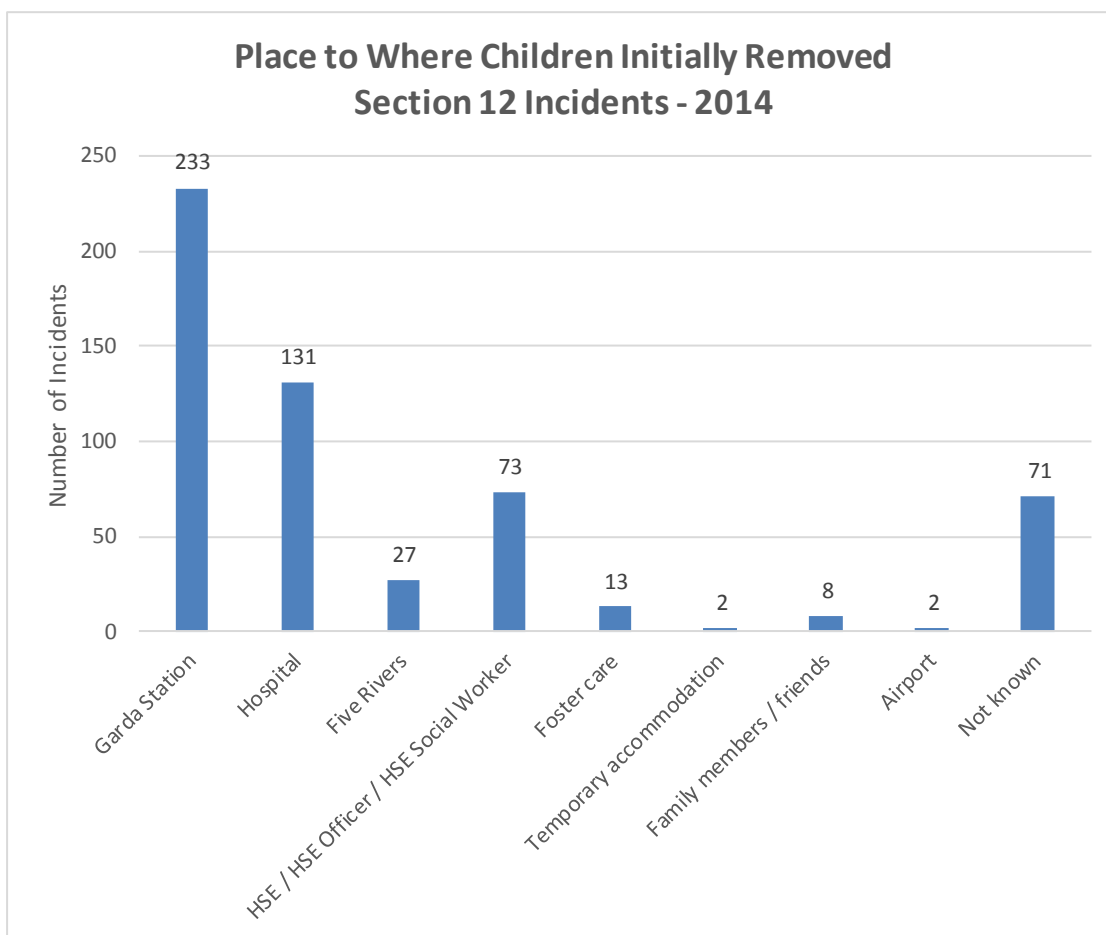


As appears in the graph, the majority of section 12 incidents in 2014 involved the removal of a child or children from parents and/or guardians in 395 cases or 70.5% of the incidents under review. The remainder of incidents arose in diverse circumstances. Moreover, the position is not known in a large number of incidents (9.1%).

As referred to in paragraph 3.7 above, the circumstances surrounding the removal of children pursuant to section 12 are many and varied. While this graph shows a high proportion of incidents involving the removal of a child from parents and/or guardians, it should be borne in mind that many of these incidents were initiated by the parent(s) or child(ren) in question, or others, as set out in paragraph 3.8.8 above.

### **3.8.13 Place to where the child or children were initially removed**

The following graph sets out the results of the data review with regard to the place where the child or children were initially removed by Gardaí when exercising their power under section 12.



In the majority (41.6%) of cases under review, the child or children were brought to a Garda Station.

A significant number (23.4%) of cases used a hospital as a ‘designated’ place of safety. Indeed, in many incidents, it appears to be the only possible or available place of safety, in circumstances where no foster or emergency accommodation is available, or where family members or foster carers are unwilling for the child to remain with them.

**Example 75:**

In one incident, Gardaí were contacted by a GP with regard to a 15-year-old child’s behaviour, to include psychotic episodes. The narrative noted “Gardaí attended at the [family home] and spoke with [the child’s] parents and ambulance crew at the scene. The child had refused to eat, sleep, take medication or leave his room for the past seven days. The child refused to speak or cooperate with medical staff, parents or the Gardaí.” Having consulted with Tusla out-of-hours service and the GP, it was noted that the child could not be involuntarily admitted for psychiatric care due to his age and lack of

available facilities. The narrative also noted that “the HSE [Tusla] out-of-hours social worker was unable to arrange foster care as the child’s needs would not be met”. Section 12 was invoked and the child was brought to a hospital as a place of safety.

**Example 76:**

In another incident, a child was arrested for a breach of the peace and brought to a Garda station. While there, Five Rivers was contacted to provide accommodation, but it refused to accept the child as he had consumed alcohol and was under arrest. In these circumstances, the Gardaí invoked section 12 and the child was brought to a local hospital.

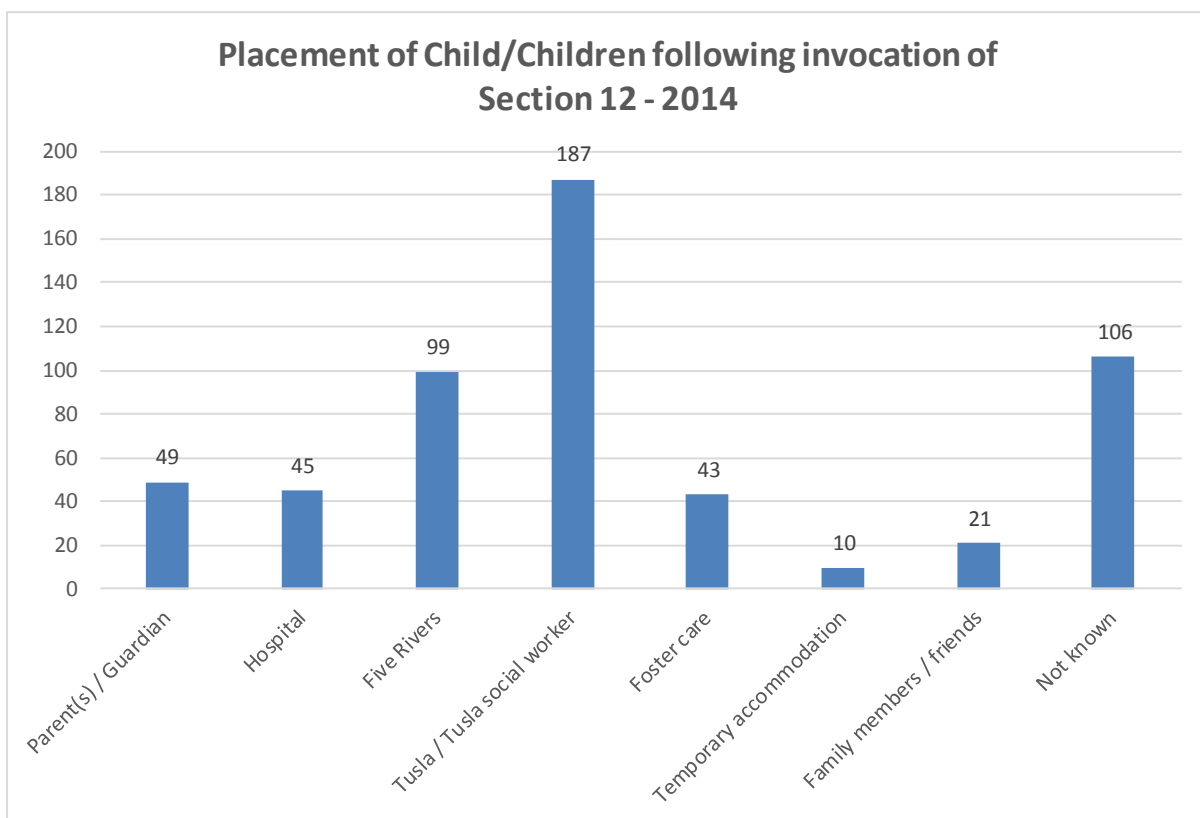
**Example 77:**

In a further incident, two hospitals also refused to receive a child. Gardaí had been advised by out-of-hours social workers to bring the child in question to a hospital. The child was ultimately returned to his father as nowhere else was available.

In a high proportion (12.7%) of incidents in this category, the place to where the child or children were initially removed is not recorded on PULSE.

**3.8.14 Location where children were placed following invocation of section 12**

The following graph sets out the results of the data review with regard to the location where the child or children were placed following the invocation of section 12 by Gardaí. It identifies the locations where children were placed, following the initial placement at Garda Stations, hospitals and other locations, as described in paragraph 3.8.13 above.



This data is informative for a number of reasons. It shows the many agencies with which AGS may deal following the invocation of section 12, when it might be argued that they should properly deal with one central agency for the placement of children once the power under section 12 has been invoked, namely Tusla.

The high proportion of cases involving Five Rivers (17.7%) is also noteworthy, in addition to the significant number of cases where the position is unknown (18.9%), i.e. not recorded on PULSE by Gardaí.

**Example 78:**

In one incident, a child was brought to a Garda station following the invocation of section 12. The child had gone missing from foster care and when located, the Gardaí were unable to contact the relevant foster carer. As a result, they contacted Five Rivers and the child was brought to emergency foster care 112 km away. It should be noted, although not stated in the narrative, that this would require significant time on the part of the relevant members of AGS in completing a 224 km round trip, and prevent them from undertaking any other essential Garda work at that time. As it must be presumed that this was the nearest available foster care placement at that time, this highlights a

potentially significant gap in geographic coverage of Ireland's child protection infrastructure.

**Example 79:**

In another incident, it was necessary for the Gardaí to bring a child from one named location to another, when the child's existing foster carer in the original location refused to accept his return. It is estimated that this necessitated a round trip of approximately 260 km for the Gardaí.

**Example 80:**

Another case shows that a child was brought from one named location to another to secure accommodation, there being no other accommodation available, representing an approximate round trip of 212 km and an inevitable occupation of Garda resources for that time.

The role of private providers in the context of emergency foster care is brought into sharp relief upon a review of the PULSE data – mirroring findings in the questionnaire and interview stages of the audit. In a significant number of cases, particularly where no out-of-hours service exists, the private provider Five Rivers appears to be almost an automatic point of contact for AGS when endeavouring to secure accommodation for a child or children.

A further query is also raised as to the extent of the role and functions of the private providers. (See further at paragraph 6.2.14 below.)

**Example 81:**

One incident records that Five Rivers was contacted with regard to providing accommodation for a child but was unable to do so. The child in this case demonstrated challenging behaviour. The child was ultimately brought to a hospital as the only available place of safety. Such an incident clearly gives rise to concern for a child in these circumstances where a question must be posed as to the role of the State in caring for this particular child and other children who find themselves in similar circumstances.

**Example 82:**

One further incident showed the lengths to which Gardaí went following the invocation of section 12 to secure accommodation for a child. This incident arose from violent and threatening behaviour to care staff (Fresh Start) on the part of a child, following which the agency refused to allow him remain. The child was brought to the Garda station where the narrative notes “Out-of-hours Social Work Dept. contacted - unable to help, Five Rivers have been contacted and do not have a place for this child. ....Fresh start were contacted by Sgt [name] and it was explained to them that they, Fresh start, had ultimate responsibility for this child, that staff there should contact their management with a view to increased security/extra staff, etc....Fresh start are employed by the HSE (Tusla) to look after these children, if they can’t do this then it is a matter for Fresh start and the HSE (Tusla) to go to the courts with a view to secure accommodation.” In this particular case, the child was ultimately returned to reside in Fresh Start, but the outcome in each individual case differs greatly and the question must be asked as to the role of the private providers and the extent to which they can refuse to care for a child, and the particular circumstances in which such refusal may be permitted. This issue is considered in greater detail at para 6.2.14.

**3.8.15 Presence of parent(s) at time of removal**

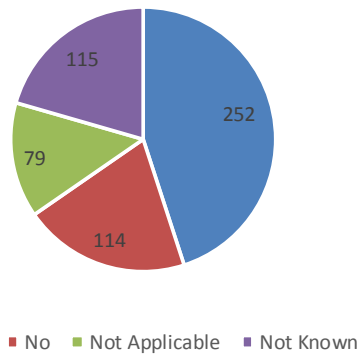
The audit considered the question as to whether the parent(s) of a child or children were present at the time of removal pursuant to section 12.

The results of the data review are set out in the following graph. This shows that parents were present at the time of exercising the power in 252 incidents (45%). The position is unknown in a large number of cases (20.5%) and the question did not arise in 79 cases where parental involvement was no longer applicable, including fostering and other arrangements.

As there is no field on PULSE to record this data, the information was extracted from a review of the Narratives, insofar as possible and subject to the level of detail recorded in each Narrative.



**Parents Present at Time of Removal?  
Section 12 Incidents - 2014**

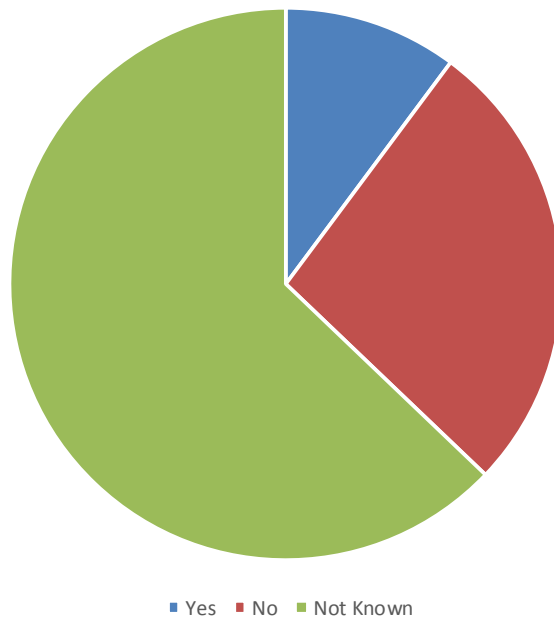


**3.8.16 Resistance at time of removal**

The PULSE records were analysed to assess the level of resistance, if any, encountered by the Gardaí when invoking the power pursuant to section 12.

The following graph sets out the results of the analysis as follows.

**Resistance at Time of Removal of Child(ren)  
Section 12 - 2014**



In the wide-ranging circumstances which present in the context of section 12, there are many situations in which conduct might be described as “resistance”. Such resistance can arise through conduct on the part of the parent or child, or both.

In addition, difficulties in analysing the data arose in this regard since many incidents did not refer to the presence or absence of resistance in the narrative. From the data provided by AGS, there does not appear to be a data field to capture this entry when recording an incident on PULSE.

From a review of the data as furnished, it appears that resistance to the invocation of section 12 was encountered in 57 incidents. There does not appear to have been resistance in 151 incidents. However, the position is unknown in a significant proportion of incidents (352 incidents), being 62.9% of the valid incidents recorded in 2014.

### **3.8.17 Presence of social workers or others at time of removal**

The extract PULSE data was also analysed to examine whether Gardaí were accompanied by social workers or others at the time of exercising the power under section 12.

Gardaí were accompanied by social workers and others in 78 incidents which occurred during 2014. Many of these occurred during office hours. However, the position is unknown in 142 incidents (25.3%). It does not appear that Gardaí were accompanied in 340 incidents, being 60.7% of all valid incidents in 2014. This information was deduced from recorded Narratives.

Gardaí were also accompanied in the exercise of their power under section 12 by staff of a residential care home (2 incidents), a medical doctor (2 incidents), a public health nurse (1 incident) and ambulance paramedics (2 incidents).

The following graph shows the results of the data review.



### 3.9 LINK WITH HSE/TUSLA IN EXERCISING SECTION 12 POWER AND ROLE AMBIGUITY

It is inevitable that a large “crossover” would exist between AGS and Tusla in carrying out their respective functions in the sphere of child protection. The review of the data shows in many cases a challenging working relationship between members of AGS and Tusla. In many cases, entries on PULSE show attempts on the part of members of AGS to follow up with regard to children the subject of section 12 orders with varying success.

Many cases also show a difference of approach and opinion with regard to the appropriate course of action to take in a case.

#### **Example 83:**

In one case, according to the narrative, Gardaí had located a missing child in circumstances where the care worker had voiced concerns that the child may have been carrying a weapon and/or drugs. The child was brought to the Garda station and the narrative further notes that the “care worker against advice from gardaí was hesitant to remain at the garda station, number of procedures and her responsibilities explained to her, care worker ultimately left [name] garda station, out-of-hours social services

contacted, unhelpful at this stage and after a number of phone calls between gardaí and out-of-hours centre (social workers) agreed to be present when child was handed into their care, subsequently youth was handed over to senior manager from [name] care home, report to superintendent regarding dubious care of child and breakdown of agreed protocols between gardaí and HSE (Tusla).”

**Example 84:**

The narrative to another incident discloses that the social worker was of the view that section 12 should not have been invoked by the member of AGS. The narrative further notes that, following invocation of section 12, the child had run away from social workers in a named location but had not been reported missing until found in another location several hours later. This child had a history of drug use and had originally been reported missing by his mother. The narrative also states “the social worker also informed youth of a confidential matter that his mother had told the social worker”.

**Example 85:**

In one incident, three children had been left alone at home by their mother who, when located, was intoxicated and unable to care for them. Section 12 was invoked by AGS. However, from enquiries made by AGS subsequently, it appears that the children were returned by (Tusla) to the care of their mother the following day.

In a number of cases, the aftermath of a section 12 removal resulted in what appears to be a less than satisfactory intervention by the State’s child protection infrastructure.

**Example 86:**

This is illustrated in the following case, where “Gardaí received call from ambulance service that they found infant at side of road, on arrival 2 year old infant was in care of ambulance crew, informed infant was located on her own at 2am at the side of [name] road, visited [name] household where gardaí observed front door wide open. Mother was asleep upstairs on arrival, confirmed that child was hers. Smell of alcohol from her, also informed that she left her child in her buggy in the kitchen while she slept upstairs. Infant conveyed to [name] hospital. Out-of-hours social services contacted. Sec 12 [invoked].” It appears that an emergency care order was subsequently obtained in the District Court. However, Gardaí were later notified by Tusla of the outcome of its

investigation in the following terms, as quoted in the narrative: “[Child] returned to home due to mother revoking her voluntary consent for [child] to remain in care. Legal advice suggested no grounds for [child] to remain in care.”

A number of instances also emerged from the review where an ambiguity in the respective roles played by AGS and Tusla might be said to exist. In particular, there appears to be a lack of clarity as to when the power under section 12 should be invoked and when the appropriate powers should be exercised by Tusla.

**Example 87:**

The PULSE records for 2014 include one case where the power under section 12 was not, in fact, invoked. It should be noted that other such instances may have occurred in 2014 since they may not be routinely recorded. The information furnished for the purposes of this audit was concerned with an examination of the circumstances where section 12 was, in fact, invoked by AGS and the reasons for the use of such a power. However, this case is worthy of mention due to its particular facts. Upon receipt of concerns notified by Tusla in relation to a child, the Gardaí attended at the child’s address but deemed it unnecessary to invoke the power in the particular circumstances. Rather, they felt it more appropriate for Tusla to seek an appropriate court order. Once the order had been obtained, the Gardaí then assisted Tusla in its execution.

**Example 88:**

In another incident, social workers called Gardaí to attend the school where children had presented with evidence of physical assault, allegedly on the part of their father. While this occurred during office hours, the relevant power was invoked by AGS, rather than Tusla.

**Example 89:**

In a further incident, the narrative records that the “child was arrested earlier today for begging offence. Child spoke no English. Could not give gardaí address or guardian details. HSE (Tusla) refused to take child. Child was released to gardaí and section 12 of the child care [act] invoked.” The Gardaí in this matter subsequently made further enquiries with a Tusla care worker who advised at a liaison meeting that the case had been closed by Tusla and the child returned to a family member.

**Example 90:**

Similarly, an issue arose in a case where a child had been found in a public place by a witness and brought to the Garda Station. The narrative notes “Ms [name] Tusla Social Worker refused to take [child] to foster care unless she was placed under Section 12 of the Child Care Act.” Section 12 was accordingly invoked by the Garda Sergeant and the child was then taken into the care of the Tusla social worker.

**Example 91:**

Similarly, another incident notes “section 12 child care act [was] invoked as a result of social services refusing to take [child] into their care, she was intoxicated and threatening suicide, as a result of this Sgt [name] invoked section 12 child care act and conveyed her to [name] hospital...”.

On the other hand, PULSE also shows a number of cases where AGS and Tusla worked well together. In one such example, at the request of Tusla staff, Gardaí accompanied them on a home inspection visit in relation to a child whose crèche had notified Tusla of suspected physical abuse. The narrative notes that the “HSE (Tusla) staff deemed child at risk [and] child to be taken into their care”. However, when the child refused to leave with the staff, Gardaí invoked section 12 and the child was then released to Tusla social workers.

In other cases, social workers sought the assistance of Gardaí in gaining access to property where they had concerns as to the safety of children.

**3.9.1 Joint notification sheet with Tusla**

Very few cases refer specifically to a “Joint Notification Sheet”. There are very many descriptions in the narratives with regard to follow-up with Tusla, to include “HSE Notification submitted”, “HSE referral form sent”, “Joint Action Sheet”, “Joint Action Plan”, “HSE update”, “HSE report”, “HSE follow up” and many variations of these. Other incidents make no reference at all to what happened post-section 12.

### 3.10 CONCLUSIONS AND RECOMMENDATIONS

The review of PULSE data has been instructive for many reasons. The quantitative data is useful to show the number of times the section has been invoked and the regional distribution across the country. From a qualitative perspective, the data has clearly shown both the varied circumstances in which, and the children in respect of whom, section 12 is invoked.

A careful examination of the grounds for invocation of section 12 was undertaken, in line with the recommendations of the Ombudsman for Children. The results, as set out in paragraph 3.7 above, show a very diverse range of circumstances leading to the power being invoked by AGS. A concern for child welfare is at the heart of these circumstances and a desire to avoid the possibility of harm to a child's safety or welfare. It is clear from the data that AGS are often faced with very complex and challenging situations where no alternative to the use of section 12 in practical terms may be available. Such situations in 2014 included young children who were found wandering alone in public places, or those suffering from abuse or neglect, whether as a result of parental mental health issues or substance abuse, among very many others.

The review of the PULSE data has shown the power pursuant to section 12 to be an essential and necessary one within the broader child protection infrastructure of the State. The PULSE data reviewed in the audit suggests that members of AGS are, in general, acting in conformity with the legislation. However, the absence of clear and complete PULSE entries in relation to some cases is a necessary qualification on this claim.

The PULSE component of the audit is also, by its nature, limited to the accounts by AGS members as recorded in their PULSE entries. It must also be borne in mind that these entries are made by the Garda or Gardaí who invoked the power, having believed it appropriate to do so.

Yet, with these qualifications in mind, the review of section 12 incidents recorded in 2014 does not show any pattern of "over-zealous" or precipitous use of the power by

AGS. From the relevant details furnished, there appears to be a proportionate exercise of section 12, with an appropriate degree of critical evaluation of the circumstances.

Where disclosed on PULSE, Gardaí appear to make attempts to locate accommodation for children and/or enquire into alternatives to invoking the power, where possible. In the incidents under review, the absence of any alternatives inexorably led to the invocation of the power by Gardaí. It is also clear from the cases reviewed that most Gardaí believe it to be better to err on the side of caution rather than risk exposing a child or children to any potential risk to their safety and welfare.

In addition, the review has offered a general impression of Gardaí approaching these cases with attention, caution and care. A strong ethic of kindness and sensitivity is apparent in how Gardaí manage children removed under section 12. At the same time, the review provided some stark insights into the dangerous circumstances with which Garda members are faced, when fulfilling their child protection function. In one such case, Gardaí were attacked with a pitchfork and in another, were subject to violent assault, involving biting.

However, the review of PULSE data has also raised some important questions with regard to the operation of section 12.

The nationalities of the children who were the subject of section 12 in 2014 are set out in paragraph 3.6.3 above. It should also be noted in this regard that of the 560 valid incidents which occurred in 2014, the majority (77.4%) of children in respect of whom data was furnished were Irish.

While there is no clear evidence in the PULSE review of racial bias or profiling in the exercise of section 12 of the Child Care Act 1991, this finding is subject to some qualifications and comments. In particular, there appears to be an over-representation of Nigerian children, or Irish children of Nigerian origin,<sup>74</sup> in the overall number of section 12 removals of children. In the 2011 census, the population of those of Nigerian

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<sup>74</sup> As there is no PULSE field capturing ethnic or racial demographic information on individuals Gardaí come into contact with, it appears the nationality field is sometimes used in its place. In some circumstances, this may also suggest a presumption that children of Nigerian, or other non-Irish ethnic origin are not Irish – despite those children being Irish citizens and residents since birth.



nationality living in Ireland was 17,642, being 0.385% of the population. As Nigerian children represent 4.4% of those removed under section 12 in 2014, this puts their over-representation at a factor of 11. Similarly, the rate of Romanian children removed under section 12 is also over-representative of their population in Ireland. Additionally, the absence of mechanisms for routine collection of ethno-cultural demographic information by the PULSE system, places a significant obstacle to any review of potential racial profiling by AGS.

However, this statistical trend does not in itself establish a practice of racial profiling in relation to section 12 use by AGS. In the context of the operation of the child protection system in ethno-culturally diverse areas, recent literature<sup>75</sup> indicates there may be other factors that can explain at least some of this over-representation. For example, part of this over-representation may be attributable to different cultural norms in relation to the disciplining of children. While all cases examined by the audit involving removal of children from Nigerian and Romanian families appear to have been justified, part of this over-representation may also be accounted for in a higher level of policing of those communities. However, on this latter point, it should be emphasised that the audit did not find *any* evidence of a distinct policy or practice of policing the family lives of immigrant communities more heavily. In fact, the evidence of this audit points very clearly to an overwhelmingly reactive, rather than proactive, approach to Garda use of section 12. The audit found no evidence of Gardaí actively searching for families they had prejudged as posing a serious and immediate child protection risk. In the vast majority of instances, Gardaí were called to the scene by a family member, another State agency, or a concerned member of the public.

This statistical feature of the audit challenges the individual consideration of section 12 removals. Unfortunately, there is little or no empirical research in Ireland on the interaction of the child protection and policing systems with new Irish communities, and ethnic minorities of native origin such as Irish Travellers, from which the audit could draw conclusions.<sup>76</sup> Further examination of this issue, apart from the review of the

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<sup>75</sup> See: R. Barn, C. Ladino and B. Rogers, *Parenting in Multi-Racial Britain* (National Children's Bureau 2006) and C. Bernard and A. Gupta, "Black African Children and the Child Protection System" (2008) 38(3) *British Journal of Social Work* 476.

<sup>76</sup> However, Christie has offered a critical race theory account of Irish child protection policy documents – though not practice: A. Christie, "Whiteness and the Politics of 'Race' in Child Protection Guidelines in Ireland" (2010) 13(2) *European Journal of Social Work* 199.

legality of individual instances of section 12 removal, was beyond the remit of this audit. It is recommended that research on the interaction between State agencies – including AGS – and minority ethnic Irish communities is undertaken to begin the invaluable process of establishing a knowledge base on the functioning of the policing and child protection systems as Ireland becomes more diverse. Similarly, full and effective demographic data collection by State agencies, and external monitoring of that data, is essential to avoid the potential for marginalisation and discrimination against minority ethnic communities. Complacency on this issue is a perilous policy.

The audit also reveals a number of fundamental shortcomings in the PULSE system. In the first place, the reporting of incidents on PULSE is not standardised and unfortunately the narratives vary significantly with regard to content, quality and level of detail supplied. As is emphasised at various points in this audit, this undermines the ability of AGS to pursue best practice in evidence-based operational policing, and poses an obstacle to the operational accountability of AGS to the public it serves. It is recommended that there should be a minimum mandatory level of reporting, with specific data fields to be completed in each case, to ensure a standardised form of information or data to be recorded in these matters. At a minimum, the grounds upon which section 12 is invoked and the supporting evidence should be carefully recorded. This will serve both statistical data purposes but also as a meaningful intelligence tool for Gardaí who, sometimes, deal with the same children on multiple occasions. The recommended mandatory fields are set out in Appendix 6 to this Report and discussed further at paragraph 6.3.9.

In overall terms, the average number of section 12 removals per annum is not so large that a full reporting of relevant information would present an onerous task for a Garda member. A monthly or other regular review by an appropriate person of data entries relating to the invocation of section 12 powers is also recommended. Such a post-event review process should capture difficulties and/or errors, if any, with regard to correct practice and procedure. It would also allow a practical review of the operation of any new provisions to be introduced in due course.

As stated elsewhere in this audit, it is also recommended that a clear checklist (laminated card) be observed so that Gardaí can confirm compliance with legislation both when

implementing the section in practice and when subsequently recording the relevant data on PULSE.<sup>77</sup>

Some entries on PULSE have also shown an incorrect use of terminology and, while the effect of the actions of AGS is not altered, it is to be recommended that a consistent use of correct terminology be used at all times. Such examples include references to a child being “arrested” under section 12, “detained” under section 12, “a prisoner” being released into the care of Tusla and reference to a “section 12 Emergency Care Order” being invoked. It is recommended that appropriate training be provided to members of AGS in this regard.

Finally, it appears from the review of section 12 incidents that the role of the HSE and Tusla, both with regard to interaction with members of AGS in the execution of section 12 powers and also from a broader child protection perspective, warrants further consideration. It is recommended that both AGS and Tusla would benefit from enhanced clarity on their respective roles and functions with regard to child protection and a clear demarcation of the respective responsibilities in the context of increasing interagency partnership in child protection. A greater level of cooperation and communication should also be put in place to ensure a “joined-up” and unified approach to the protection of children in these cases, to bring Irish child protection systems into line with international best practice.

In particular, the apparent absence of an out-of-hours service in the majority of cases reviewed in 2014 is a cause for concern. In addition, the nature and role played by private providers in sensitive cases such as these must be clarified, in the best interests of all concerned.

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<sup>77</sup> See Appendix 4.

**CHAPTER 4:**  
**QUESTIONNAIRES REVIEWED**

## 4.1 METHODOLOGY

This chapter deals with the second source of quantitative data generated in the audit: the questionnaires.

Questionnaires were designed to gather comprehensive data on all instances of section 12 removal of children in the calendar year 2014, including demographic details of the particular Garda member who invoked section 12, the child removed, the family from whom the child was removed, and the operational thresholds for intervention used by Garda members in instances of section 12 removal.

Questionnaires were distributed to each Garda station in the jurisdiction from which there had been a section 12 removal of a child in 2014. All Garda members who were listed on the PULSE system as having exercised section 12 in 2014 were directed to complete the questionnaires, and return copies of all documentation in relation to the case. Respondents were requested to complete questionnaires using Microsoft Word, so that response data was clearly readable by the audit team. Responses (questionnaires and accompanying documentation) were returned in both hard and soft copy formats.

Members of the audit team then coded the responses into a Microsoft Excel template. Where questions were not answered, the team sought clarification from the supplementary documentation in relation to the incident.

Generalisable response data was then extracted from the Microsoft Excel document and converted into percentage formats. In some instances, the audit was unable to categorise the data presented. As a result, the information set out in this chapter may not always represent a complete population of questionnaire responses.

## 4.2 FINDINGS

### 4.2.1 Introduction

This questionnaire component of the audit examined all instances in which section 12 of the Child Care Act 1991 was exercised by a member of AGS in the calendar year 2014.

PULSE contained 560 valid entries<sup>78</sup> in relation to section 12 being exercised in 2014. These 560 entries were invoked in 528 distinct events. A questionnaire was sent to each member who exercised section 12 in 2014 – totalling 528 questionnaires. 508 questionnaires were returned to the audit. Of these 470 were completed and deemed valid, though some valid questionnaires had not completed sections or answered particular questions. 38 questionnaires were blank and are deemed to be invalid. This gives a total response rate of 96% and a valid response rate of 89%.

#### **4.2.2 Response data**

For a complete list of questions asked in the questionnaire, please refer to Appendix 2.

The following sections contain questionnaire response data under the following thematic headings: Garda Respondent Demographics; Garda Training Relevant to Child Protection; The Circumstances and Context in which Section 12 was Invoked; Locations of Safety and Time Spent by Child at that Location; and Institutional Communication and Knowledge.

#### **4.2.3 Garda Respondent Demographics**

##### ***Garda Gender***

The respondent's gender was requested in order to explore any correlations between Garda gender and rate of exercise of section 12 powers, and nature of exercise of section 12.

467 respondents answered the question in relation to their gender – of these 315 (67%) answered that they are male, and 152 (33%) that they are female.

Figures provided by AGS indicate that there are 9,477 (74%) males in active service and 3,321 (26%) females in active service.

##### ***Number of years in force***

Respondents were asked the number of years they had been serving members of AGS. This question was asked as respondent age and experience is relevant to a number of

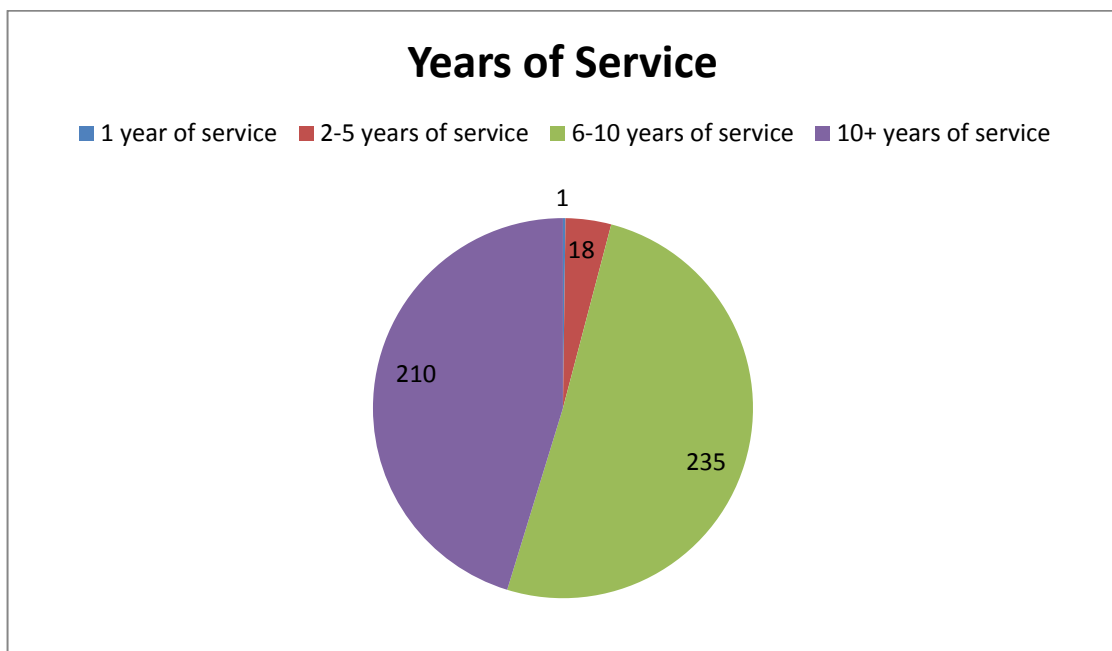
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<sup>78</sup> One entry reflects one instance in which one child was subject to section 12 – so for any particular event where a member was required to exercise section 12, this could involve one or more children.

other fields within the questionnaire, including the level of training they might have undertaken in child protection, and any possible correlation between a respondent's number of years in service (a possible proxy for experience in relation to child protection), and their inclination towards exercising section 12.

Respondent answers have been organised into ranges of years of service. 464 Respondents answered this question as follows:

- 1 year of service – 1 respondent (0.2% of those who answered)
- 2-5 years of service – 18 respondents (3.8% of those who answered)
- 6-10 years of service – 235 respondents (51% of those who answered)
- 10+ years of service – 210 respondents (45% of those who answered)



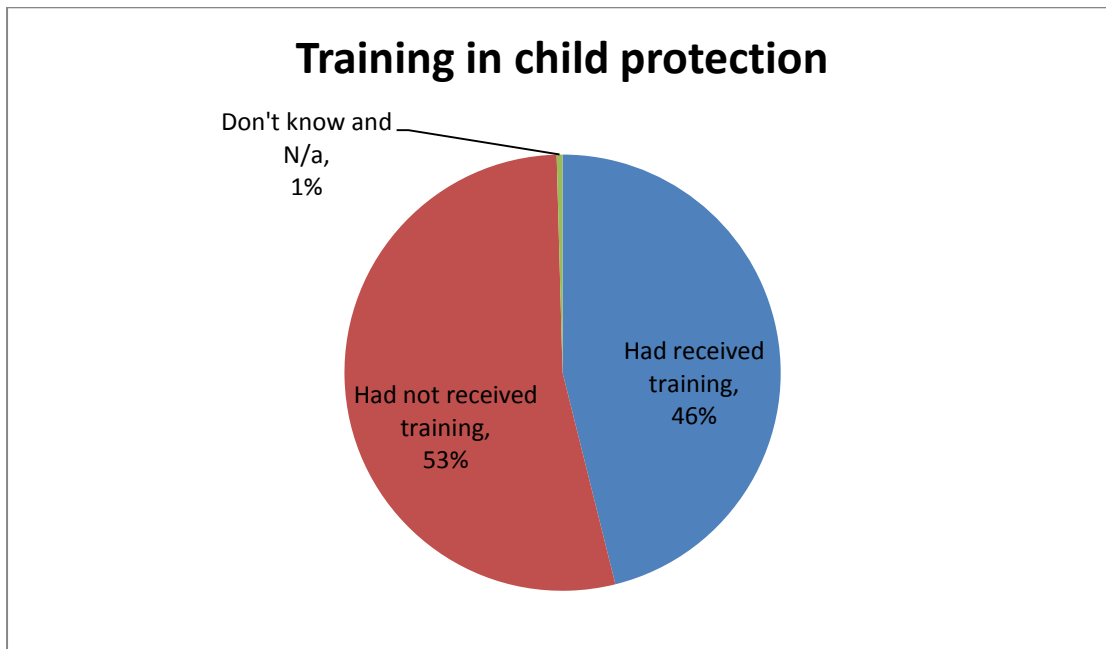
This data shows the vast majority (96%) have at least 6 years' service. This figure reflects the absence of Garda recruits during the public services hiring moratorium 2009-2014. It is notable that a significant proportion of respondents have greater than 10 years' service. This suggests that those who exercised section 12 powers were drawing from a well of significant professional experience when doing so.

#### 4.2.4 Garda Training Relevant to Child Protection

##### *Training in child protection?*

Respondents were asked whether they had training in child protection, and some specific questions in relation to any such training. These questions were asked to ascertain Garda respondents' recollections of formal levels of instruction members had received that might inform their exercise of section 12 powers, and the nature of any such training Gardaí were and are receiving.

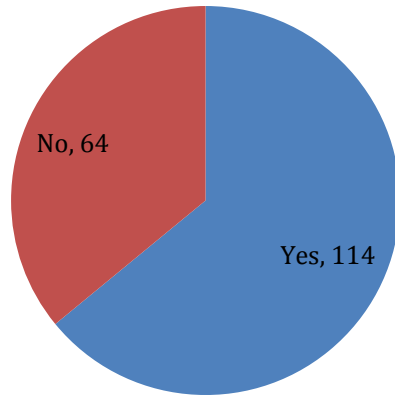
463 respondents answered this first general question – 213 (46% of those who answered) said they had received training in child protection, 247 (53% of those who answered) said they had not received such training. 2 answered “Don't know” while 1 answered “N/a”.



On whether that training was part of the respondent's general training, 114 respondents (25% of those who answered) answered yes, and 64 respondents (14%) answered no.



## Whether that training was part of the respondent's general training

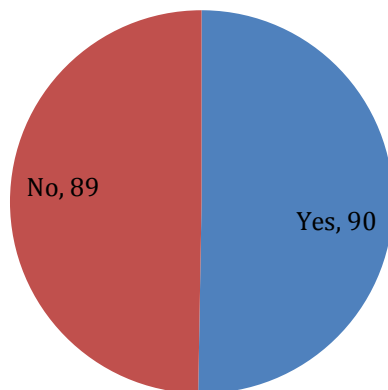


Note: It was not possible to categorise some of the responses.

On whether that training was “specialist training”, 90 respondents (19%) said yes, 89 (19%) said no.

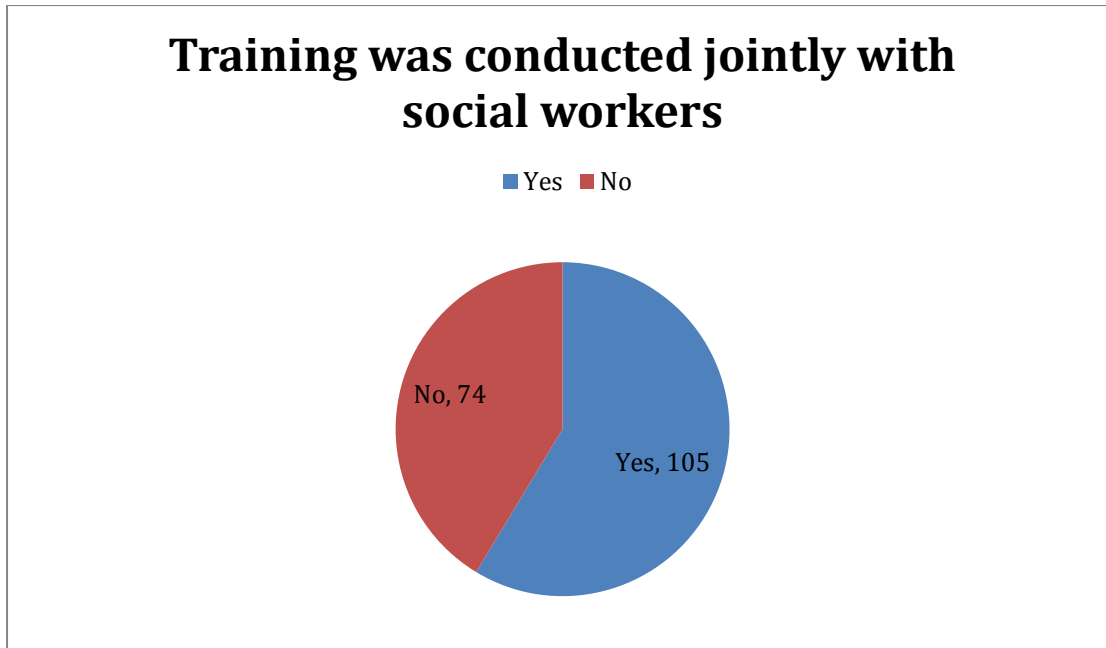
## Specialist training

■ Yes ■ No



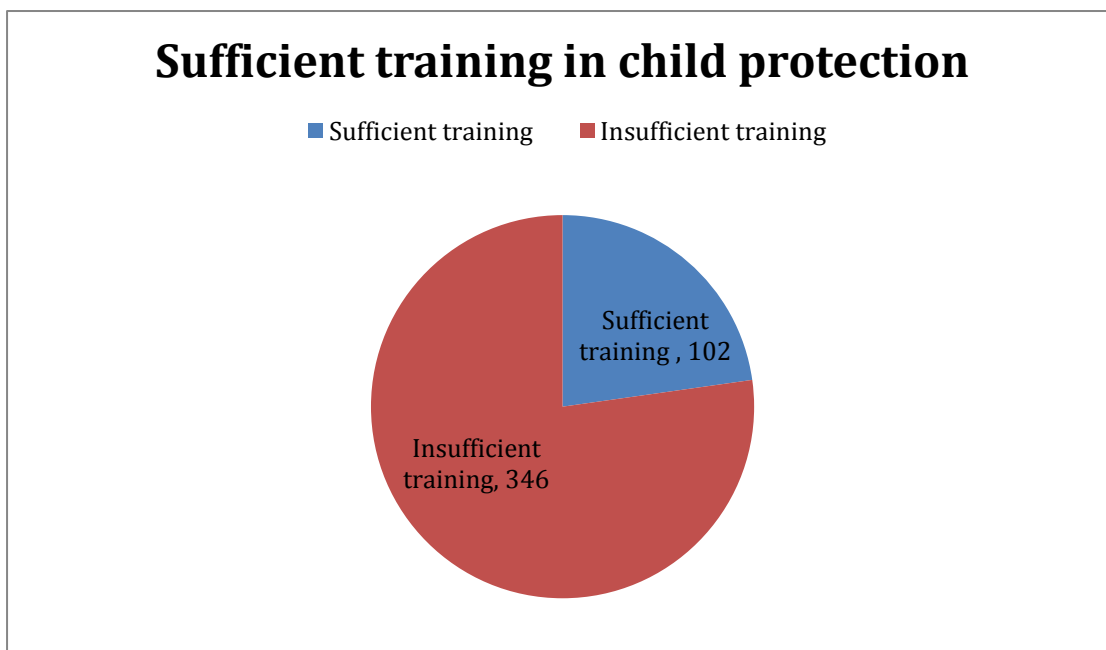
Note: It was not possible to categorise some of the responses.

On whether that training was conducted jointly with social workers, 105 respondents (23% of those who answered) said yes, 74 (17%) said no.



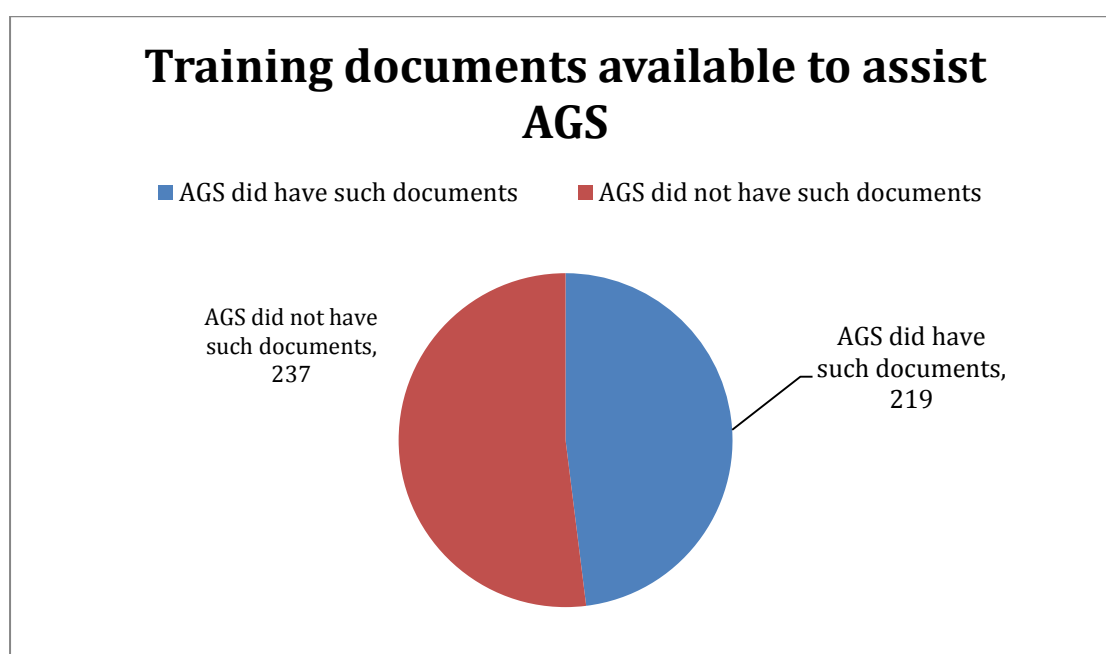
Note: It was not possible to categorise some of the responses.

Respondents were also asked if they felt they had sufficient training in child protection. This question is part of the audit's examination of underlying levels of confidence in members of AGS in the performance of their child protection duties. 448 respondents (97%) answered this question. Of those who answered this question, 102 respondents (23% of those who answered) felt they have sufficient training in child protection; 346 respondents (77%) felt they do not have sufficient training in child protection.



### ***Training Documents and Guidance Information***

Respondents were also asked whether they had training documents available to assist them in their exercise of child protection powers under section 12. This question is part of the audit’s examination of general training, information and institutional knowledge available to members of AGS in the performance of their child protection powers under section 12. 460 respondents answered this question, of whom 219 answered they did have such documents available to them, and 237 respondents answered they did not.

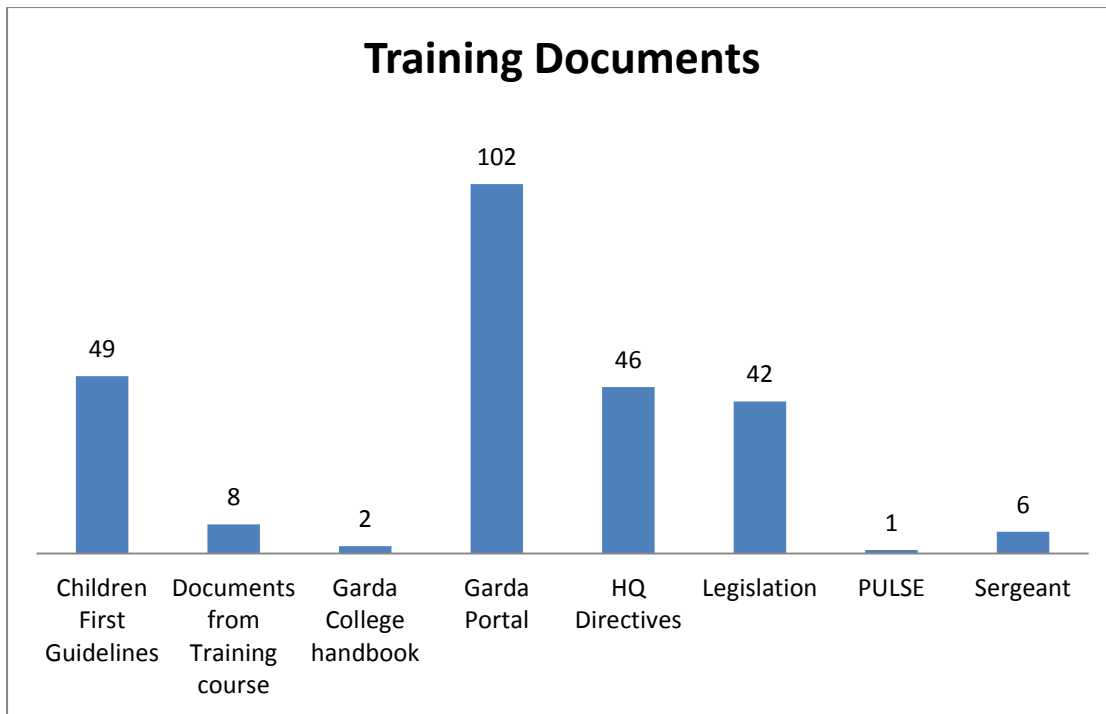


Note: It was not possible to categorise some of the responses.

Respondents were also asked to specify what types of training documents were available.

Respondents’ answers included the following:

- “Children First Guidelines”: 49 respondents (22% of those who answered yes)
- “Documents from Training course”: 8 respondents (4%)
- “Garda College handbook”: 2 respondents (1%)
- “Garda Portal”: 102 respondents (47%)
- “HQ Directives”: 46 respondents (21%)
- “Legislation”: 42 respondents (19%)
- “PULSE”: 1 respondent (0.5%)
- “Sergeant”: 6 respondents (3%)



It is to be noted that more than one response to this question was possible.

### ***Cultural Competency***

Finally, respondents were asked whether they had training in diversity or cultural sensitivity. This question is part of the audit’s examination of whether racial bias or profiling is informing the exercise of Garda child protection powers under section 12. Specifically, this question seeks to understand the background-training members of AGS have and are receiving in relation to cultural sensitivity in the performance of their duties.

453 (96%) Garda respondents answered this question. Of these, the vast majority of 331 respondents (73%) said they had not received training in cultural sensitivity, 121 respondents (26.8%) said they had received such training, and 1 respondent (0.2%) said he or she did not know.



#### 4.2.5 Circumstances and context in which section 12 invoked; including prior knowledge of family and child (and where they derived that knowledge)

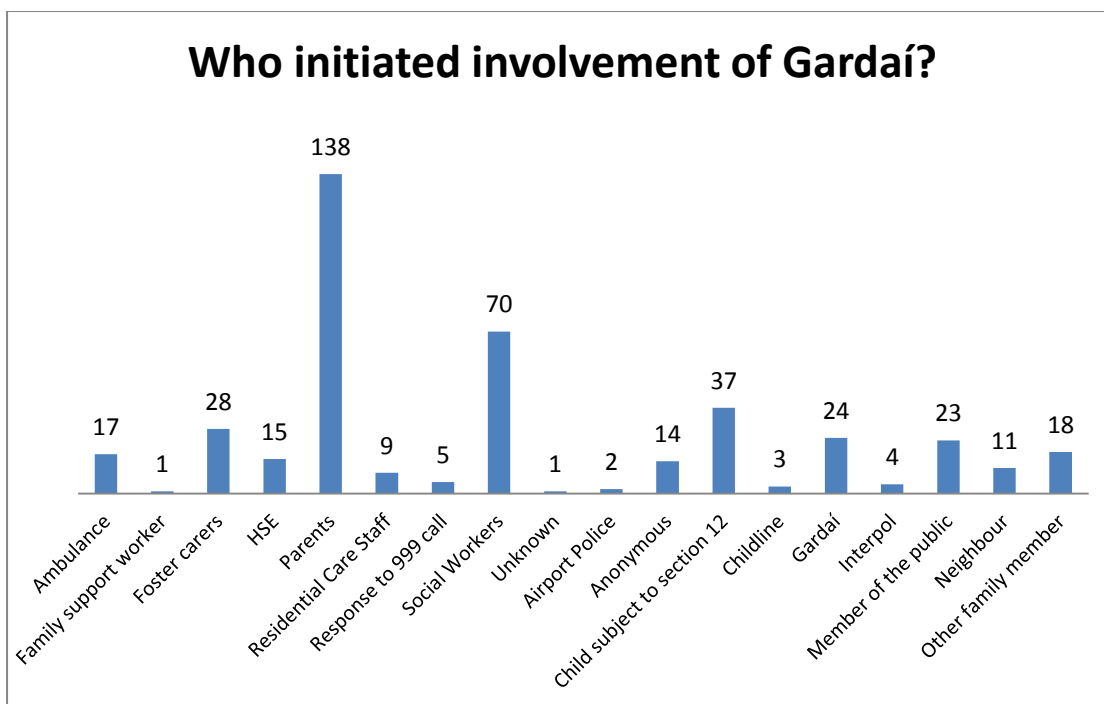
A number of questions were asked of respondents in relation to the background circumstances to the exercise of section 12 powers. These questions sought to develop a picture of the nature of the circumstances in which members of AGS typically invoke their child protection powers.

##### *Who initiated involvement of Gardaí?*

Respondents were asked who initiated the involvement of AGS in the incident involving the invocation of section 12. Respondents' answers included the following:

- “Ambulance”: 17 respondents
- “Family support worker”: 1 respondent
- “Foster carers”: 28 respondents
- “HSE”: 15 respondents
- “Parents”: 138 respondents
- “Residential Care Staff”: 9 respondents
- “Response to 999 call”: 5 respondents
- “Social Workers”: 70 respondents
- “Unknown”: 1 respondent
- “Airport Police”: 2 respondents

- “Anonymous”: 14 respondents
- “Child subject to section 12”: 37 respondents
- “Childline”: 3 respondents
- “Gardaí”: 24 respondents
- “Interpol”: 4 respondents
- “Member of the public”: 23 respondents
- “Neighbour”: 11 respondents
- “Other family member”: 18 respondents

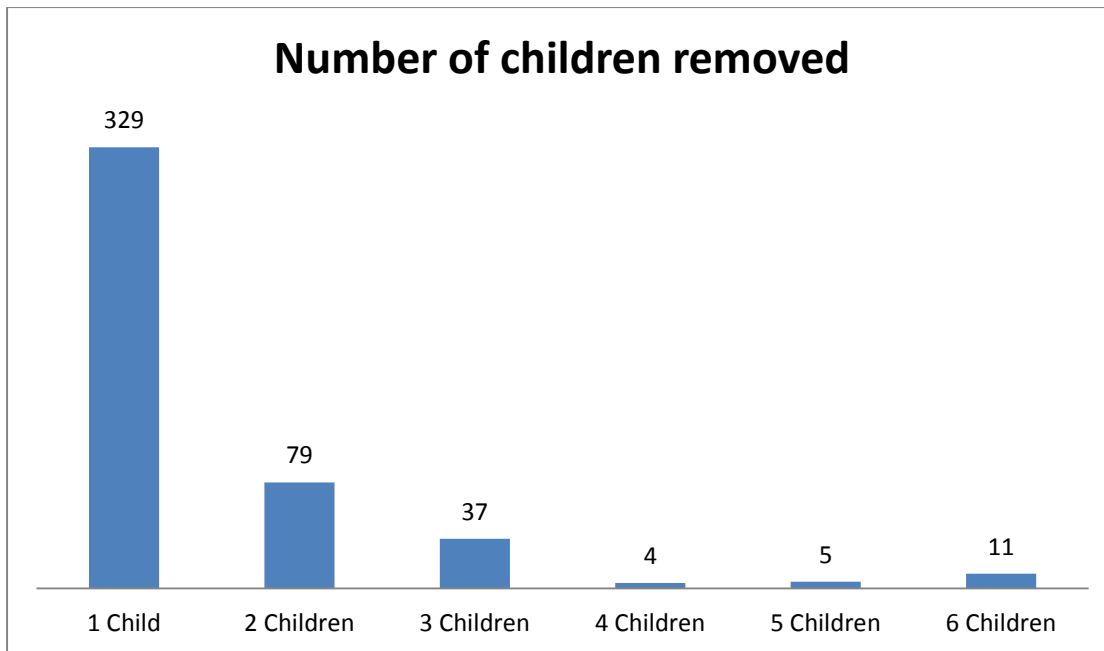


Note: It was not possible to categorise some of the responses.

#### *Number of children removed?*

Respondents were asked how many children were removed into Garda care under section 12 in the particular incident. 465 respondents (99%) answered this question. Of those who answered, answers included the following:

- 1 child: 329 respondents (71% of those who answered)
- 2 children: 79 respondents (17%)
- 3 children: 37 respondents (8%)
- 4 children: 4 respondents (1%)
- 5 children: 5 respondents (1%)
- 6 children: 11 respondents (2%)



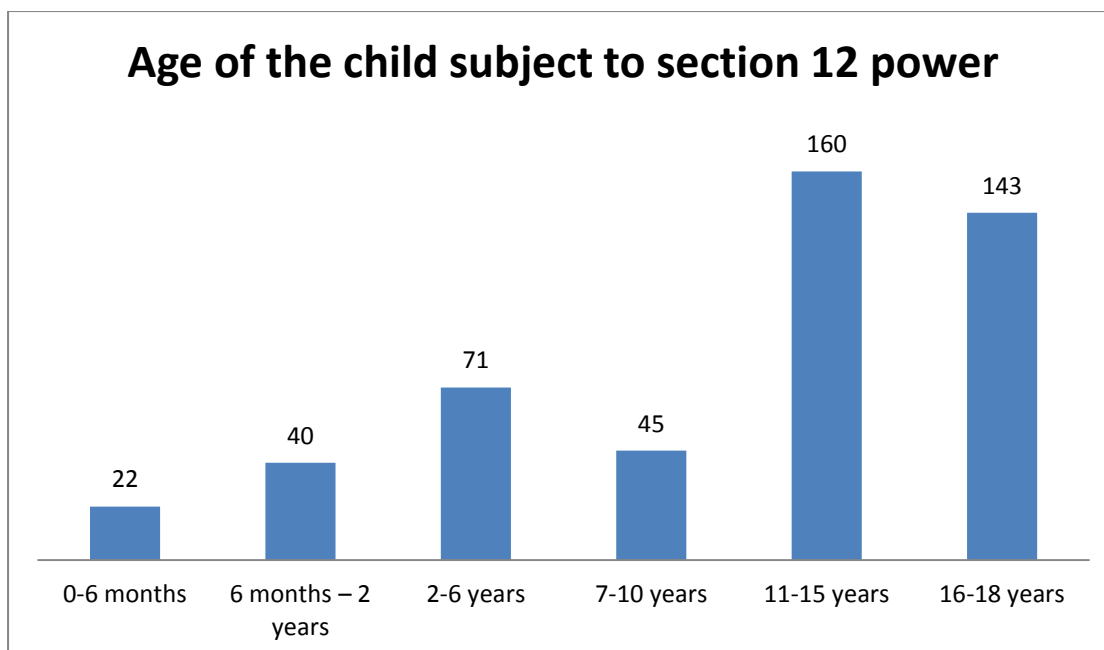
*Age of the child subject to section 12 power*

Respondents were asked the age of the child subject to section 12 powers in the incident. There were 481 ages provided by respondents.<sup>79</sup> The age ranges of the children were as follows:

- 0-6 months of age: 22 children (5% of the ages provided by respondents)
- 6 months – 2 years of age: 40 children (8%)
- 2-6 years of age: 71 children (15%)
- 7-10 years of age: 45 children (9%)
- 11-15 years of age: 160 children (33%)
- 16-18 years of age: 143 children (30%)

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<sup>79</sup> This over-provision of ages can be accounted for in cases where respondents gave multiple ages in one questionnaire, as multiple children were subject to section 12 in the incident. In these particular cases of multiple invocations of section 12, the respondent did not provide individual questionnaires for each child subject to section 12.

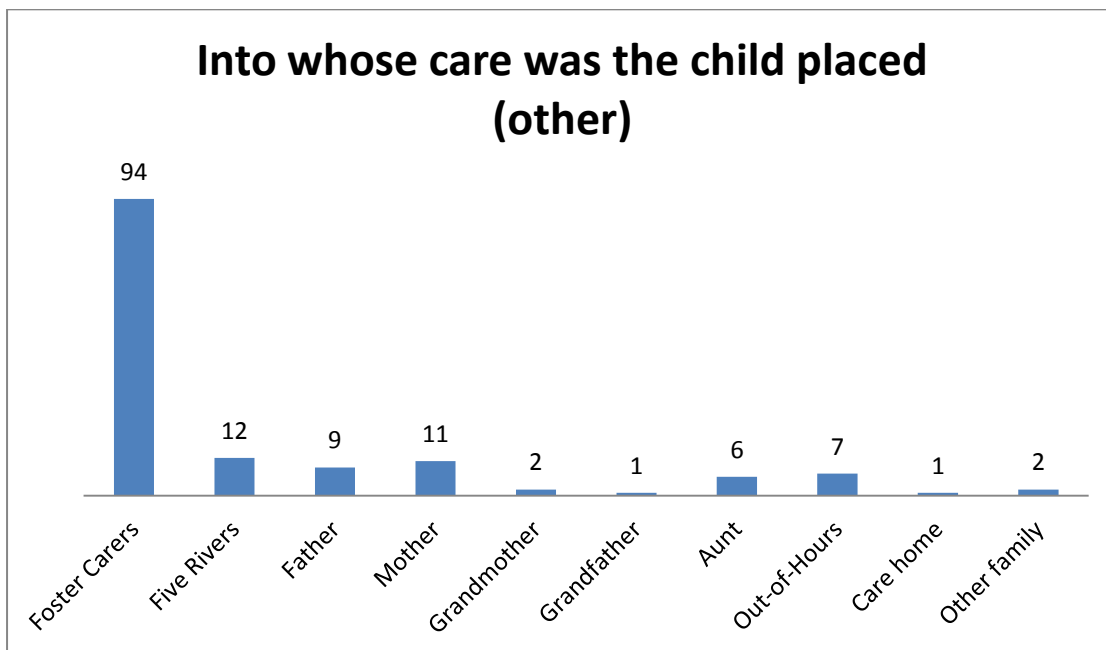
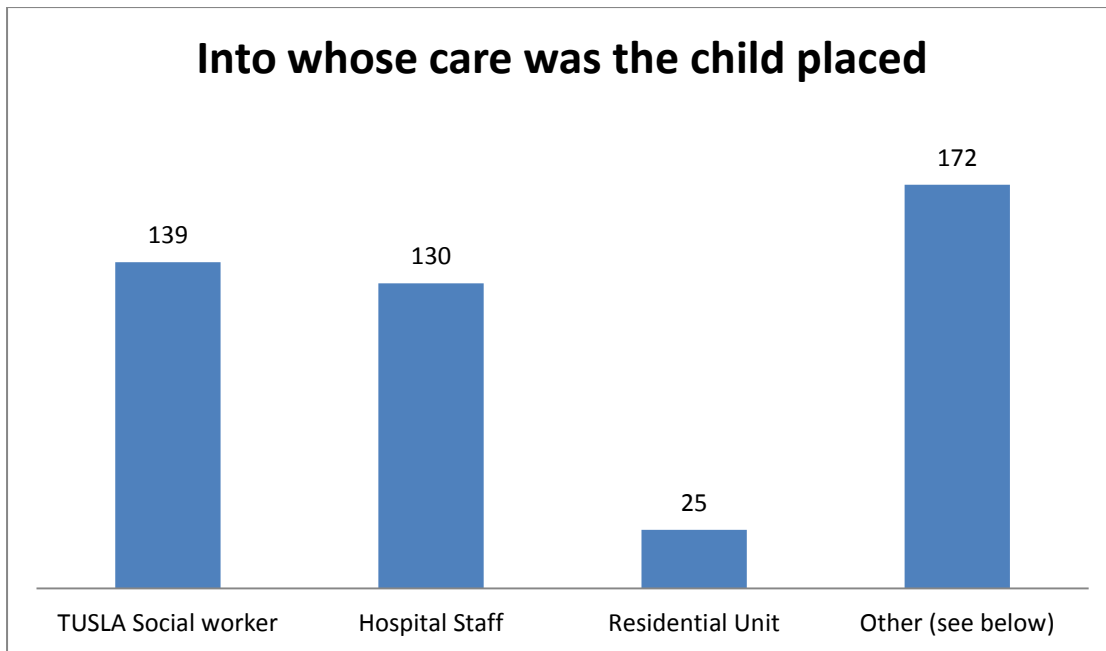


*Into whose care was the child placed?*

Respondents were asked into whose care the child subject to section 12 was placed. Respondents were given 4 categories in which to give their response. 466 respondents (99% of valid responses) answered the question. Responses included the following:

- “Tusla Social worker”: 139 respondents (30% of those who answered)
- “Hospital Staff”: 130 respondents (28%)
- “Residential Unit”: 25 respondents (5%)
- “Other” (172 respondents – 37%), including:
  - “Foster Carers”: 94 (20% of those who answered)
  - “Five Rivers”: 12 (2.6%)
  - “Father”: 9 (2%)
  - “Mother”: 11 (2.4%)
  - “Grandmother”: 2 (0.4%)
  - “Grandfather”: 1(0.2%)
  - “Aunt”: 6 (1.3%)
  - “Out-of-Hours”: 7 (1.5%)
  - “Care home”: 1 (0.2%)
  - “Other family”: 2 (0.4%)





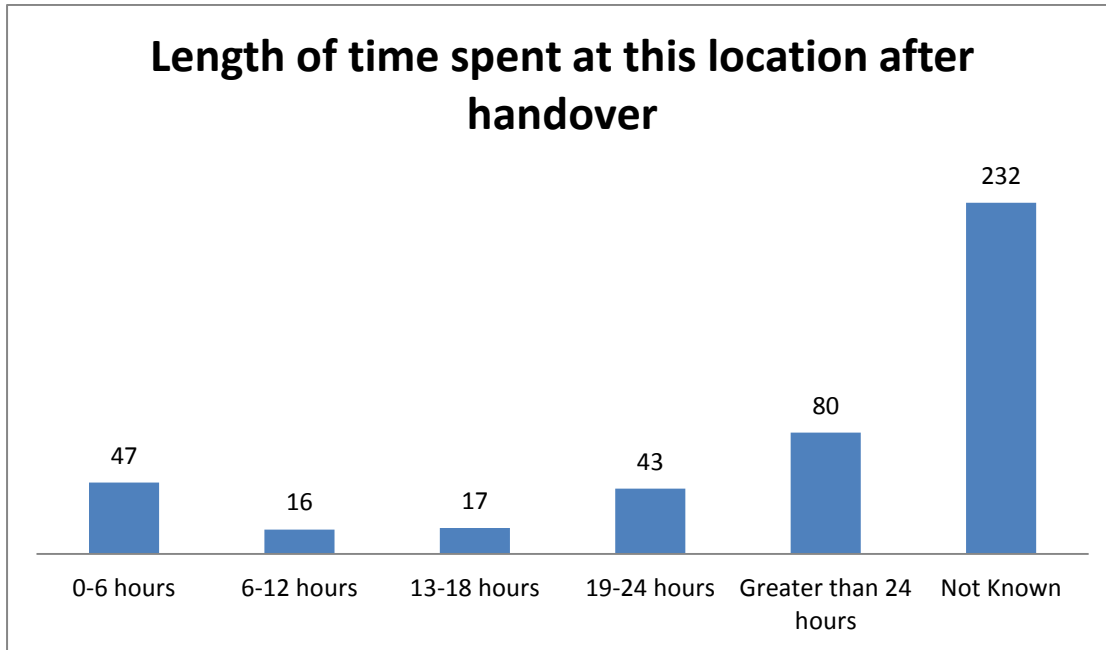
Note: It was not possible to categorise some of the responses.

#### *Length of time spent at this location after handover*

Respondents were asked how long the child subject to section 12 remained at this handover location. 435 respondents (93% of valid questionnaires) answered this question. Of those who answered, their responses were categorised into the following time ranges:

- 0-6 hours: 47 respondents (11% of respondents who answered)
- 7-12 hours: 16 respondents (4%)
- 13-18 hours: 17 respondents (4%)

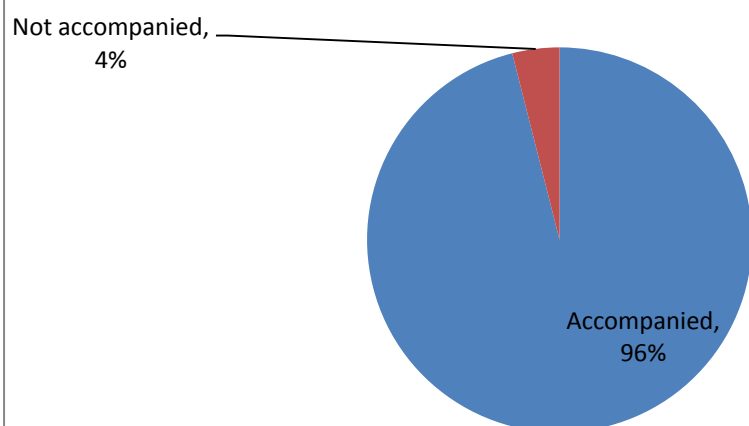
- 19-24 hours: 43 respondents (10%)
- Greater than 24 hours: 80 respondents (18%)
- Not Known: 232 respondents (53%)



*Were you accompanied at the time of invoking section 12?*

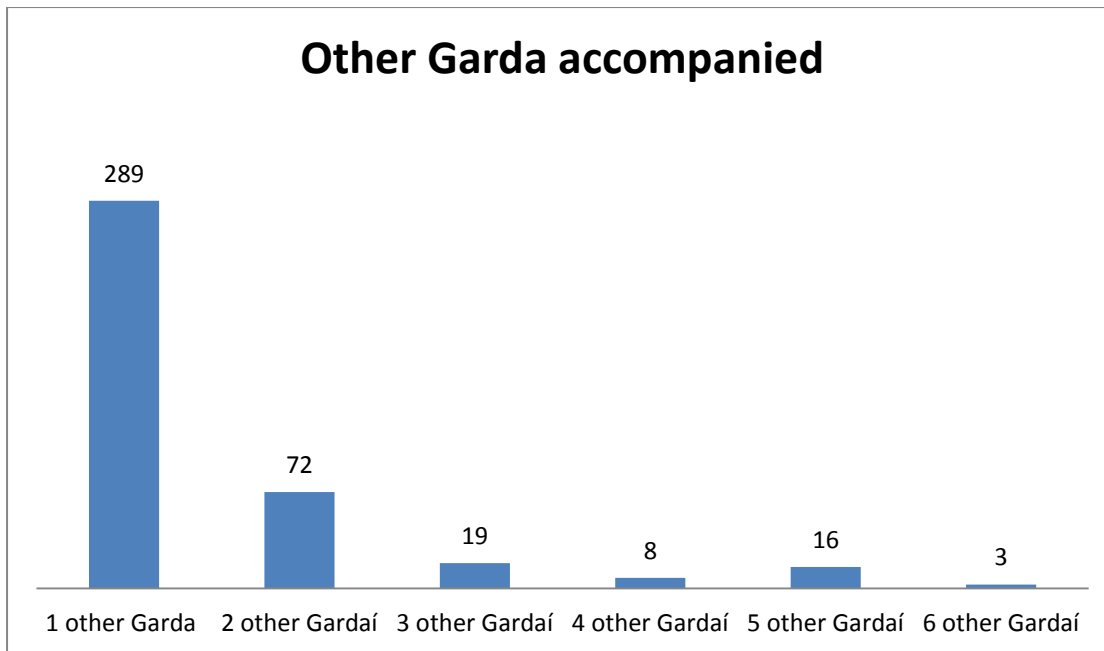
Respondents were asked whether they were accompanied when they invoked section 12. 461 respondents (98% of valid questionnaires) answered this question. Of those who answered, 442 respondents (96% of those who answered) said they were accompanied, and 19 (4%) said they were not accompanied.

## Were you accompanied at the time of invoking section 12?



Respondents were also asked who (i.e. specific professionals or others) accompanied them, and how many accompanied them during their invocation of section 12. 407 respondents (90% of those who answered) said another Garda accompanied them. Of these:

- 289 respondents said 1 other Garda accompanied them
- 72 respondents said 2 Gardaí accompanied them
- 19 respondents said 3 Gardaí accompanied them
- 8 respondents said 4 Gardaí accompanied them
- 16 respondents said 5 Gardaí accompanied them
- 3 respondents said 6 Gardaí accompanied them



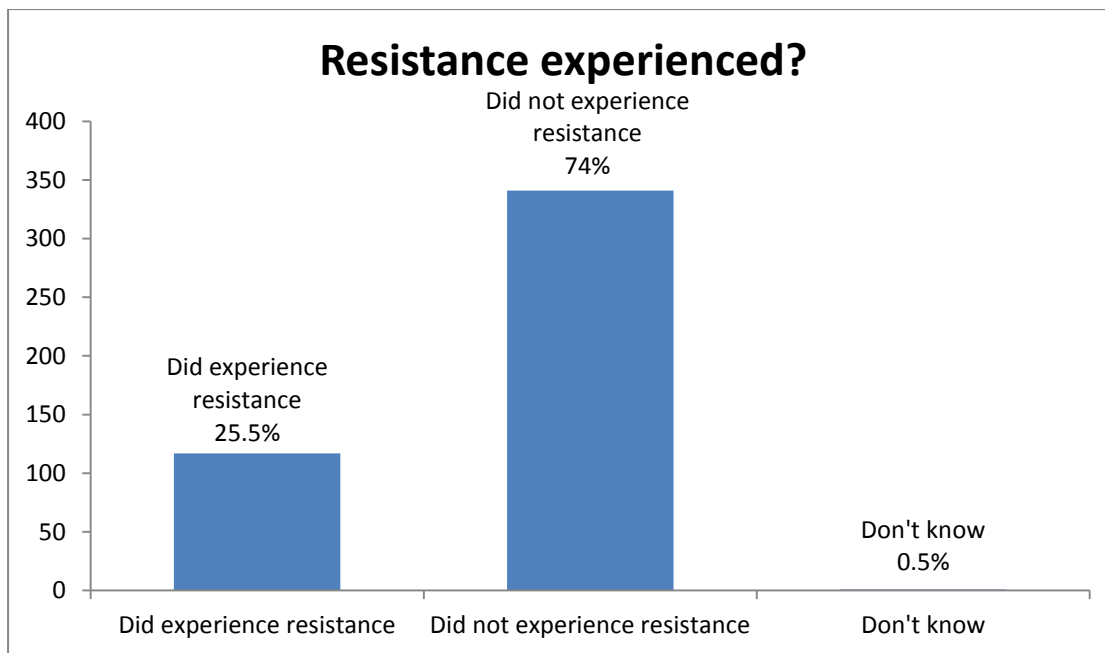
85 respondents said a social worker accompanied them during their invocation of section 12. Of these:

- 23 respondents said 1 social worker accompanied them
- 56 respondents said 2 accompanied them
- 1 respondent said 4 accompanied them
- 5 respondents said 5 accompanied them

8 respondents answered “other”, which included 3 who said ambulance services accompanied them, and 1 who said a General Practitioner accompanied him or her.

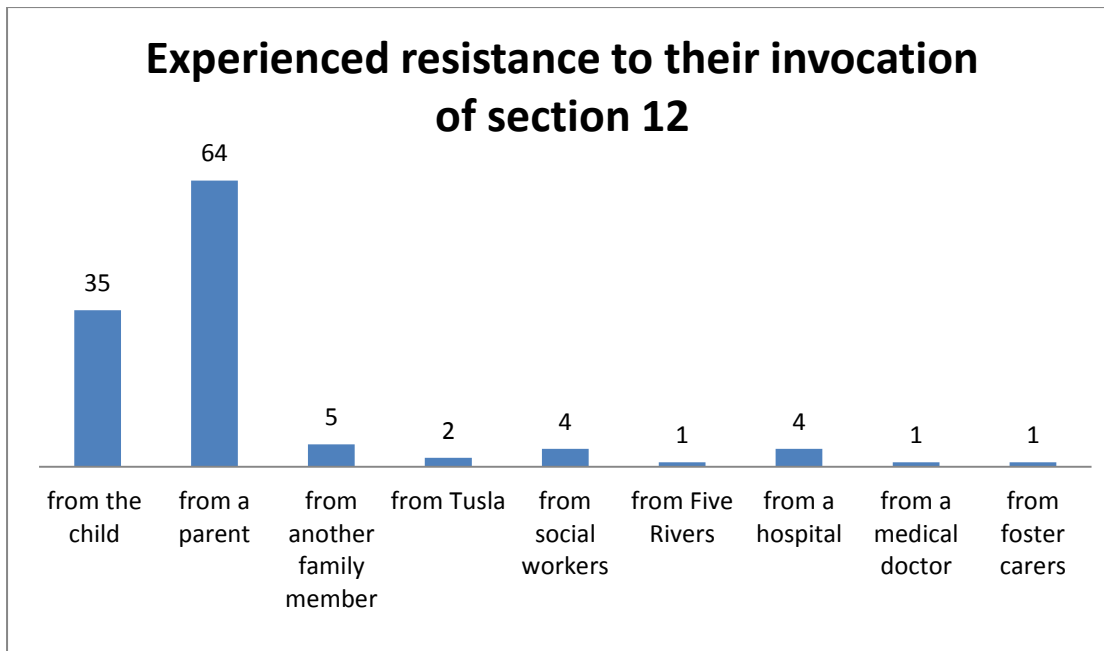
#### *Resistance experienced?*

Respondents were asked whether they experienced any resistance to their invocation of section 12. 459 respondents answered this question, 341 (74% of those who answered) of whom said that they did not experience resistance, and 117 (25.5%) said they did experience resistance. 1 (0.5%) answered “Don’t know”.



Respondents were also asked from whom they experienced resistance to their invocation of section 12. Of those who answered:

- 35 respondents said they experienced resistance from the child subject to section 12
- 64 from a parent
- 5 from another family member
- 2 from Tusla
- 4 from social workers
- 1 from Five Rivers
- 4 from a hospital
- 1 from a medical doctor
- 1 from foster carers



*Grounds under which section 12 was invoked*

Respondents were given a list of possible grounds upon which their decision to invoke section 12 was based. Respondents could, and did, select more than one ground upon which they based their decision to exercise section 12. Respondents who answered this question answered the following:

- “Suspicion or concern that child being abused or neglected”: 82 respondents
- “Concern for child welfare (public safety)”: 292 respondents
- “Suspected emotional abuse”: 100 respondents
- “Suspected neglect”: 122 respondents
- “Suspected physical abuse”: 60 respondents
- “Suspected sexual abuse”: 8 respondents
- “Child a danger to self/others”: 107 respondents
- “Child under the influence of drugs/alcohol”: 17 respondents
- “Domestic violence”: 69 respondents
- “Mental health issues within parents”: 55 respondents
- “Mental health issues within child”: 40 respondents
- “Active substance abuse within parents leading to abuse or neglect”: 82 respondents

- “Other”: 44 respondents answered in this field – these responses are varied and are described in a highly contextualised manner. Examples of such responses include:

[The] mother was a known drug user and maternal grandmother had care of children but she could no longer cope. Mother had arranged with social workers that grandmother would care for children. The situation became unpredictable.

Child was out begging. Spoke no English. Child was visibly dirty and neglected. Child claimed parents were in Romania and didn't know the people she was staying with. Concern that child may have been brought to Ireland solely to beg.

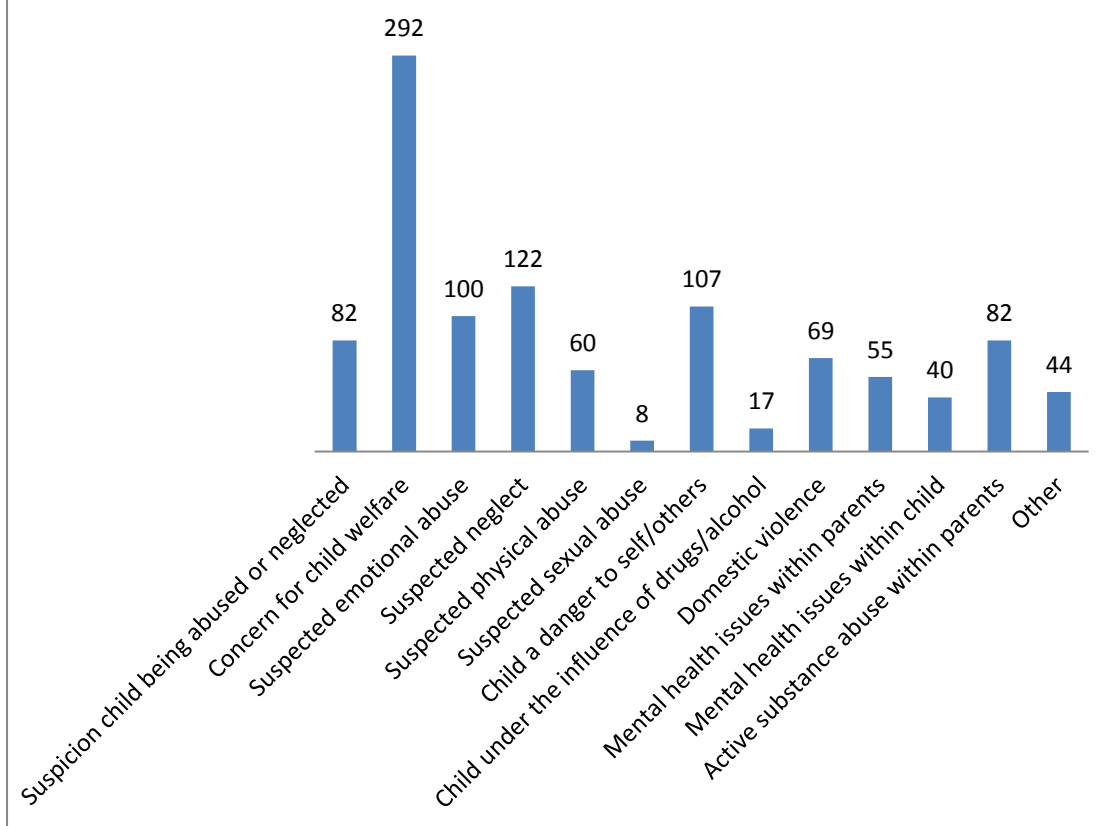
Parents would not have him home.

Parents refused to collect child from Garda Station and child refused to go into care of her parents.

Child was not being provided with a safe place to stay that evening by his mother.

These children were placed in a non-secure care home and didn't want to be there. Each time AGS were called and returned them they would run away again so it was decided on consultation to invoke section 12.

## Grounds under which section 12 invoked

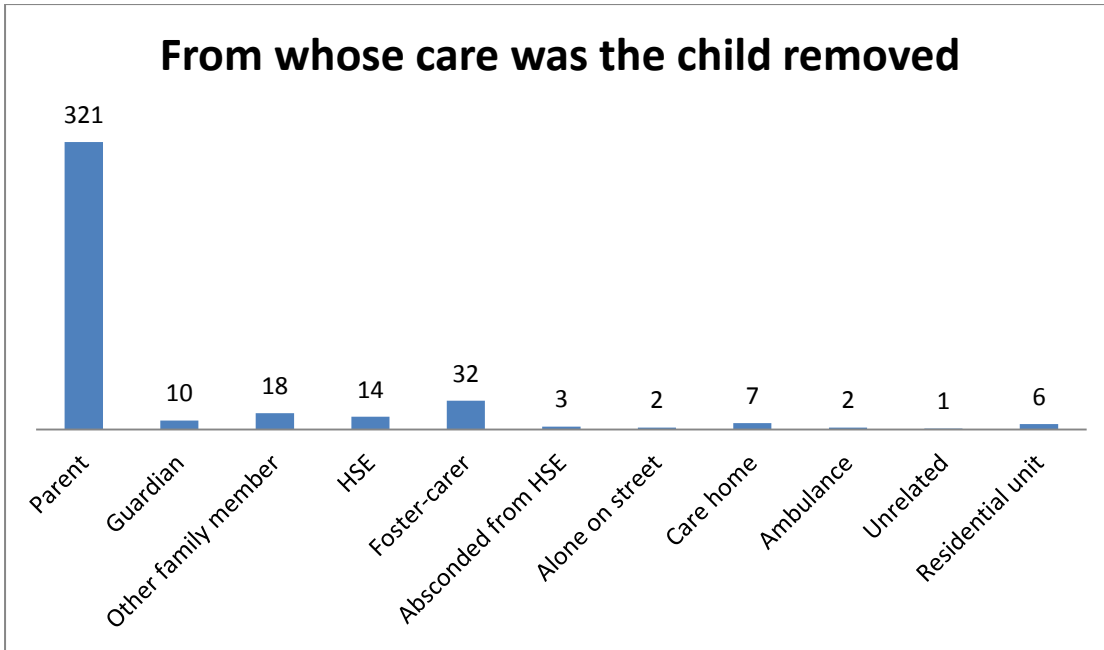


### *From whose care was the child removed*

Respondents were asked from whose care they removed the child when they exercised section 12. All 470 respondents with valid questionnaires answered this question. They answered as follows:

- “Parent”: 321 respondents (68%)
- “Guardian”: 10 respondents (2%)
- “Other family member”: 18 respondents (4%)
- “HSE”: 14 respondents (3%)
- “Foster-carer”: 32 respondents (7%)
- “Absconded from HSE”: 3 respondents (0.6%)
- “Alone on street”: 2 respondents (0.4%)
- “Care home”: 7 respondents (1.5%)
- “Ambulance”: 2 respondents (0.4%)
- “Unrelated Person(s)”: 1 respondent (0.2%)
- “Residential unit”: 6 respondents (1.3%)

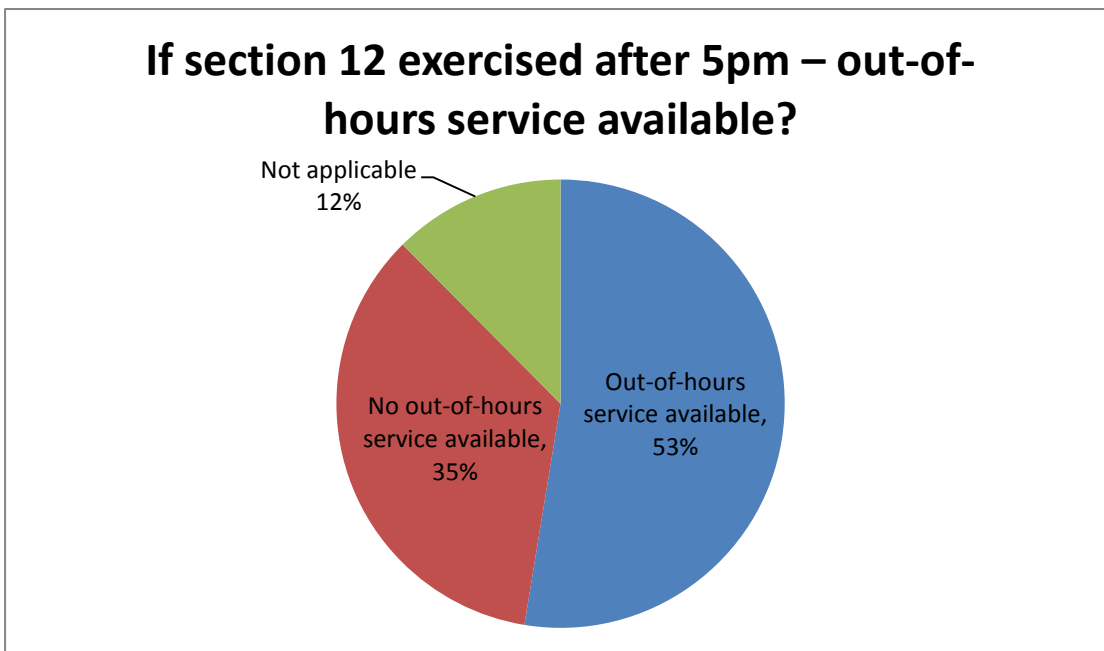




Note: It was not possible to categorise some of the responses.

#### *If section 12 exercised after 5pm – out-of-hours service available?*

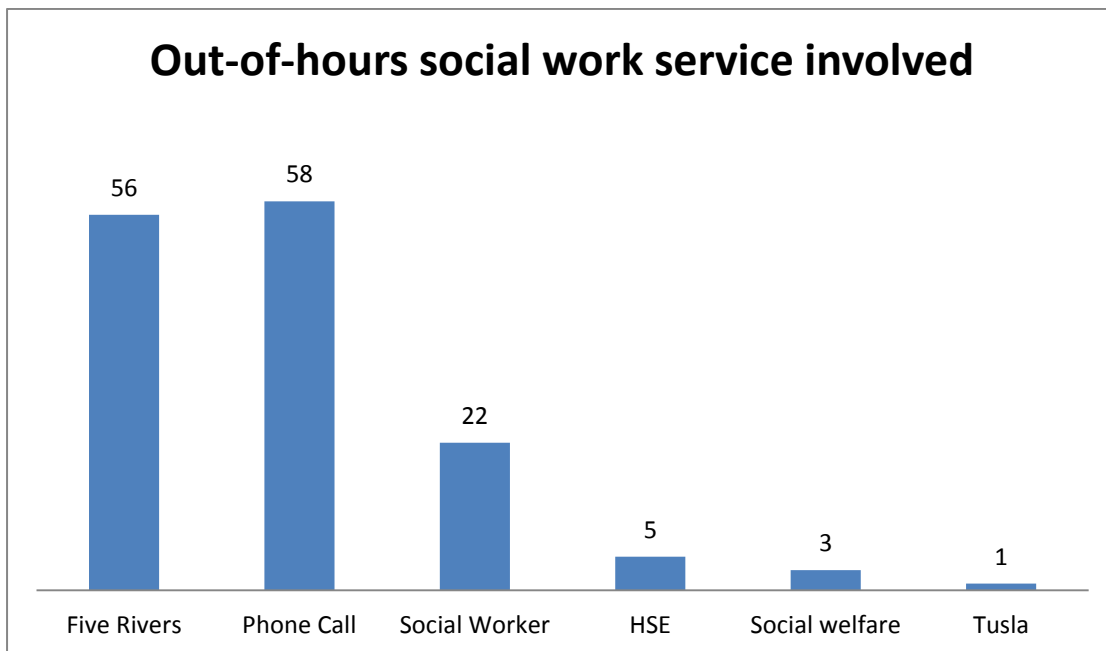
Respondents were asked if the section 12 powers were invoked after 5pm, or during a weekend, whether an out-of-hours social worker was available. 422 respondents (90% of valid questionnaire responses) answered this question. Of those who answered, 224 respondents (53% of those who answered) said there was an out-of-hours service available, 146 (35%) said there was no service available, and 52 (12%) answered “not applicable” or equivalent.



Respondents were also asked what any such out-of-hours social work service involved. 136 respondents (29% of valid questionnaires; 61% of those said there was an out-of-hours service) answered this question. Of those who answered, respondents' answers included the following:

- “Five Rivers”: 56 respondents (25% of those who said there was such an out-of-hours service)
- “Phone Call” or equivalent: 58 respondents (26%)
- “Social Worker”: 22 respondents (10%)
- “HSE”: 5 respondents (2%)
- “Social welfare”: 3 respondents (1%)
- “Tusla”: 1 respondent (0.5%)

It is to be noted that more than one response to this question was possible.



Note: It was not possible to categorise some of the responses.

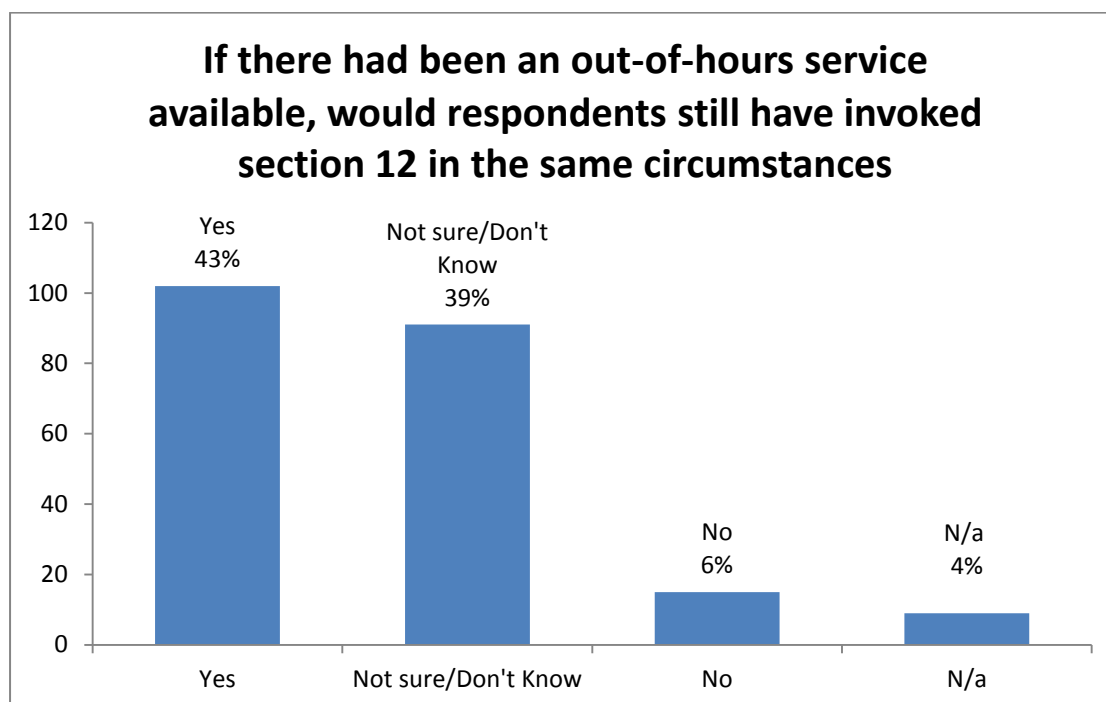
***If there had been an out-of-hours service available, would section 12 have been invoked?***

Finally, respondents were asked if there had been an out-of-hours service available, would they still have invoked section 12 in the same circumstances.<sup>80</sup>

<sup>80</sup> This question was intended for those who said there was not an out-of-hours service available. However, 236 respondents (50% of valid questionnaires) answered this question. This is higher than the 146 respondents who said there was no out-of-hours service available.

Of those who answered, responses included:

- “Yes” – they would still have exercised section 12: 102 respondents (43% of those who answered)
- “Not sure”/”Don’t Know”: 91 respondents (39%)
- “No” – they would not have invoked section 12: 15 respondents (6%)
- “N/a”: 9 respondents (4%)



Note: It was not possible to categorise some of the responses.

#### **4.2.6 Locations of place of safety and time spent in that location**

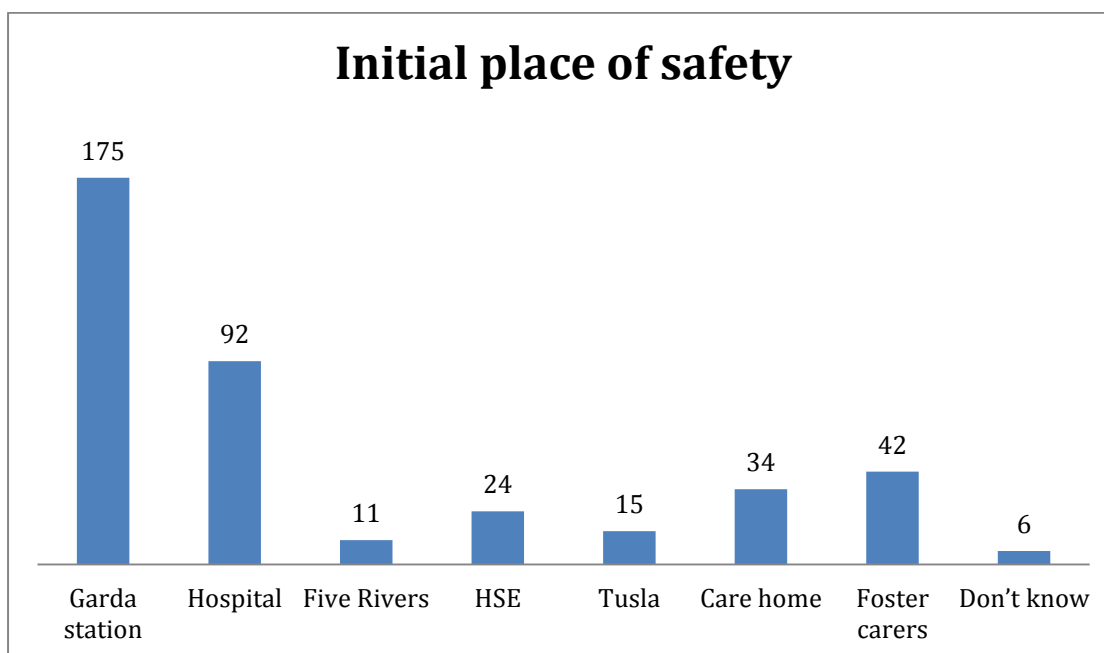
The questionnaire asked for information in relation to where children were removed following invocation of section 12, and the amount of time the child stayed in this location afterwards. These questions were asked to ascertain policies and/or patterns in how children are managed after their removal under section 12.

##### *Initial place of safety*

Respondents were asked the initial place of safety, where the child subject to section 12 powers was removed to. 460 respondents answered this question. Of those who answered, answers included the following:

- “Garda station”: 175 respondents (38% of those who answered)
- “Hospital”: 92 respondents (20%)

- “Five Rivers”: 11 respondents (2.4%)
- “Tusla”: 15 respondents (3.3%)
- “HSE”: 24 respondents (5%)
- “Care home”: 34 respondents (7.4%)
- “Foster carers”: 42 respondents (9%)
- “Don’t know”: 6 (1%)



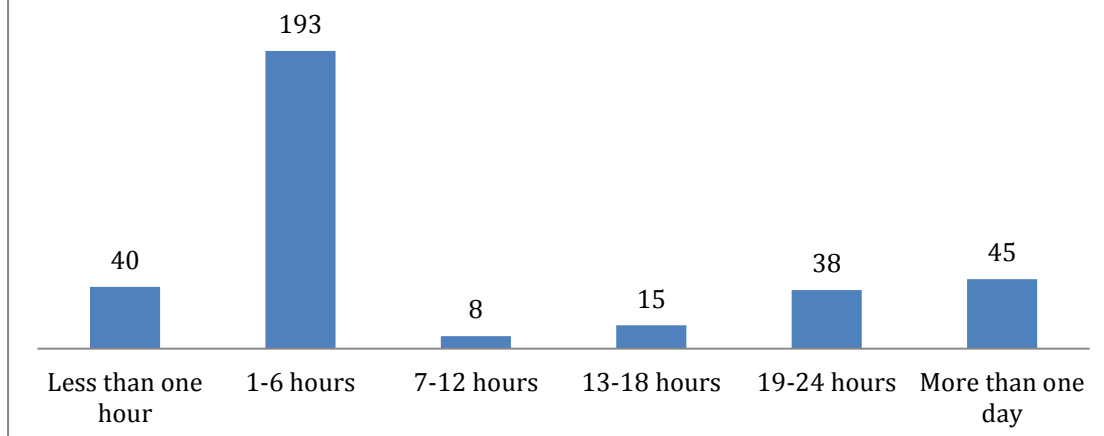
Note: It was not possible to categorise some of the responses.

#### *Length of time child spent in the initial place of safety*

Respondents were asked the length of time the child removed under section 12 spent at the initial place of safety. 426 respondents (91% of valid responses) answered this question. Answers fell into the following time ranges:

- Less than one hour: 40 respondents (9% of those who answered)
- 1-6 hours: 193 respondents (45%)
- 7-12 hours: 8 respondents (2%)
- 13-18 hours: 15 respondents (4%)
- 19-24 hours: 38 respondents (9%)
- More than one day: 45 respondents (11%)
- Not known: 87 respondents (20%)

## Length of time child spent in the initial place of safety



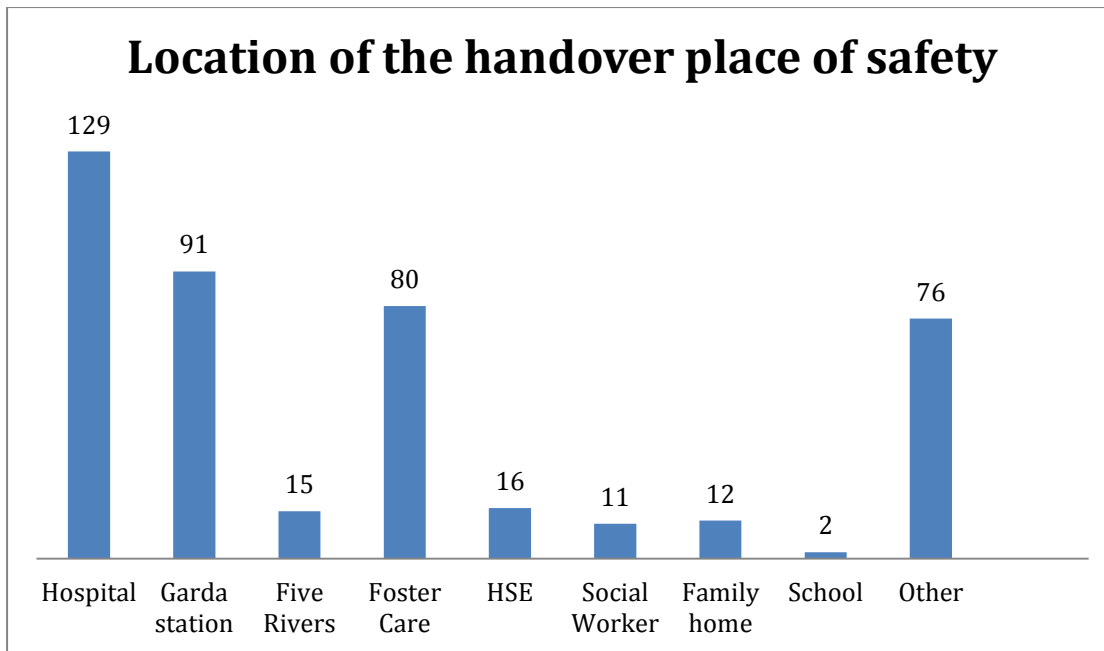
### *Location of the handover place of safety*

Respondents were asked the location of the “handover place of safety” following the invocation of section 12. 432 respondents (92% of valid responses) answered this question. Of those who answered this question, responses included the following:

- “Hospital”: 129 respondents
- “Garda station”: 91 respondents
- “Five Rivers”: 15 respondents
- “Foster Care”: 80 respondents
- “HSE”: 16 respondents
- “Social Worker”: 11 respondents
- “Family home”: 12 respondents
- “School”: 2 respondents
- Other: 76<sup>81</sup> respondents

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<sup>81</sup> A variety of other responses were provided by respondents, including named towns and villages, and named individual’s houses. These results are not listed in this audit report as they provide very little statistical insight into how section 12 invocations are managed by members of AGS.



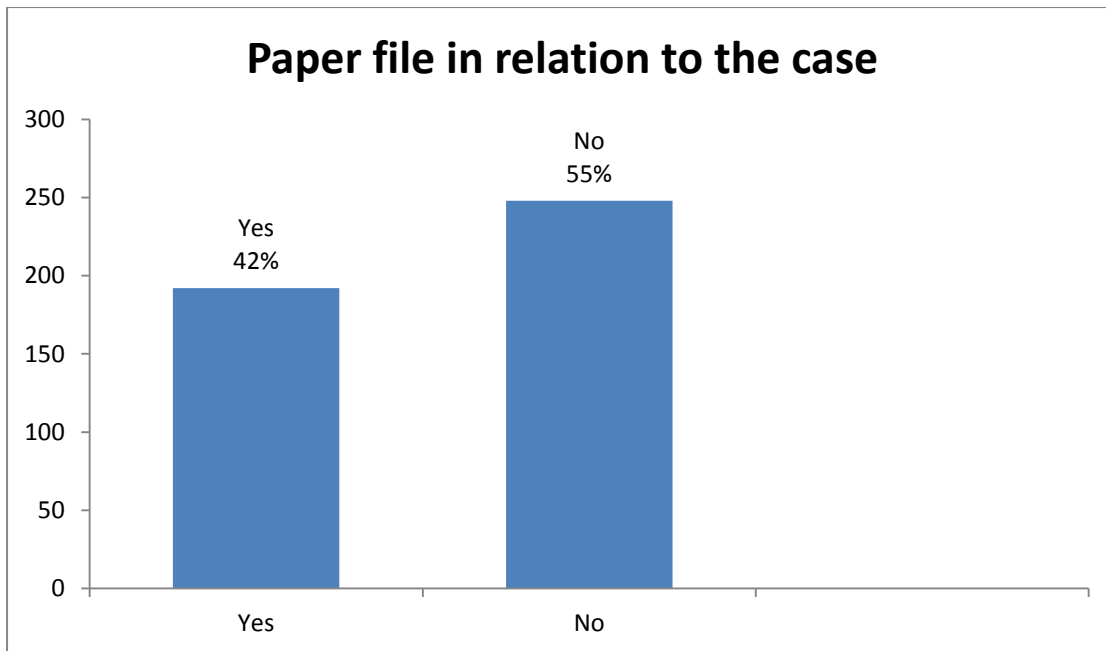
#### 4.2.7 Communication and Knowledge

The questionnaires included questions regarding the background knowledge (the individual respondent's knowledge and organisational knowledge within AGS) of the particular child and family subject to the section 12 power. These questions are part of the audit's examination of correlative patterns around section 12 use by members of AGS.

Questionnaires also asked a number of questions in relation to communications processes and procedures both internally within AGS, and externally between AGS and other agencies in the child protection infrastructure. These questions are part of the audit's examination of the nature and extent of internal and external communication and information-sharing systems between institutional actors in the child protection infrastructure.

##### *Paper File*

Respondents were asked if there is a paper file in relation to the case. 455 respondents (97% of valid questionnaires) answered the question. Of those who answered, 192 respondents (42% of those who answered the question) answered yes, 248 respondents (55%) answered no.

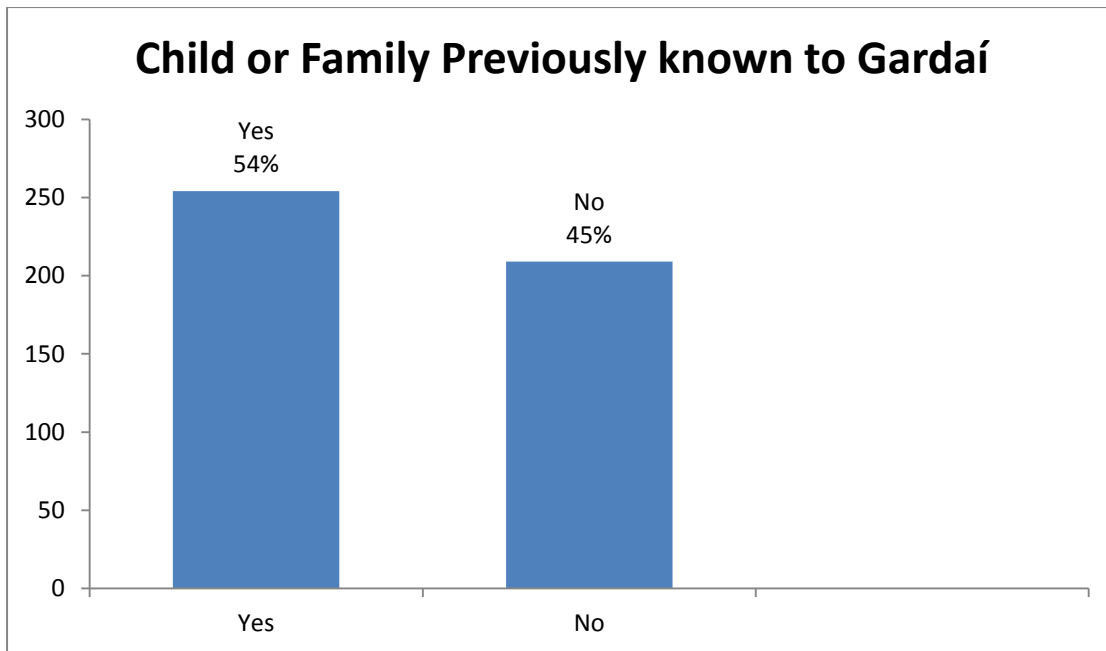


Note: It was not possible to categorise some of the responses.

### ***Child or Family Previously known to Gardaí***

This questionnaire examined prior Garda knowledge of the child or the child’s family. This question was asked to ascertain whether there are correlative patterns between previous Garda interactions with a child and/or the child’s family, and the invocation of section 12 child protection powers by members of AGS.

469 respondents (99.8% of valid questionnaires) answered this question. Of those who answered, 254 respondents (54% of those who answered) said they did have previous knowledge of the child or the child’s family, and 209 respondents (45%) answered that they did not have such prior knowledge.



Note: It was not possible to categorise some of the responses.

### ***Gathering background information***

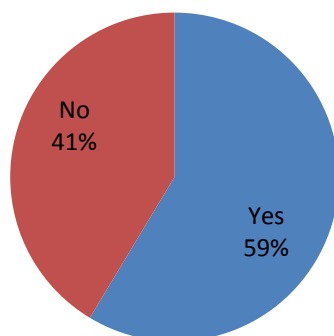
Respondents were asked if they had an opportunity to gather background information on the family before they invoked section 12, and from where they derived any such background information. This question is relevant to systems of internal Garda knowledge and communication, and the prevalence of communication and information-sharing between the different institutional actors in the child protection infrastructure, principally Tusla and AGS. This question is also relevant to the theme of Garda critical evaluation of circumstances prior to the exercise of section 12 powers (see above section on grounds for use of section 12, page 130).

462 respondents (98% of valid questionnaires) answered the initial question of whether they had the opportunity to gather background information. Of those who answered, 272 respondents (59% of those who answered) said they did have such an opportunity, and 190 respondents (41%) said they did not have such an opportunity.



## Opportunity to gather background information

■ Yes ■ No

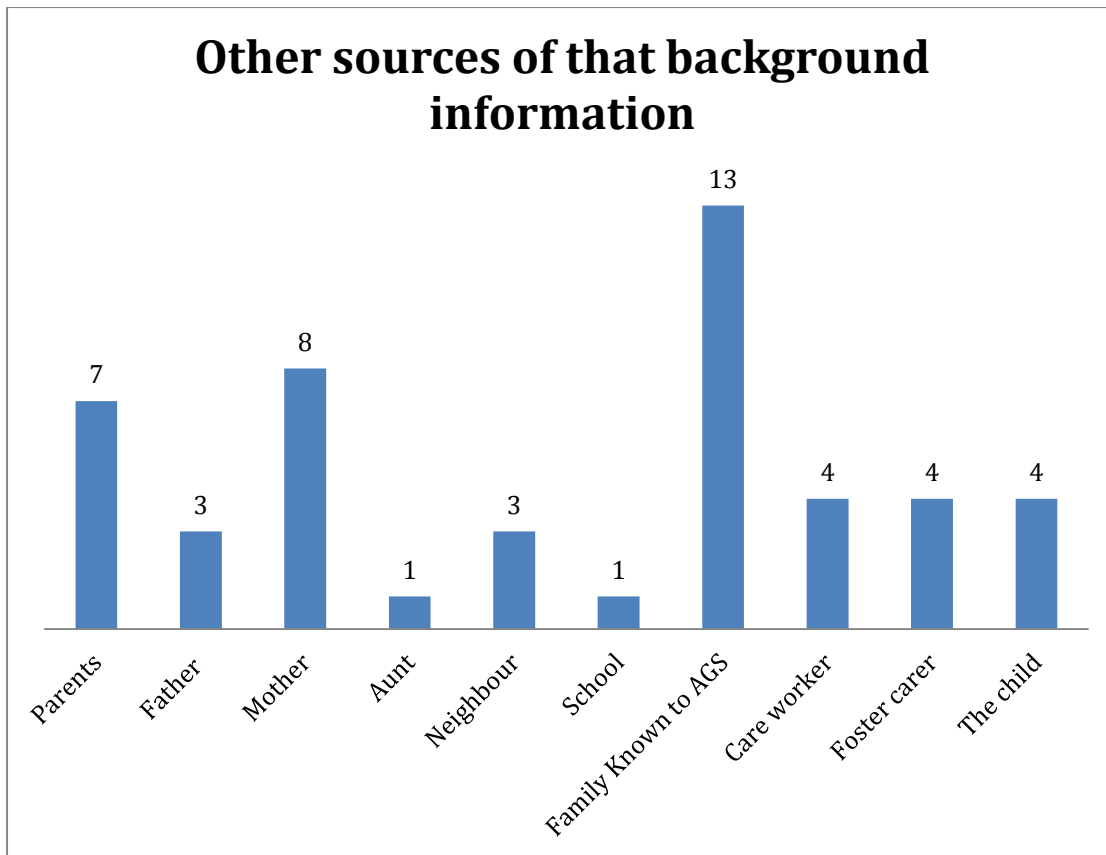


On the question of the source of that background information, respondents gave the following answers:

- Garda intelligence: 165 respondents (61% of those who said they had gathered background information)
- Social Workers: 57 respondents (21%)

Respondents also provided a variety of other sources, with a significant amount of qualitative detail in their responses. The following key terms were mined within this data set and counted.

- “Parents”: 7 respondents
- “Father”: 3 respondents
- “Mother”: 8 respondents
- “Aunt”: 1 respondent
- “Neighbour”: 3 respondents
- “School”: 1 respondent
- “Prior experience of respondent/Family Known to Gardaí”: 13 respondents
- “Care worker”: 4 respondents
- “Foster carer”: 4 respondents
- “The child”: 4 respondents



Note: It was not possible to categorise some of the responses.

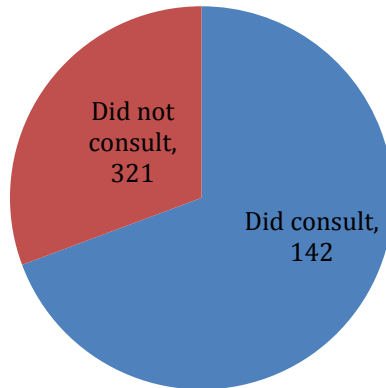
#### ***Consultation prior to invocation***

Respondents were asked if they consulted with anyone before they invoked section 12. Respondents were also asked if that consultation was within the Garda organisation, or with an outside agency. This question is relevant to systems of internal Garda knowledge and communication, and the prevalence of communication and information-sharing between the different institutional actors in the child protection infrastructure, principally between Tusla and AGS. This question is also relevant to the theme of Garda critical evaluation of circumstances prior to exercise of section 12 powers (see above section on grounds pursuant to which section 12 was invoked).

466 respondents (99% of valid questionnaires) answered this question. 321 respondents (69% of respondents who answered) said they did consult during their consideration to invoke section 12. 142 respondents (31%) said they did not consult.

## Consultation prior to invocation

■ Did consult ■ Did not consult

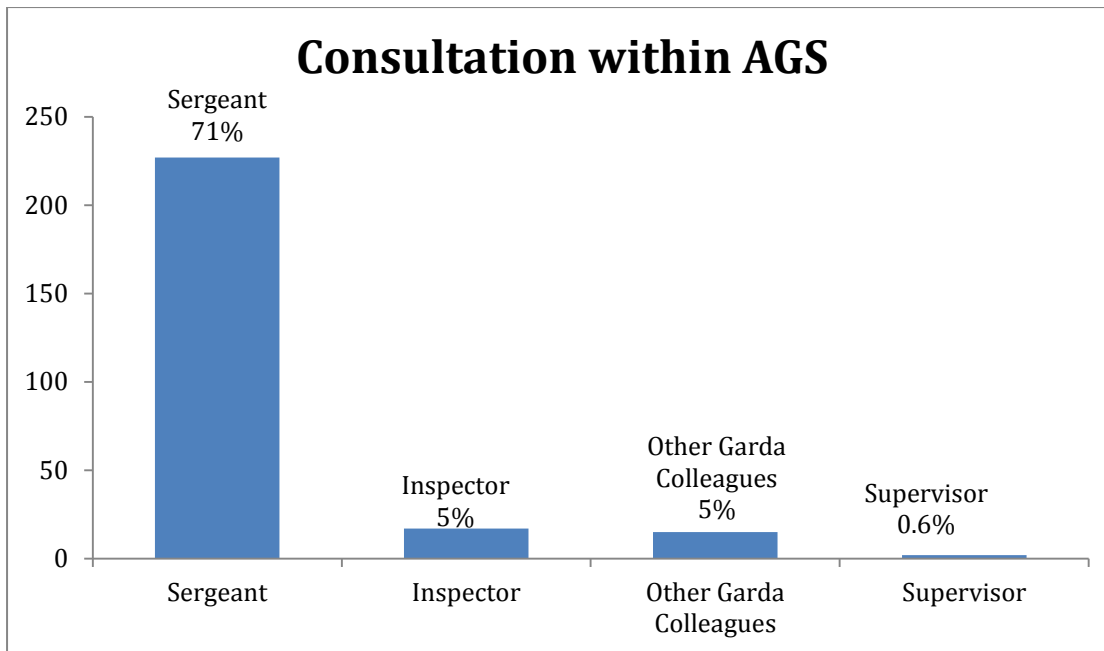


Note: It was not possible to categorise some of the responses.

### *Consultation within AGS*

Respondents were asked with whom they consulted within AGS prior to invocation. This question was asked to evaluate whether Gardaí are seeking informal authorisation or guidance from senior members of AGS prior to exercising section 12, despite the decision to use this power being within the exclusive discretion of the particular Garda, regardless of rank.

- “Sergeant”: 227 respondents (71% of respondents who said they did consult)
- “Inspector”: 17 respondents (5%)
- “Other Garda Colleagues”: 15 respondents (5%)
- “Supervisor”: 2 respondents (0.6%)

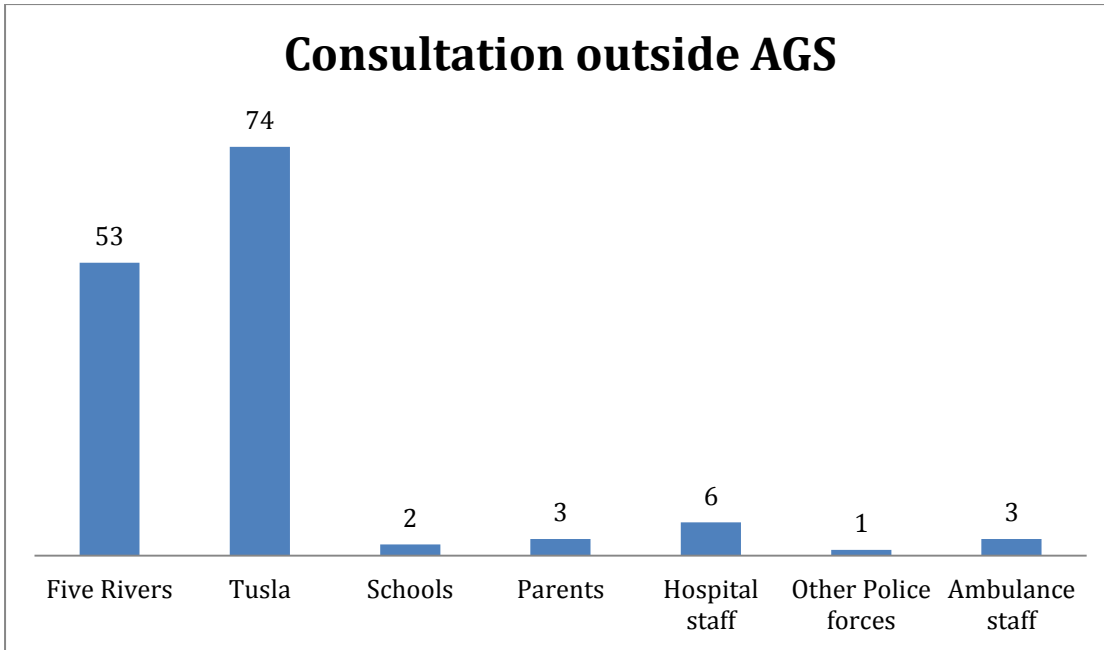


Note: It was not possible to categorise some of the responses.

### ***Consultation outside AGS***

Respondents were asked with whom they consulted outside of AGS prior to invocation. This question was asked to evaluate whether Gardaí are seeking informal authorisation or guidance from external agencies or authorities prior to exercising section 12, in spite of the use of this power being within the exclusive discretion of the particular Garda, regardless of rank.

- Five Rivers: 53 respondents of those who said they did consult (16%)
- Tusla: 74 respondents (23%)
- Schools: 2 respondents (0.6%)
- Parents: 3 respondents (1%)
- Hospital staff: 6 respondents (2%)
- Other Police forces: 1 respondent (0.3%)
- Ambulance staff: 3 respondents (1%)



Note: It was not possible to categorise some of the responses.

#### ***Unable to consult***

Respondents were asked if they would have liked to consult with someone before they invoked section 12, but were unable to do so. This question was asked as part of the audit’s examination of any possible gaps in information, communication, or support for members of AGS in their decision-making regarding the invocation of section 12.

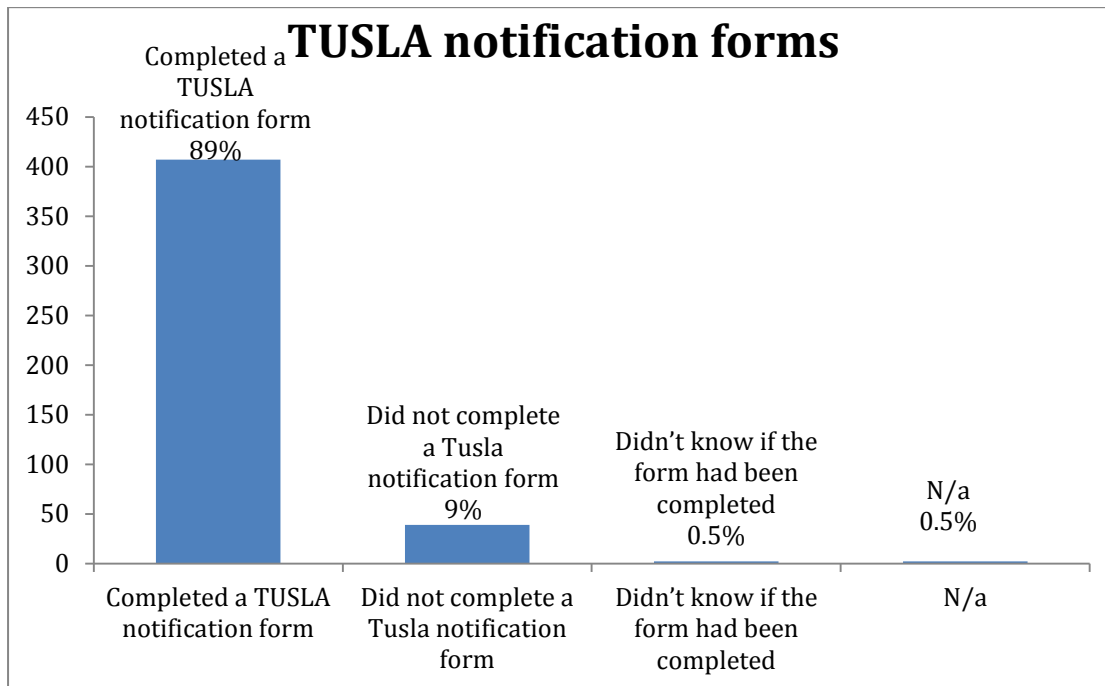
449 respondents (96% of valid questionnaires) answered this question. Of those who answered, 98 respondents (22% of those who answered) said they would have liked to consult, while 345 respondents (77%) said they would not have liked to consult on the case, and 6 answered “N/a” or equivalent.

The questionnaire also asked why those who wanted to consult, were unable to have that consultation. 61 respondents (62% of those who wanted a consultation) answered that there was no one available to consult at that time. 26 other respondents (26%) similarly detailed specific reasons why no one was available, most of which centred on the incident taking place outside of social worker office hours.

#### ***Tusla notification forms***

The questionnaire asked if the respondent completed a Tusla notification form in relation to the case. This question is part of the audit’s examination of levels of formal compliance with existing inter-agency cooperation and information-sharing procedures.

458 respondents (97% of valid questionnaires) answered this question. Of those who answered, 407 respondents (89% of those who answered) said they had completed a Tusla notification form, 39 respondents (9%) said they had not completed a Tusla notification form, 2 (0.5%) said they did not know if the form had been completed, and 2 responded “N/a”.

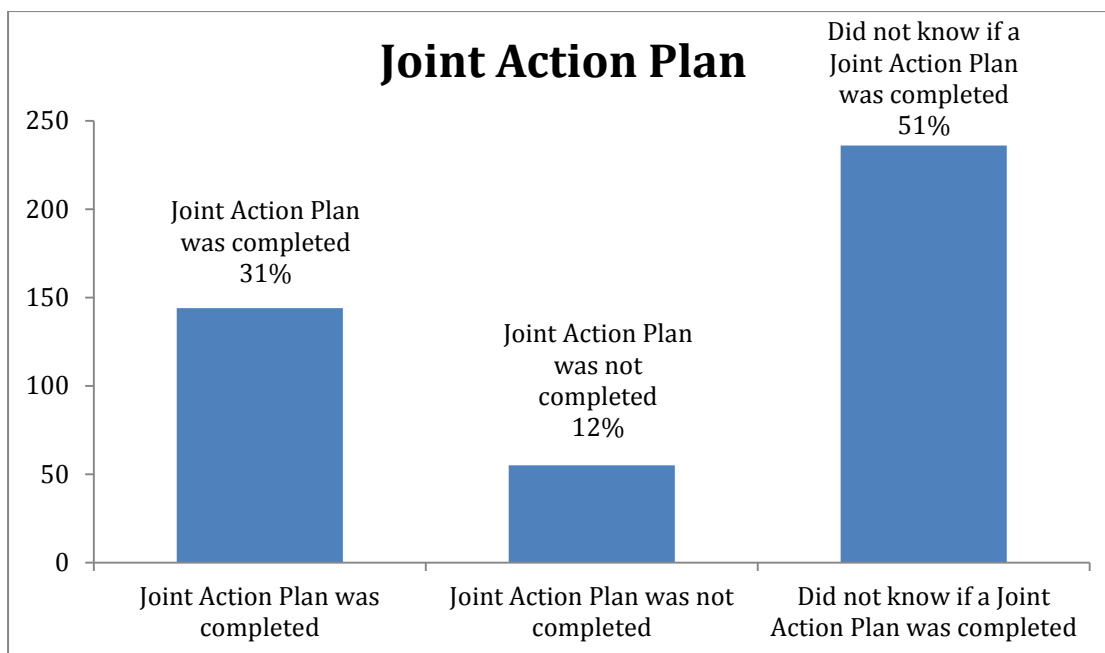


Note: It was not possible to categorise some of the responses.

### ***Joint Action Plan***

The questionnaire asked if a Joint Action Plan (otherwise known as a Joint Action Sheet) had been completed in relation to the case. This question is part of the audit’s examination of levels of formal compliance with existing inter-agency cooperation and information-sharing procedures.

461 respondents (98% of valid questionnaires) answered this question. Of those who answered, 144 respondents (31% of those who answered) said a Joint Action Plan was completed, 55 respondents (12%) said a Joint Action Plan had not been completed, and 236 respondents (51%) said they did not know if a Joint Action Plan was completed. The responsibility for the completion of the Joint Action Sheet rests with Tusla.



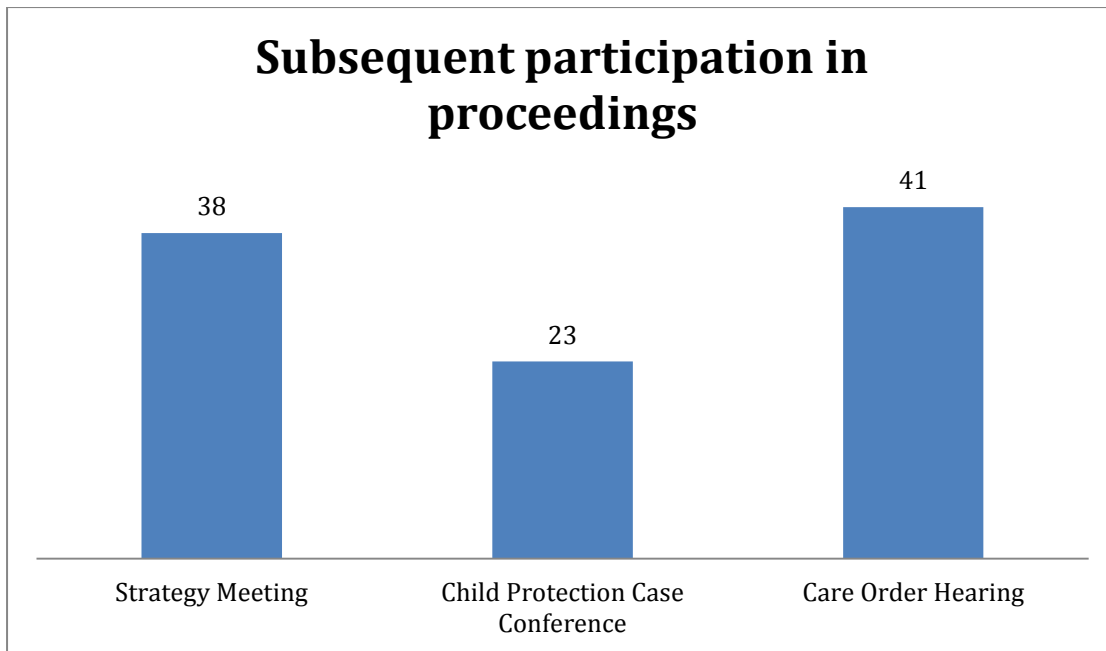
Note: It was not possible to categorise some of the responses.

#### ***Subsequent participation in proceedings***

The questionnaire asked whether respondents had attended a strategy meeting, case conference or care order hearing in relation to the case following the particular invocation of section 12. This question is part of the audit’s examination of case handover and follow-up procedures from all agencies involved in child protection proceedings, following the invocation of section 12 powers by a member of AGS.

The respondents’ attendance included the following:

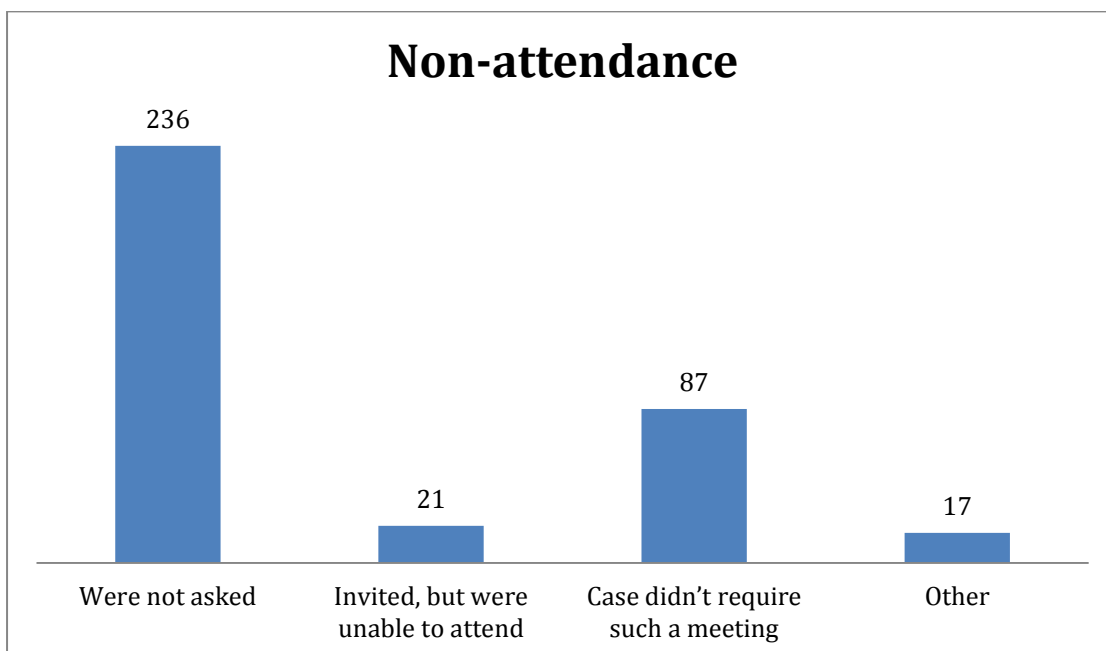
- Strategy Meeting: 38 respondents (8% of valid questionnaires)
- Child Protection Case Conference: 23 respondents (5%)
- Care Order Hearing: 41 respondents (9%)



Note: It was not possible to categorise some of the responses.

Respondents were given four headings under which to explain non-attendance at any of these proceedings. Respondents answered as follows:

- “Were not asked”: 236 respondents (50% of valid questionnaires)
- “Invited, but were unable to attend”: 21 respondents (4%)
- “Case didn’t require such a meeting”: 87 respondents (19%)
- “Other”: 17 respondents (4%), a majority of whom explained another Garda attended in their place



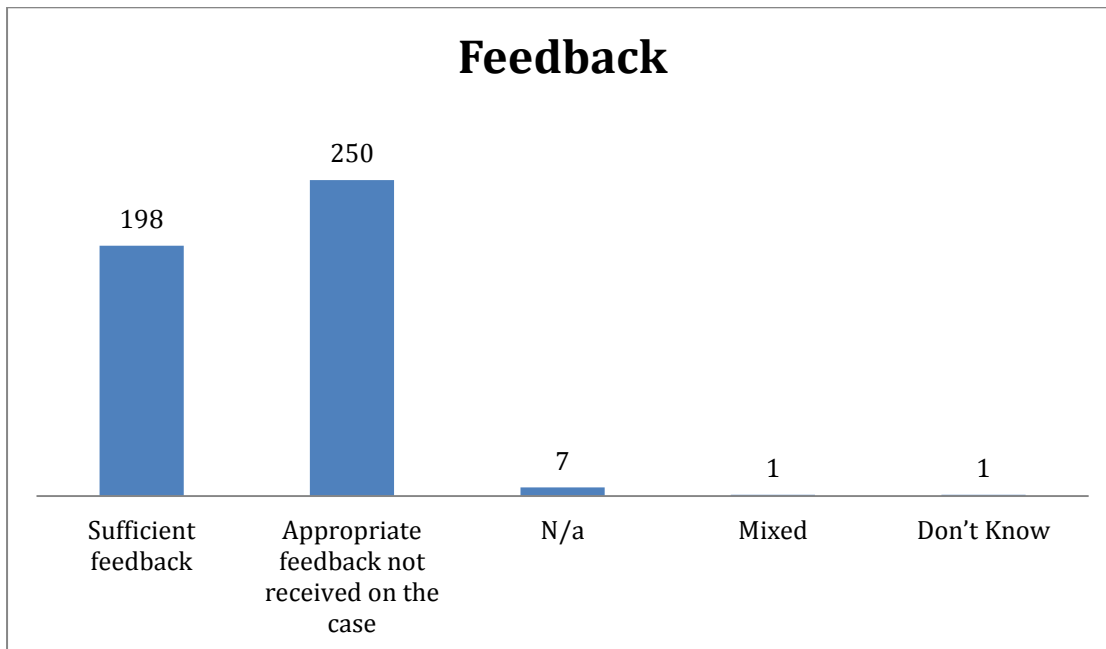
Note: It was not possible to categorise some of the responses. In both parts to this question, respondents could select multiple options in each part.



### ***Feedback***

The questionnaire asked whether respondents felt they had received appropriate feedback in relation to the case. This question is part of the audit’s examination of case handover and follow-up procedures from all agencies involved in child protection proceedings, following the invocation of section 12 powers by a member of AGS.

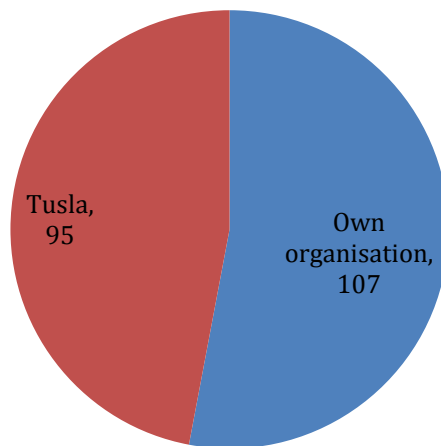
457 respondents (97% of valid questionnaires) answered this question. Of those who answered, 198 respondents (43% of those who answered) said they had received sufficient feedback, 250 respondents (55%) said they had not received appropriate feedback on the case, 7 respondents (1.5%) answered “N/a”, 1 respondent answered “mixed”, and 1 respondent answered “don’t know”.



Note: It was not possible to categorise some of the responses.

If they had received appropriate feedback, respondents were asked from where they received that feedback. 107 respondents said they received appropriate feedback from within their own organisation. 95 respondents said they received appropriate feedback from Tusla. It should be noted that respondents could select both options in relation to this part of the question.

## Appropriate feedback



### 4.2.8 Critical Evaluation and Reflection in Use of Section 12 power

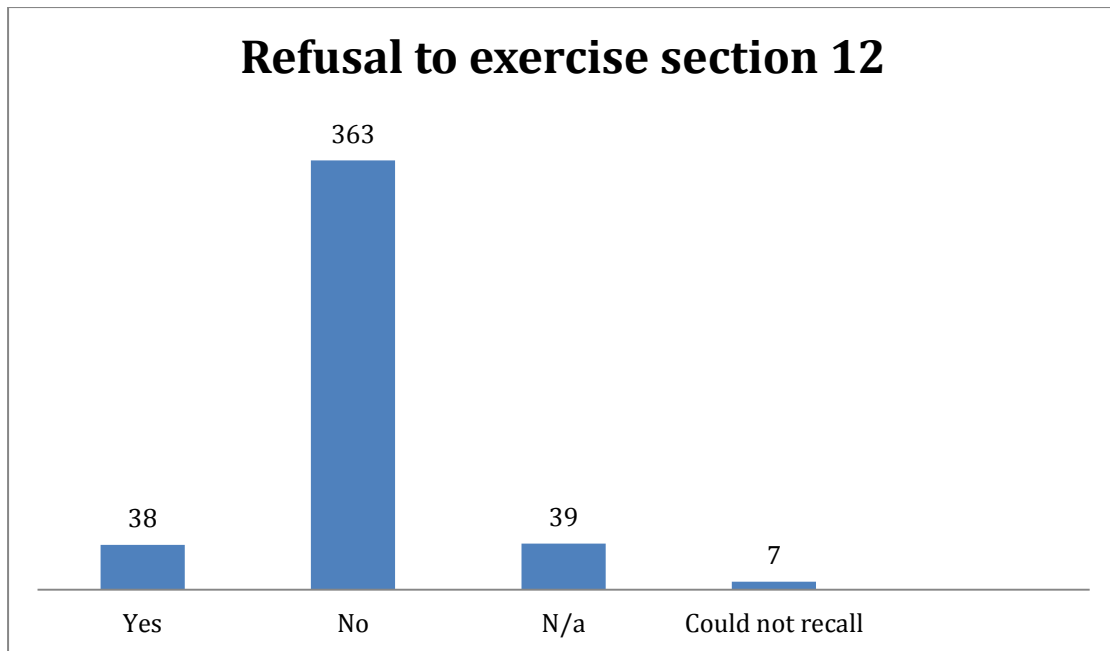
Respondents were asked a number of questions to assess evidence of critical evaluation by members of AGS of circumstances in which they considered using section 12. These questions are part of the audit's inquiry into the understanding of the thresholds for State intervention in family life under section 12 of the Child Care Act 1991, by members of AGS.

#### *Refusal to exercise section 12*

The questionnaire asked if respondents had ever refused to exercise section 12 when requested to do so by a social worker. This question is designed to assess whether members of AGS were forming independent judgments on the circumstances of a case to see whether the threshold of "immediate and serious" threat to the child had been met.

452 respondents (96% of valid questionnaires) answered this question. Of those who answered, responses included:

- Yes: 38 respondents (8% of those who answered)
- No: 363 respondents (80%)
- N/a: 39 respondents (9%)
- Could not recall: 7 respondents (2%)



Note: It was not possible to categorise some of the responses.

#### **General Discussion**

The questionnaire stage of this audit provides a valuable overview of the operation of child protection powers exercised by AGS. Crucial findings from this stage centre on the dearth of training in child protection among members of AGS, and the specific gaps in training in relation to the use of section 12 powers. In both regards, most respondents indicate they have received no training. A substantial majority of respondents (77%) felt they are not sufficiently trained in the area of child protection.

Similarly, the questionnaires detail a context where little or no meaningful inter-agency cooperation takes place in relation to child protection, beginning at the level of basic training.

Perhaps the most important insights from the questionnaire stage relate to the common circumstances in which section 12 is invoked to remove children into the care of the State. Parents are by a significant margin the most frequent instigator of Garda involvement leading to section 12 removal. A substantial portion of the narratives that accompanied questionnaire responses detailed circumstances where parents requested the involvement of AGS due to an adolescent child's disruptive, and frequently violent behaviour. Relatedly, the majority of children removed in the calendar year 2014 according to the questionnaires, were between 11 and 18 years old.

The majority (68%) of children were removed from the care of their parents. Notably, 14% of respondents said they had removed the children from the care of the HSE, a foster carer, or a care home/residential unit. A majority of respondents (54%) said they, or AGS, had previous contact with the child or family before invoking section 12 of the Child Care Act 1991.

A high proportion of respondents (59%) said they had an opportunity to gather background information on the situation prior to invoking section 12. Similarly, respondents offered multiple grounds justifying the removal of the child, reflecting a degree of critical sophistication in Garda decision-making around the exercise of section 12. Relatedly, a large majority of respondents indicated they consulted with a senior member of AGS, most often their unit Sergeant, prior to exercising their section 12 powers. This is significant as it suggests an interesting feature in the operation of section 12 powers by AGS. It indicates a possible lack of understanding of section 12 powers among members of AGS, or a lack of confidence among Garda members in their exercise of child protection functions. It also suggests that Gardaí have informally and organically developed a similar practice of oversight of section 12 powers to that contained in the UK equivalent under section 46 of the Children Act 1989. While many respondents said they consulted within the Garda organisation, a large number of respondents stated that they consulted with either Tusla or Five Rivers prior to section 12 removal.

25.5% of respondents indicated they had experienced resistance to the removal of the child. This reflects the emotionally tense and challenging circumstances in which Gardaí are called upon to remove children from the care of their parents. Parents were the most frequent source of that resistance, followed by resistance from the child.

Garda stations and hospitals were by a significant margin the most frequently used initial places of safety to which children were removed, with numerous accounts of children being kept for hours in Garda stations while a placement was arranged, or of children being left in hospitals over a weekend due to the lack of an out-of-hours service.

Children removed under section 12 were placed in the care of a variety of different actors and agencies, principally Social Workers (30%), Hospital Staff (28%) and Foster Carers

(20%), but also including the Five Rivers organisation, and other family members. Much of this variation can be attributed to the absence of out-of-hours services provided by Tusla, and various localised policies with regard to treatment of children removed during out-of-hours periods, developed in response to the absence of national rules in relation to the management of children post-removal under section 12.

53% of respondents indicated there was an out-of-hours social service available. However, analysis of these responses, and subsequent related questions about the nature of that service, suggests a significant proportion of these respondents believed the private fostering service Five Rivers to be the same organisation as Tusla. The questionnaire findings, along with findings at all stages of this audit, indicate Five Rivers was operating as the *de facto* out-of-hours child protection service outside of Dublin and Cork.

Questions relating to follow-up after a section 12 removal indicate high levels of adherence to superficial inter-agency communications mechanisms such as the Tusla notification form (89% of respondents completed such a form), and low levels of involvement in materially significant inter-agency cooperation. For example, most respondents (51%) were not aware if a Joint Action Plan had been completed. 50% of respondents said they were not asked to attend a case conference, strategy meeting or care order hearing, or were not aware of such a meeting taking place in relation to the child they had removed. Most respondents (55%) felt they did not receive sufficient feedback on the case either from AGS, or externally from Tusla or other private/third sector service providers.

**CHAPTER 5:**

**INTERVIEWS AND FOCUS GROUPS REVIEWED**

## 5.1 INTRODUCTION

This chapter examines the three substantive sources of qualitative data generated through this audit: narratives from the questionnaires – which provided Garda questionnaire respondents with the opportunity to give a comprehensive outline of the circumstances in which section 12 powers were invoked; interviews with thirteen randomly selected members of AGS who exercised section 12 powers in the month of September 2015;<sup>82</sup> and the two focus groups – each of which consisted of six participant members of AGS – one group consisted of Gardaí who had exercised section 12 powers between 2014 and 2015; the other group consisted of their supervising officers (five Sergeants and one Inspector).

## 5.2 METHODOLOGY

The data from the interview stage of the audit was derived from contemporaneous notes taken on a laptop computer by one member of the audit team. The same member of the team acted as note-taker to ensure consistent documentation throughout this stage of the audit. The data from the focus group stage of the audit was derived from transcripts of those focus groups, generated from audio recordings of those focus groups. The audio recordings of the focus groups were professionally transcribed. The data from the questionnaire narratives was directly copied and pasted into the Questionnaire Data Master Excel spread sheet from the original questionnaire responses, or was summarised during the coding stage of the questionnaire responses. Questionnaire narratives were also analysed by the coders as each questionnaire was coded into the Master Excel spread sheet. Coders selected narratives<sup>83</sup> that were particularly rich with qualitative data, and analysed these narratives using themes from the questionnaires themselves, and informed by the overarching objectives of the audit.

The interviews and focus groups were coded and analysed using NVivo qualitative analysis software. The analytical codes used in this process were generated from the questionnaires used in both the interviews and the focus groups. More analytical codes

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<sup>82</sup> In September 2015, 55 children were removed under section 12, in 35 situations where Gardaí removed children under section 12.

<sup>83</sup> The narratives inputted in the questionnaires varied enormously in terms of length, quality and detail.

were also generated for the audit from the raw data itself, employing a form of grounded theory analysis.

In line with commitments given to Garda respondents, and to ensure compliance with the data protection obligations of both AGS and the audit team, Garda respondents have been anonymised. Respondents from the questionnaire stage are referred to by a random number or two letters (Garda 213, Garda ZY, etc.); respondents from the interview stage have been randomly assigned an identifying letter (e.g. Garda A, Garda B, etc.); respondents from the focus group stage are not referred to individually, but by the particular focus group they participated in (Focus Group 1, Focus Group 2).

In the following chapter, all respondents will be referred to in the masculine to protect the conditions of confidentiality under which the interviews and focus groups were undertaken.

### **5.3 THE INTERVIEWS**

The following section outlines, contextualises, and critically analyses the findings from the interview stage of the audit. The sub-headings under which the findings are categorised reflect the questions asked during the audit, and other critical themes that emerged during interviews. Where relevant, findings from the audit's questionnaire narratives will be cited to enrich findings from the interview stage. The questionnaire narratives will be examined in their own section of this chapter.

#### **5.3.1 Respondent Gender**

Of the 13 respondents in the interview stage, 2 were female, and 11 were male. This demographic data is noted to provide a degree of consistency across the different stages of this audit. Respondent gender is also noted, as the audit used gender as one of the central critical tools to evaluate all data derived in the questionnaire, interview and focus group stages of this audit. In this regard, the audit explored if there was a discernible pattern of difference in Garda respondents' approaches to their child protection role, depending on the Garda respondent's gender.



### **5.3.2 How Long a Member of An Garda Síochána**

The number of years respondents had been members of AGS ranged from 6 years (1 respondent) to 33 years (1 respondent). 1 respondent had served for 7 years, 3 for 8 years, 3 for 10 years, 3 for 12 years, and 1 for 25 years. This demographic data is also noted to provide a degree of consistency across the different stages of this audit. Respondent age is also noted, as the audit used respondent age as one of the central critical tools to evaluate all data derived in the questionnaire, interview and focus group stages of this audit. In this regard, the audit explored if there was a discernible pattern of difference in Garda respondents' approaches to their child protection role, depending on the Garda respondent's length of service in AGS.

### **5.3.3 Number of Times Respondent had Exercised Section 12 Powers**

Respondents were asked how many times they had removed a child under section 12. This question was asked as part of the audit's goal of exploring the frequency with which the average Garda will remove a child under section 12. This question also informed the audit's examination of Garda willingness to exercise section 12 powers.

Most respondents who answered this question indicated they had invoked section 12 no more than once or twice before this incident. For example, Garda O had been a member of AGS for 33 years, but the instance discussed in the interview had been his first time exercising section 12 powers. Both Garda J and Garda B described the use of the power as "rare". Garda P who had previously been stationed in economically and socially deprived urban and suburban areas, had himself only exercised section 12 once before, but had been involved in a number of other incidents where his colleagues had exercised section 12 powers. Garda P, Garda W, and Garda Q all explained that the rarity of section 12 cases made it difficult to accurately recall details of other incidents in which they had invoked section 12, prior to the invocation in September 2015.

Having invoked section 12 three times, Garda A and Garda Z had the highest number of reported uses of section 12 in the interview stage. For Garda A, two of his invocations of section 12 powers were in relation to the same child, on different dates in 2014 and 2015. Garda Z explained he had exercised section 12 powers twice over 12 years.

Both Garda L and Garda T said it was their first time invoking section 12 powers. Garda T said he was nervous about exercising section 12 powers, and had taken great care with his Sergeant to review the wording of the section in the 1991 Act before proceeding. Garda T indicated this hesitancy on his and his Sergeant's part in exercising this power was in part connected to the fallout from the 'Tallaght' case.

Overall, this stage of the audit found that the removal of a child under section 12 of the Child Care Act is a rare occurrence for the average member of AGS.

#### **5.3.4 Personal Details in relation to Family and Child Removed under Section 12**

The demographic data of the child and family is again noted to provide a degree of consistency across the different stages of this audit. The child's gender, age, socio-economic, and ethnic background was also noted as a central research question for this audit to assess whether Garda profiling in its exercise of powers under section 12 of the Child Care Act 1991, exists. The audit also attempted to establish if there were any significant patterns in terms of the background of children removed under section 12.

##### ***Age***

This issue is considered at para 3.6.1.

##### ***Gender***

This issue is considered at para 3.6.2.

##### ***Socio-Economic Background of the Child Removed***

Respondents were asked about their knowledge of the child's or the family's socio-economic background. A number of the children, as in the cases discussed by Garda W and Garda L, were under the care of Tusla, in a care home or in a foster placement. As a result, the respondents were not familiar with the socio-economic background of the biological family.

Of those who were able to answer this question, the majority said the families were low-income. A handful, such as in the cases discussed by Garda Z and Garda S, were families "known to the Gardaí" for unrelated criminal activity.

Garda S helpfully provided a broader insight into the socio-economic makeup of the Garda district in which he was deployed, describing it as a large geographical area with a socio-economically diverse population. He also described areas in the district with high levels of social deprivation, and what he termed “very challenging clients”, with complex issues such as drug addiction, homelessness, and chronic mental health problems. Garda S’s interview in particular, along with a number of other respondents’ accounts of contemporary policing in Ireland, highlighted the increasingly diverse and demanding roles expected of members of AGS, of which child protection is now firmly a part.

In the cases discussed by Garda Q and Garda B, the families appeared to live in middle to upper-middle class neighbourhoods, in financially secure circumstances.

From the cases examined at the interview stage of this audit, there was no single paradigm for the socio-economic background of families, from whom children were removed under section 12. While there were a higher number of children removed from families from lower socio-economic backgrounds, there was no evidence that this factor was a significant consideration in a respondent’s decision to remove the child under section 12. While some respondents noted the physical condition of the home (e.g. level of cleanliness) in their description of circumstances at the scene, it was not clear from interviews that this was a major or minor ground upon which section 12 was invoked. Overall, the audit did not find evidence to suggest over-zealous use of section 12 removal of children from families living in social or economic deprivation.

### ***Ethnic and National Background of the Child and its Family***

The majority of the cases examined in the interview stage involved Irish parents and Irish children. At least two cases involved an Irish Traveller family, though there may have been more, as this particular piece of demographic data does not appear to be routinely documented on the PULSE system.

One case involved a child and family with an ethnic Roma background, all of whom, according to the Garda respondent, were Romanian nationals. One case involved a Nigerian national and her Irish children, one case involved a Nigerian child,<sup>84</sup> with

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<sup>84</sup> It was unclear if this child was Nigerian born, or born in another EU member state with Nigerian heritage.

citizenship in another EU member state, and two cases involved Latvian national mothers and their Irish children. One child, who was in a Tusla foster care placement when section 12 was invoked, was, as best as the respondent could remember, English-born, with an English-born biological mother. Another case involved an English family who had fled their home jurisdiction, and were sought by Police and Social Services in England. One family (a Latvian national mother, and her children, at least two of whom were Irish born) was homeless at the time section 12 was invoked – a fact that formed part of the respondent’s grounds for exercising section 12 powers. The remaining 7 cases involved Irish children, two of which involved a Traveller child.

It should be noted that it is not entirely clear from the interviews, and the data received along with those interviews, that a child’s nationality and ethnic background is routinely taken as part of normal Garda investigation procedures, and documented on PULSE. Some officers, such as Garda J, were not confident in accurately identifying the specific nationality of the child, or the child’s parents.

However, despite these uncertainties around the ethnicity and/or nationality of the children (uncertainties that are more problematic from a broader national and temporally longer perspective), the audit could find no evidence that the ethnic background of a child, or their nationality, was a significant consideration in the decision to remove a child. While the nationality of the children and family in the case involving Police and Social Services in England and Wales was undoubtedly a central concern – this factor is relevant due to international legal obligations on the Irish State, rather than any issue of racial profiling. As such, the interview stage of this audit showed no evidence of racial profiling in decisions to remove children under section 12.

This finding must be tempered by three considerations: firstly, by necessity, the sample size in the interview stage is not sufficiently large to draw general conclusions about the presence or absence of racial or ethnic profiling in Garda use of section 12 powers. The interview stage provided the audit with very valuable insights into the culture and professional practices of members of AGS in the performance of their child protection functions, but was not designed to generate data of statistical significance. Secondly, as noted above and in more detail below, the apparent absence of a requirement for routine gathering of ethnic data on children, or others, in the PULSE system makes it difficult

for the audit to make firm determinations on the presence or absence of racial or ethnical profiling by AGS in the performance of its child protection functions.

Finally, while there may be little or no evidence of racial or ethnic profiling by members of AGS in their exercise of section 12 powers (above qualifications excluded) – the audit is unable to comment on the presence of racial or ethnic profiling in the performance of other policing functions. The most important example in this regard is that the audit’s findings are in no way relevant to the question of whether children, their families, or any other adults, are racially profiled by members of AGS when those people are considered possible offenders. The remit of this audit was confined exclusively to examine cases where a child was removed under section 12 – it did not examine any cases where the child was arrested for suspected commission of a criminal offence.

### ***Religion***

Most respondents were unable to answer the question covering the religion of the child or the family, indicating this kind of data is not routinely taken as part of normal Garda investigation procedures, and documented on PULSE. Of those respondents who answered, none were wholly confident in their answers, and all said the child and family were Catholic.

### ***Disability***

Most respondents were unable to answer this question, indicating this kind of data is not routinely taken as part of normal Garda investigation procedures, and documented on PULSE. One respondent was able to answer this question, and said he believed the child had autism.

### ***Number of Children in the Family and Number of Children Left Behind***

This particular demographic data was gathered and evaluated by the audit, as decisions to leave some children behind, when one or more children are removed under section 12, is relevant to a Garda respondent’s understanding of the threshold for section 12 removal.

Eight of the thirteen respondents said there was more than one child in the family. In one of these cases, the sibling lived in another jurisdiction, and in another case the other siblings were half-siblings on the father’s side, not living in the family home.

Three respondents said there were two children; three respondents said there were three children; one respondent said there were five children; and one respondent said there were six children in the family. These responses were total sibling numbers the respondents were aware of – including half-siblings not living in the family home.

In four cases, other children were left in the family home and not subject to section 12 removal. In two of these cases, the other children were biological siblings of the child subject to section 12, but the Garda respondents did not feel the situation for those particular children met the section 12 threshold for intervention. In another case, the half-sibling living in the family home was left in the care of his biological father, while the other child was removed under section 12, as no other appropriate adult was available to care for the child. In the fourth case, the other children were foster children unrelated to the child subject to section 12.

In all these cases, the respondents were able to clearly justify their decision not to invoke section 12 in relation to all the children, in line with the risk threshold governing the section 12 power. In all these instances, the evidence available to the audit supports the genuineness and legitimacy of these justifications.

***Was the Child and/or the Family Known to the Respondent or other members of An Garda Síochána?***

This particular data was gathered and evaluated for the audit to explore if existing Garda knowledge of a child or his or her family is a significant factor in decisions to remove a child under section 12.

All but three respondents said the child and/or the family were known to them, or other members of AGS (i.e. the child or the family had a record on PULSE). In one of the three cases where they were not known, the family was known to Police in England and Wales (Interpol initiated the involvement of AGS in this case). In only two cases were the children and the family unknown to policing services in this or neighbouring jurisdictions.

This finding indicates that the children and families in which section 12 is invoked are typically experiencing some level of social dysfunction, trauma or insecurity.

In some cases, such as with Garda W and Garda L, the children themselves were known to members of AGS. In most cases, the parents (as with Garda S), or other family members (as with Garda Z), were known to the Gardaí for crime-related activity of some sort.

In a number of cases, such as with Garda W, Garda L, and Garda T, section 12 had been invoked in relation to the child or children in those families on previous occasions. Garda L's case, for example, involved a child who was repeatedly subject to section 12 by various members of his Garda station due to serial absconding from a foster placement. Garda L described how the child was comfortable with the circumstances surrounding the invocation of section 12, as she was more than familiar with the routine of being temporarily moved out to an emergency foster placement in a nearby town.

In Garda T's case involving a homeless foreign national mother and her Irish-born children, the existence of a history of section 12 interventions in relation to the family on PULSE formed part of his decision to invoke section 12. Reflecting on the decision-making process, he described feeling lucky that such a record existed, as one of his initial goals would have been to avoid separating the mother from the children. He felt the prior history in relation to the family on PULSE helped him make the right call in exercising section 12 powers. Garda T's account perhaps indicates a greater willingness on the part of some members to exercise section 12 where it has been used to remove a child from the same family before. While the audit finds that section 12 removal was wholly appropriate in those circumstances, it might be suggested that the significance placed on previous section 12 removals highlights a potentially problematic reluctance among some members to remove children even where good grounds exist. Garda T's emphasis on this history also highlights the value in information-sharing between agencies on children deemed to be at particular risk.

In summary, the evidence from the audit indicates that the background knowledge held by AGS often plays a significant role in the decision-making around section 12 removal of a child. However, the audit has not found that this knowledge superseded or supplanted an individual assessment of section 12 criteria in specific cases. Particular circumstances are evaluated in their own context – but risk assessments are undoubtedly enhanced by background knowledge and understanding.

### ***Was the Child and/or the Family Known to Tusla?***

This data was gathered by the audit to explore if the children being removed under section 12, or their families, have histories of engagement with Tusla, and what level of involvement Tusla has had with those families. This information is relevant to determining which children and families are subject to section 12 removals. It is also relevant to the overarching question that emerged throughout the course of this audit, of whether Tusla is properly fulfilling its obligations to children and the family before a child is removed under section 12.

The case involving Garda W and Garda L related to children in a Tusla foster care placement. While some respondents knew Tusla social workers were familiar with the child and the family – such as Garda P whose involvement in the case was initiated by social workers – most respondents were not aware if the child was known to Tusla. This absence of knowledge is in part due to the common finding throughout the audit of a lack of information-sharing between agencies: a theme expressly articulated by Garda Z and others.

#### **5.3.5 Garda Training**

##### ***Training in Child Protection***

Respondents were asked to detail the nature of training in child protection they had received, if any, as the question of appropriate training in child protection is central to the audit's examination of whether section 12 is being used appropriately and proportionately. Appropriate training in child protection is essential for members of AGS to have the capacity and competence to critically evaluate circumstances suggesting a risk to a child, in a manner that is sensitive to both the rights of the child and the parent, and also the risks associated with removal of a child. Additionally, this data also provides a degree of consistency across the different stages of this audit.

Beyond the basic training undertaken during their time at Templemore Garda College, most of the respondents said they did not have any training in child protection. A common response, articulated clearly by Garda A, was that members were overwhelmed with information during their basic training in Templemore. Many, such as Garda L, said they could not remember having received any specific child protection training – though



these respondents were generally comfortable assuming they had received such training. That said, they were not able to recall the details of any such training.

On the nature of that training received during their time in Templemore, a number of respondents, such as Garda Z, described it as a short presentation in a large lecture: a format for child protection training that some respondents, such as Garda P, suggested was not conducive to active engagement with the material. In summary, the vast majority of respondents explained that any such training was basic, and had little impact on them. Other respondents also explained that little or no emphasis was placed on children's rights, or child welfare and protection, in the core training and assessment of trainee Gardaí while in Templemore.

Most respondents, such as Garda S, drew a sharp distinction between the more theoretical training in child protection in Templemore, and later through HQ Directives and Circulars, and the practical training when members were deployed "on the street". A number of respondents, such as Garda N and Garda P, explained the best training came through operationalising their basic training in the field: Garda A explained that newly attested members required time to "contextualise" this training.

Garda N emphasised his view that leadership was essential in decision-making around child protection. The same respondent also echoed the sentiments of other respondents by focusing on the 'common sense' nature of decision-making by Gardaí in child protection cases, and suggested members were guided by how they would want their own family to be treated. For a large number of respondents, such as Garda S, this 'on-the-job' learning was the totality of their child protection training.

A number of respondents, such as Garda B, also emphasised their perceived limitations of any such formal training, given the extremely diverse range of circumstances that might require the exercise of section 12 of the Child Care Act 1991. However, that same respondent also echoed the sentiments of a number of respondents, when he said he did not feel adequately trained to undertake his child protection role. This respondent was particularly concerned that he could exercise such a dramatically intrusive power into the private life of a family, with such little training, while specialist child protection social workers were required to apply to a court to exercise their emergency powers under

section 13 of the Child Care Act 1991. Garda B also articulated the acute anxiety he experienced with the significant responsibility attached to exercising section 12, and again emphasised his feeling ill-equipped to use such a power in the family context.

On *Children First* training specifically, most respondents had little or no knowledge of it. Garda P reflected the responses of other respondents when he explained his only dealings with such guidelines were when his Sergeant referred him to “the manual”.

Some respondents, such as Garda N and Garda R, had undertaken *Children First* training. Garda Q said he thought he had undertaken *Children First* training “at some stage – as part of [his] CPD (Continuing Professional Development)”. Garda R also said he had undertaken *Children First* training one year ago as part of his CPD, but still felt he required more comprehensive child protection training.

Some respondents were forthright in their dismissive attitude towards sources of training and guidance on child protection in HQ Directives and Circulars: one member explained his view that such documents were designed to absolve the higher-level Garda bureaucracy from any responsibility in the event of a highly publicised and controversial error or failure. A number of respondents, such as Garda S, said these documents were too dense to be of significant use, and found it difficult to make time to read them in their busy working schedule.

The findings in the interview stage are not unrelated to a pattern observed in the questionnaire stage of this audit. In the questionnaire stage a substantial number of respondents who answered that they had received child protection training, felt they did not have sufficient training in child protection; while a substantial number of those with no child protection training, felt they had sufficient child protection training.

In summary, there is no clear consensus among interview respondents regarding what they perceive to be an appropriate or ideal form or level of child protection training. However, the findings from both this stage, and mirrored in the questionnaire and focus group stages of this audit, are clear that there is little or no emphasis on formal training of Gardaí in relation to child protection. There is a superficially conflicting view from many Garda respondents, that, on the one hand, it is difficult to train members of AGS

in child protection, as the cases they are called upon to address are so diverse; while on the other hand, many of the same respondents are anxious about exercising these powers without being ‘properly’ trained. It is suggested that this reflects a deeper systemic inadequacy within AGS in the training of Gardaí. This conflict appears to be rooted in a general ambivalence on the part of many Gardaí in relation to the training they receive both in Templemore, and as part of continuing professional development. There is a clear culture within AGS of privileging on-the-job learning, which undermines respect for the value of core training in Templemore.

### ***Joint Training with Social Workers***

All respondents were asked if they had received joint training with child protection social workers. This question was asked, as it is relevant to the overarching research question of inter-agency communication and cooperation between Tusla and AGS.

The vast majority of respondents said they had not participated in joint training, but a small number had taken part in some inter-agency training in child protection. Garda N described his experiences of such training as “a little sterile”, as it focused principally on the different roles of the different actors in each agency. Garda R described his joint training as involving role-playing exercises, which he found interesting. Garda R felt the availability of such training, and whether interested members could undertake it, was largely dependent on limited resources.

These findings reflect findings in both the questionnaire and focus group stages of this audit in suggesting only a minority of members of AGS receive joint training with social workers. This also reflects the broader finding in this audit that levels of inter-agency cooperation and coordination remain very limited, or are confined to high-ranking members of the Garda organisation. The findings in relation to respondent perceptions of resourcing issues is also consistent with broader themes in both the interview and focus group stages of the audit. The availability of resources was a concern that jumped immediately to mind for many of the Garda respondents in these stages of the audit.

### ***Training in Cultural Competency and Understanding of Diversity***

In light of the increasing ethnic and cultural diversification of Irish society, and the distinct sensitivities this change demands of policing practices in general, and child

protection practices in particular, respondents were asked what training they received in how to deal with these changes. Evaluating levels of guidance and training on how members of AGS should address these on-going changes to Irish society, is also central to an assessment as to whether AGS are racially profiling children in their exercise of section 12. Finally, this data is relevant to the equally important prospective question of whether Garda members are equipped with the critical skills necessary to avoid racially profiling children when exercising their section 12 powers in a future diverse Ireland.

All but one of the interview stage respondents said they had not received such training, or had no memory of having received such training. Only Garda L said he had received diversity training in Templemore – though he had not received any recent training.

In the questionnaire stage, Garda ZA was the only respondent encountered in the audit to indicate he was a JLO (Juvenile Liaison Officer). This respondent also answered that he did not have training in diversity or cultural sensitivity. This, it is suggested, is a surprising and concerning finding. Given the highly specialised and community-centred policing role of JLOs, there ought to be an expectation that such Gardaí have completed training to prepare them for the increasingly complex and diverse youth demographics in Irish communities.

In the cases where respondents dealt with foreign national children, and/or foreign national parents, there was a distinct hesitancy or discomfort among respondents in their discussion of those interactions. This was in sharp contrast to the forthright manner with which the vast majority of respondents engaged with interviewers.

In what little discussion there was of these engagements in the interviews, the language used by those members lacked sensitivity and suggested an absence of critically sophisticated understanding of the complex needs of an increasingly culturally and ethnically diverse population. Garda Q, for example, made a sweeping and generalised claim that male Nigerian nationals were “aggressive”.

This finding of an absence of training in how AGS should respond to the increasing diversity in Ireland’s population is also reflected in the questionnaire and focus group

stages. This consistent finding raises issues that are central to the overarching question in this audit, namely racial profiling in the exercise of AGS's child protection function.

As discussed above, this audit has been unable to find evidence of racial profiling by members of AGS in their performance of their child protection functions under section 12. That said, this finding must be tempered by the finding that certain ethnic and cultural demographic data does not appear to be routinely documented by AGS on the PULSE system. For example, whether a child or parent is an Irish Traveller does not appear to be routinely documented by Gardaí. As discussed above, this means any finding that there was no racial profiling in the PULSE and questionnaire stages of this audit, must be somewhat qualified because of an absence of consistent documenting of a child's ethnic background.

Taken together, these findings suggest a possible lack of organisational coordination in how AGS should respond to both the historic ethnic diversity of Ireland, and also the contemporary ethnic and cultural changes in its population. These findings suggest a policy failure on the part of AGS management on how to deal with these changes, or to ensure such policies reach through to ordinary Garda members operating in the field. Given the recent problematic experiences, failures and successes, in neighbouring jurisdictions (most notably police in England and Wales), in adapting to multiculturalism from a policing perspective, it is important AGS learn from the experiences of its colleagues abroad.

### **5.3.6 Circumstances Surrounding the Exercise of Section 12**

Interview respondents were asked to explain the circumstances leading up to their decision to exercise section 12 powers in the particular incident in September 2015. This question was asked to enable the audit to critically evaluate both the context in which the decision was made, the decision-making process leading to section 12 removal of the child, and whether both of these factors satisfied the legal threshold for section 12 removal. This question was also aimed at providing the audit with a richer insight into the circumstances that necessitate the removal of a child under section 12, than that provided in the other stages of this audit.

### ***Who initiated the involvement of An Garda Síochána***

Those who initiated the involvement of AGS in the section 12 incident were varied: for example, in one case, a biological father living separately to the mother of the child subject to section 12 contacted the Garda station with concerns regarding the care of his child; in another case, the child subject to section 12 had voluntarily presented herself to staff in a hospital stating her parents had physically abused her; and in one further case, the child had contacted her nearest Garda station directly with similar allegations of domestic violence at the hands of family members. Interpol initiated in one case; Tusla initiated in another case; a neighbour in a further case; and a member of the public in two cases. Foster carers, the most frequent initiators among the interview subject group, initiated the involvement of Gardaí in three cases.

This diversity of initiators reflect a common theme throughout the audit, that there is no typical or paradigm case for a section 12 removal of a child.

### ***Previous Exercises of Section 12 in Relation to the Child***

Data surrounding previous exercises of section 12 powers was relevant for a number of research questions in this audit. For example, whether previous exercises influenced decision-making by later Garda members on whether to remove a child. It was also relevant to the background question about the children who are being removed under section 12, and whether there is evidence of systemic failure if children identified as having challenging behaviour are not being assisted and managed by other State agencies with statutory obligations, before the intervention of AGS.

One respondent had exercised section 12 powers in relation to the same child twice. These two interventions were separated by the involvement of the HSE's mental health services with the mother. This resulted in the removal of the child from her care, and, from what the respondent was able to tell the audit, a structured return of the child to the full-time care of the mother.

Other respondents, however, such as Garda T, Garda R, Garda W, and Garda L, exercised section 12 in relation to a child that had previously been removed by another member of AGS. Some of these cases were in relation to children that were repeatedly absconding from foster care. For example, a situation was described to interviewers

where the same child would fail to return to a Tusla foster placement; intentionally refuse attempts to be contacted by the foster carer, and members of AGS; refuse to return to the foster placement; and would then be brought by those same members to an emergency foster placement. Garda L detailed how the child subject to his invocation of section 12 might abscond 3 or 4 times per week, triggering a missing person notification in the local Garda Station: a process which demands a significant amount of Garda time and resources.

These findings, reflected in the findings of the PULSE chapter above, of repeated removal of children under section 12 are evidence suggestive of serious systemic failings with regard to the child protection systems in Ireland – leaving AGS alone with the onerous task of protecting vulnerable children. There were multiple examples in each stage of this audit highlighting chronic systemic failures to help children with challenging behaviour, prior to their removal by AGS.

### ***Circumstances at the scene***

The nature of circumstances responding members of AGS were met with were also highly varied. The majority of cases involved a member of AGS responding to a domestic dispute. Of these cases, three required the use of physical force by the respondent against a parent; two involved parents being taken into custody under the Mental Health Act 2001; and two involved the arrest of a parent for a suspected criminal offence.

One case saw the respondent Garda force entry into the home, in circumstances where the father – who was suspected to be under the influence of drugs and/or alcohol – was behaving threateningly towards a very young child. That case, like the majority of cases encountered during the interviews, saw the Garda respondent carefully negotiating a tense situation, to defuse the immediate threat to the child.

Most other exercises of section 12 by Garda respondents were made without physical resistance by the parent. Unlike the questionnaire stage of this audit, none of the interview respondents experienced physical resistance from the child subject to the section 12 removal. However, one notable case involved the respondent carefully and sensitively negotiating with the child who had absconded from the emergency foster

placement she had been placed in the night before. In that case, the child, who had allegedly been a victim of physical abuse at the hands of family members the night before, was in a very agitated and emotionally vulnerable state, and initially refused to cooperate with the respondent who was attempting to remove her to a place of safety.

Most cases saw respondent Gardaí being called upon to mediate disputes (three of which involved physical violence, or allegations of physical violence – one of these perpetrated by the child, the other two by other family members) between the child and their parents or legal guardians. A number of these cases also involved children refusing to return to their home for that night. One incident saw a missing child presenting to the children's ward of a local hospital for assistance. Two cases saw respondents removing children from aggressive and intoxicated parents.

Another case involved the respondent being called to a domestic incident in which a Tusla-appointed foster carer alleged the child had engaged in a violent and threatening outburst, after the foster carer had refused the teenage child entry after returning home after a curfew. In this case, the respondent Garda described how other, unrelated foster children in the same foster placement, were traumatised by the outburst by the child. The respondent noted how this child was able to switch rapidly into a passive and non-threatening mode when the Gardaí arrived at the house: a behaviour he, and another Garda respondent who had experience with the same child, ascribed to the child's manipulative tendencies, which he exercised on a number of other members of AGS, and Tusla social workers, locally.

Three cases involved parents or foster carers refusing to permit the child to return to his or her home that night, despite the child being open to returning, and the respondents attempting to negotiate the child's return to the family home.

One case involved a notably high level of advance planning by the respondent Garda – the one Sergeant interviewed in this stage of the audit – and his team of Gardaí. This case involved an Interpol notification from police and child protection social services in England. The respondent coordinated a carefully planned operation in communication with his counterparts in England, which involved surveillance of the family in advance of Garda intervention. This case did not meet resistance from the parents.



Another notable incident involved the respondent answering a call from social workers in a nearby Tusla office. In this case, a verbally abusive and threatening mother, who was suspected of physically abusing her child, abandoned the child in the Tusla office after making explicit threats that she would physically harm the child. This was followed by a standoff between the respondent Garda (in consultation with his Sergeant), and the social workers, over who should take responsibility for the child. The respondent explained he felt he was put under significant pressure by the social workers to exercise section 12, as the incident occurred towards the end of the normal working day, and the social workers did not want to apply to take the child into care under section 13 of the Child Care Act 1991 past their standard working times.

One incident involved a homeless foreign national mother being apprehended by Gardaí attempting to break in to a derelict building with her children. Her three very young children were found to be in an exhausted state, having not slept in over 24 hours, in dirty clothing and smelling of urine. The mother in this case was found in an intoxicated state and without any money. The respondent in this case dealt with the family after they were discovered by another unit and brought to the station.

It should be noted that in all cases examined in the interview stage, the audit found no evidence that Garda respondents had exercised their section 12 powers in a manner that was unjustified, disproportionate and unlawful.

### ***Time of Day Section 12 Exercised***

This data was gathered, as it is relevant to the question of whether current inter-agency support from Tusla, is available at appropriate times. As most of the State is not serviced by a full-time out-of-hours social work system, the audit examined whether there are any discernible patterns to section 12 removal times, and whether most occur outside of Tusla's "standard" Monday to Friday, 9am to 5pm, service hours.

The majority of interview respondents exercised section 12 powers outside of these standard working hours. Many of these out-of-hours "domestic" incidents took place between 10pm and 3am.

One case involved the Gardaí responding to a call during these “standard” working times. The nearby Tusla office initiated this case, with the call requesting Garda involvement coming not long before 5pm. The respondent in that case echoed perceptions expressed repeatedly throughout the interview stage of the audit by other respondents, that social workers regularly delayed dealing with a case until close to the end of their working day, to force a Garda intervention. A number of respondents felt this was the easier route for social workers to having a child removed, than obtaining a court order under section 13 of the Child Care Act 1991 and the requisite evidence required to secure such an order.

It is clear from this, and findings from other stages of this audit, that the majority of cases requiring section 12 removal of children occur outside of Tusla’s current standard hours of service. There is also a persistent perception among a number of Garda respondents that Tusla social workers sometimes delay addressing a particular risk to a child, in order to force the involvement of AGS in the case, due to the organisation’s 24 hour operational basis.

### ***Child in Fear***

This data was gathered from respondents in the interview stage, as the audit attempted to provide a general insight into the experience of the child in the background circumstances that necessitated a section 12 removal. In a number of cases the interview respondent described the child subject to section 12 as being in fear when he arrived. All of these cases centred around allegations of physical violence, or the threat of physical violence, perpetrated by a parent, or other family member, against the child.

In one incident a teenage child, whose parents refused to allow her to enter the home following a night out socialising with other teenagers from the neighbourhood, described her fear that her contacting the Gardaí might result in violent reprisals from her parents. Another teenage child contacted Gardaí and alleged she had been violently assaulted by both her mother and brother during a dispute. In another respondent’s case, a teenage child who presented herself voluntarily to a children’s ward in a hospital, alleged that she had been assaulted by her parents.

In all these cases, the allegation of violence, or the threat of violence, was central to the decision by the respondent to invoke section 12.

### **5.3.7 Respondent Actions prior to Section 12 Exercise**

Interview respondents were asked to account for the circumstances surrounding section 12 removal of the child. From these accounts, data was gathered in relation to the actions and decision-making processes undertaken by respondent Gardaí. The aim of this data collection and analysis is to critically review the context in which a Garda respondent decided to remove the child, and the robustness of the decision-making process itself. This was undertaken as part of the evaluation of the appropriateness and legality of section 12 removals, in the diversity of circumstances faced by members of AGS.

#### ***Consultation with other Gardaí***

Data was gathered in relation to whether the respondent Garda consulted with other Garda members of the same, lower, or higher rank prior to the decision to remove the child under section 12. The question of consultation within the Garda organisation on a particular case reflects levels of critical self-reflection amongst Gardaí in their performance of their child protection functions, and use of their significant interventionary powers in the private life of families.

A significant majority of eight respondents consulted either with an attending member of AGS, their Sergeant-in-Charge, or the Superintendent. This is a finding consistent with the questionnaires, where the vast majority of respondents said they had consulted with their Sergeant-in-Charge prior to exercising section 12.

Garda Q said it was common practice to contact the Sergeant in cases where children are involved, as it was important to get a second opinion. Others, such as Garda R, explained that they contacted their Sergeant for general advice on how to manage a sensitive situation, with an extremely vulnerable child.

It is suggested this strong tendency among members of AGS to consult with a senior supervising officer prior to exercising section 12, is also consistent with the rarity of occasions in which a member of AGS will remove a child under section 12. Many respondents were comfortable admitting that they were unsure of the exact wording of

the legislation, the grounds upon which they were legally entitled to remove a child, and the proper protocols required for such a removal. A number of respondents, such as Garda T and Garda P, described careful consultation with their Sergeant, while reviewing all available literature on section 12 available to them in the station.

However, there were also a number of Garda respondents who said the circumstances of the case were such that they did not feel it necessary to consult with the supervising officers. Both Garda J and Garda Z explained that their cases were routine, and evinced a distinct confidence regarding the remit of their authority to remove children from the care of their parents or legal guardians.

These findings reinforce one of the overarching conclusions of this audit, that members of AGS do not exercise section 12 powers lightly. These findings also support the other overarching conclusion that Gardaí are uncertain about certain specificities of their role and powers in child protection. While respondents were clear that they had such a role, they were often unsure about the legal boundaries of this role. The high level of consultation with senior officers also reflects the highly hierarchical command structure of AGS, and the decision-making deference of junior officers to their supervising officers.

### ***Evidence of Gathering Background Information***

Data was gathered in relation to evidence from the respondent Garda's account that they made efforts to locate background information on the situation prior to removing the child under section 12. The question of background information-gathering, and the degree of effort undertaken in exploring the background circumstances, reflects levels of critical self-reflection amongst Gardaí in their performance of their child protection functions. All respondents interviewed described some attempt to gather background information on the family situation of the child perceived to be at risk – where it was not already known to the respondent – and the circumstances triggering the involvement of AGS. While a few respondents, such as Garda Z and Garda W, were already very familiar with the child and the families involved in the case, most respondents were not.

Respondents consistently demonstrated a strong tendency to gather as much information as possible, from all available sources, before making a determination on the most

appropriate course of action. Some of these decisions, such as with Garda P, Garda S, and Garda Q, were made while respondents were under considerable pressure. For example Garda S, though under considerable pressure, made efforts to consult with other family members nearby, to determine the circumstances within the family home, and potential risks to the child.

Most decisions, however, were made in circumstances where respondents had time to carefully examine and consider the circumstances at the scene. Garda B, for example, was notable in that he dismissed moderate pressure from a health professional to exercise section 12 powers, so that he could contact the family, in order to make a careful and fully informed decision regarding the use of the section 12 power. Garda T was equally noteworthy, for the fastidious manner in which he sought out, and examined as many sources of information on the family available, before making his decision.

These findings are again supportive of the overarching conclusion that members of AGS do not exercise section 12 removal lightly, and emphasises the prioritisation of many Gardaí to avoid removing children unless absolutely necessary.

### **5.3.8 Grounds for Invoking Section 12**

Data was gathered in relation to the grounds upon which the respondent Garda based his decision to remove the child under section 12. This data was central to one of the principal objectives of this audit: to assess the appropriateness, proportionality, and legality of section 12 removals of children by members of AGS. The grounds upon which a Garda member removed a child are the factual antecedents to the authority of a Garda member to remove a child under section 12 of the Child Care Act 1991. In documenting and critically evaluating these grounds for section 12 removal, the audit sought to account for the circumstances that members of AGS encounter, which require the use of extraordinary powers of intervention in the private life of the family.

The grounds for invoking section 12 powers in the cases examined at the interview stage of the audit were manifold. In this section, a number of distinct grounds will be outlined and commented upon, and will conclude by listing and exploring some general themes that emerged during the interview process. It should be noted that few of these grounds

were the sole justification offered by respondents for their invocation of section 12 powers.

### ***Child Abandoned or Refusing to Return Home***

Seven out of thirteen cases examined at the interview stage involved a child being abandoned by his or her parent, or a child refusing to return to the family home. The potential outcome in both these types of scenarios was the child becoming homeless, or the child being left in the care of someone other than an appropriate and competent adult.

One case, mentioned above, involved allegations against a mother of physical abuse of her son. These allegations were made by another daughter of the mother, and were being investigated by Tusla social workers, when the incident involving the respondent Garda took place. The mother's response to the allegations put to her by social workers was explosive, and involved her threatening to kill or seriously harm the child. This reaction, and explicit threat of violence against the child, led Tusla to contact the Garda respondent's station. When the respondent arrived at the scene, the mother left, leaving the child behind in the Tusla office. However, the threat of violence by the mother against the child, and the refusal of Tusla to take responsibility for this child after a lengthy standoff with the respondent, formed the principal basis for the invocation of section 12 powers.

There were other examples where children were effectively abandoned by their parent, or foster carer, when refused entry to the family home. For example, one case mentioned in more detail above, saw a foster carer exclude a teenage child from the home for the night, due to her repeated absconding, and her violent outbursts when confronted by the foster carer. In that case, the respondent Garda attempted to mediate the dispute and convince the foster carer (who he described as being "at her wits end" with the child) to allow her return. When these attempts failed, the Garda respondent was forced to remove the child, to avoid her being left without appropriate care for the night.

Another case, also mentioned above, involving a child who alleged physical abuse by her mother and brother against her, saw that child excluded from her home for the night by

her mother. This, combined with the allegations of physical abuse, formed the basis for that respondent Garda's exercise of section 12.

A further similar case saw a teenage child excluded from her home when she returned late after socialising with other teenagers, whom the parents disapproved of. In that case, although the parents eventually agreed to allow the child return home, the child expressed her concern that her involving AGS might result in violent reprisals from her father. She was therefore reluctant to accept the invitation to return to her home, and instead suggested she would stay with friends. As the respondent Garda could not verify that there were suitable adults to care for her at those suggested locations, he rejected this proposal for alternative accommodation and care. This lack of suitable alternative carers and accommodation, and the suggestion of violent reprisals against the child, were the grounds for that respondent's use of section 12 powers. However, it should be noted that it was unclear from the respondent's account whether he would have allowed the child to return to the home, if she had agreed to return, even with the knowledge of her fear of violent reprisals. It is suggested this kind of situation might have resulted in the child being returned to the family home, if she had consented. This suggested possibility highlights a potential limit to the scope of this audit – namely a gap in knowledge of cases where use of section 12 was decided against by a member of AGS. The Garda PULSE system does not routinely record instances where section 12 was considered but decided against, so it is generally outside the scope of this audit. However, it is suggested the general findings of Garda reluctance to use section 12, may create a situation where children are sometimes not removed from situations where it would be best to do so.

This pattern of parental abandonment was also significant in the questionnaire stage of the audit, where large numbers of responses, such as that of Garda ZB, detailed parents refusing to take a child back into their care, when that child had absconded or was intoxicated.

### ***Parental Failure or Temporary Lack of Capacity or Competence to Care for the Child***

The most frequent circumstance encountered by respondents requiring removal of children under section 12 was some form of failure by a parent or person acting *in loco parentis*, or a temporary lack of capacity or competence to care for the child. A total of 10

out of the 13 interviewees described some form of parental failure justifying their invocation of section 12 powers. Garda R spoke in frank terms, when he described what he felt was a truth the Irish public are somewhat uncomfortable with: some parents fail to protect their children, and it is then the responsibility of AGS to protect those children by removing them from their parents' care.

Examples of express parental failure included a number of cases where Garda respondents felt the parents were largely disinterested in the care or welfare of their children at that time. For example, Garda Z described how the family initially refused to permit their teenage daughter re-entry into the home, which resulted in the child calling the Gardaí. When the respondent arrived, the parents said they were happy for her to return home, though the respondent suspected otherwise from their manner – a suspicion reinforced by the child's hesitancy in returning to the home. Garda S described a dangerous and chaotic home environment of a young child, where both parents were involved in various forms of criminality and substance abuse.

Examples of parental loss of capacity were varied, and included circumstances where the parent was suffering from mental health difficulties. For example, one respondent dealt with a case where an apparent psychotic episode on the part of the mother, and the perceived danger the mother presented to both herself and the children, required the removal of the children under section 12. In another instance, evidence that the mother was self-harming while intoxicated, led the respondent Garda to remove the child from her care. In both cases, the mothers were also detained under section 12 of the Mental Health Act 2001. Additionally, in both these cases, there were no other appropriate adults available to care for the children, to avoid exercising section 12 powers.

Garda T's case involved a homeless family, where the mother appeared unable at that time to cope with caring for the children. Another respondent described a foster carer unable to cope with a defiant, and allegedly violent and threatening teenage child.

Garda W said he encountered numerous cases where foster carers caring for children with complex and demanding needs, asked the Gardaí to remove the child temporarily from the home, until tensions and moods calmed down: a use of section 12 power the respondent explained was wholly inappropriate.



Other respondents, such as Garda A and Garda T, encountered parents who were intoxicated with alcohol, and were therefore unable to properly care for the children.

### ***Neglect***

Only Garda T and Garda Z explicitly referred to neglect as a ground for their exercise of section 12 powers. Garda Z also spoke of a general history of parental neglect in the care of all the children in the family. However, in neither case was neglect the sole, or principal, ground upon which the respondents invoked section 12.

### ***Domestic Violence and Physical Abuse***

Five respondents recounted some form of domestic violence in the circumstances involving their use of section 12. Garda J described a history of domestic violence incidents in the home of the family, from whose care the child was removed. Garda L likewise described a history of domestic violence in the home environment of the child. Some of this violence was directed at the child in question, but others described a home environment deeply affected by an atmosphere of violence between adult parental figures. One incident involved domestic violence perpetrated by the child, and not a parent.

Some respondents, such as Garda B, Garda R and Garda P, specifically referenced physical abuse of the child that had recently occurred, as a ground for exercising section 12 in that circumstance. Other respondents, such as Garda P, referenced anticipated physical violence against the child, among the grounds for exercising section 12 powers. Garda J described the child's fear that he would be subject to physical abuse in the near future.

### ***Mental Health Issues with the Parent***

As described above, a number of respondents encountered circumstances where parents were demonstrating signs of mental health issues. Two respondents exercised their powers under section 12 of the Mental Health Act 2001, to take a parent into protective custody. Another respondent expressed the view that the mother of the child subject to section 12 was suffering from mental health difficulties. In all three cases, the perceived inability of the parent to care for the child due to these mental health difficulties, was among the grounds upon which the decision to remove the child under section 12 was

based. In all three cases, the respondents also considered whether there were alternative suitable adults to care for the child, before section 12 removal was undertaken.

### ***Drugs or Alcohol***

Three respondents – Garda A, Garda S, and Garda T – explicitly referred to parents being under the influence of alcohol or drugs at the time section 12 was exercised to remove the child from their care. Other respondents noted histories of alcohol abuse within the family unit.

In each circumstance, the parent being intoxicated was not the sole or principal reason section 12 was used to remove the child from the parent's care. In each case, there were other factors that also led the respondent to believe the child required removal from the care of the parent.

### ***Interpol***

As noted above, one respondent Garda became involved in his case following a notification from Interpol regarding a family at risk that had left England. In that case, police and social services in England were concerned that the father presented a risk to the children. The evidence provided to the respondent through the Interpol notification, and his extensive communication with the dedicated team of police and social workers in England, were the sole grounds upon which the respondent felt the exercise of section 12 powers was required to temporarily remove the children from the care of the mother.

Another respondent had also exercised section 12 following a notification by Interpol. That case involved international child abduction by the biological parents who had fled to Ireland.

While the accounts provided of these cases indicate professionalism and care on the part of the Garda officers involved, the length of time the respondents had to deal with the cases potentially raise questions with regard to the appropriateness of seeking a court order for removal of the children, instead of using section 12.

### **5.3.9 Evidence of Critical Evaluation of Circumstances by Respondent**

As with evidence of background information-gathering, data was also gathered in relation to evidence of critical evaluation of the circumstances by the respondent Garda in his decision to remove the child under section 12. This data was central to one of the audit's principal objectives: namely to assess the appropriateness, proportionality, and legality of section 12 removals of children by members of AGS. Evidence that a Garda respondent critically examined the circumstances of a case, and evaluated the risks flowing from that examination, is central to the lawful authority of a Garda member to remove a child under section 12 of the Child Care Act 1991. In documenting such critical evaluations by Gardaí, the audit sought to account for the decision-making processes employed by members of AGS in child protection scenarios, and examine whether those processes are sufficiently critically sophisticated, and also in accordance with the legislation.

A number of respondents, such as Garda B and Garda S, were careful in the interviews to frame their account of their final decision to exercise section 12 within the specific wording of section 12. Both referred explicitly to the “immediate and serious risk to the health or welfare of the child” threshold in section 12 of the Child Care Act 1991. However, most respondents did not frame their final decision in the case in this way. A number of respondents, such as Garda W, were comfortable characterising the final decision to remove the child as “common sense”. As with interview respondents' discussions of their training in child protection, a number of respondents, such as Garda Z, explicitly described relying on their professional experience and judgment in exercising their section 12 powers.

A number of Garda respondents described circumstances where they were hesitant in exercising their powers. Garda P, for example, invoked section 12 in circumstances where, on the information available to interviewers, removal was wholly appropriate. Despite the justifiable use of section 12 powers in those circumstances, Garda P was, and remained, anxious about whether he had done “the right thing”. Others, such as Garda T and Garda B, were compelling in explaining to the audit how serious an intervention they considered section 12 removal to be. Both these respondents exercised their powers following a period of careful consideration of the circumstances and available evidence, and the availability of any alternative and appropriate adults to care for the child.

With the exception of Garda P, all other respondents were confident in their view that removal of the child was the correct decision in the circumstances.

Interview respondents demonstrated, on the whole, a significant degree of critical sophistication when exercising their section 12 powers. As discussed above, all respondents engaged in some degree of background information-gathering, with many undertaking considerable effort and research to ensure the appropriate decision was made. There was no evidence from the interviews that decisions to exercise section 12 were taken lightly, or that alternatives to removing the child were not considered by the respondent. From the description of these cases available on PULSE, and the accounts of events provided by respondents in the interviews, all 13 cases examined in the interview stage involved an appropriate use of section 12 powers by respondents.

#### **5.3.10 Treatment of the Child Immediately Following Removal**

Respondents were asked specific questions in relation to the treatment of the child in the immediate aftermath of the child's removal under section 12. This data was relevant to the audit's examination of the experience of the child, its critical review of the appropriateness of practices and procedures for managing children while in the care of AGS, and its exploration of the realities of inter-agency coordination and cooperation with Tusla.

##### ***Initial Place of Safety***

The location of the initial place of safety, how children are treated in that location, whether there are formal procedures regulating the use of that location as a place of safety, and the overall appropriateness of that place of safety, is a central question across the questionnaire, interview and focus group stages of this audit.

As found in the questionnaire stage of this audit, the vast majority of children were removed to the local Garda Station immediately following the invocation of section 12. A number of respondents, such as Garda A, described the Garda Station as the default place of safety following the removal of a child under section 12.

In two incidents in the same Garda regional division, the initial place of safety was the local public hospital – specifically the children's ward in that hospital. This finding of the

hospital as the default place of safety for this region of the State is consistent with the findings from the questionnaire stage of the audit. Both these respondents described a well-developed formal policy of the children's ward in the local hospital as the designated place of safety. These respondents, and perhaps this Garda Division, were unique in having such a considered policy. No other respondents described this kind of formal policy regarding the designated place of safety for their station or division. Some respondents, such as Garda R, described a more general policy of the hospital as an alternative place of safety to the Garda Station.

### ***Respondent's Perception of the Child's Experience***

A few respondents discussed their perceptions of how the child reacted to being removed to the station. Garda W described a child who was relatively relaxed and "resigned to her fate". Garda J described the child in his case as "happy" to come to the station, and remaining so after consultation with social workers. Garda N described the value in his case of having female members of AGS in the station: "mothers" who could deal sensitively with the children following a traumatic event.

Others, such as Garda R, described a child who was extremely agitated and vulnerable, and conflicted about her desire to return to her family or to care. In that case, the respondent described efforts by Gardaí in the station to talk to her about general unrelated things, in an attempt to relax her. Similarly, Garda T explained his general approach being to develop a rapport with children in the station, and described how other members of AGS can become frustrated with the responsibility when resources are already thin, and have little patience with the child as a result.

In another respondent's case, the children were exhausted, and slept throughout most of their time in the station.

### ***Appropriateness of the Initial Place of Safety***

The two respondents who described a policy of using the local hospital as the designated initial place of safety, explained this policy in terms of the general inappropriateness of using the Garda Station as the initial place of safety. The more senior officer from this region echoed the vast majority of interview respondents when he described a Garda station as a "completely inappropriate and unsafe" environment for children. This

respondent was also able to give interviewers an insight into the history of the policy of using the local hospital as the initial place of safety, describing it as a decision made at a divisional level following the enactment of section 12 of the Child Care Act 1991. His account was that the policy emerged in consultation with the local Health Board following the creation of the power, with the Garda Division setting out a clear position that the Garda Station was an inappropriate place to bring children following a removal.

Both of these respondents, however, were also mindful of the inappropriateness of a hospital as a place of safety. The less senior of the two noted how hospital staff are themselves resource-limited and extremely busy dealing with other “genuinely sick” children.

Another participant, Garda R, though not used in his case, commented generally on the appropriateness of hospitals as the initial place of safety. He was very critical, describing such a policy as a “disgrace”, as the hospitals were already busy, with hospital staff already over-stretched, and unhappy with having that particular responsibility placed upon them. In his experience, the designated hospital often required Gardaí to stay after the handover to ensure the children did not abscond: an occurrence he suggested had happened on previous occasions.

Garda S, who removed a child to a hospital for a drug and alcohol assessment, also noted a reluctance of hospital staff to keep the child beyond the time necessary for the health check. In that case, the hospital staff were concerned that the young child might contract a vomiting bug in the hospital.

The other Garda respondents were also emphatic that the Garda Station was not an appropriate environment for children. Those working in busy urban stations, such as Garda Q, advised about how busy the station was, with a high level of “prisoner traffic” throughout the day.

Garda P’s account was unusual in his belief that Tusla’s view was that the Garda Station was a more appropriate environment for the young child, than Tusla’s own offices – a view not shared by Garda P.

In summary, all respondents agreed that Garda Stations and hospitals were not appropriate locations to remove highly vulnerable children to. However, given the later hours during which the majority of section 12 removals take place, these two locations are typically the only place available. What is clear from findings in both the interview and focus group stages, is that Garda members generally try to deal with the child in a sensitive manner. They are conscious that the experience in the Garda Station poses a risk of added trauma to the child, and generally do their best to minimise that risk. However, Garda members are left in a situation where there is no formal guidance on how a child is to be managed following a section 12 removal, particularly how a child should be treated when in an environment such as a police station to avoid greater trauma. Combined with the general absence of training in child protection among members of AGS, children are placed in a situation where they are at high risk of further traumatisation following section 12 removal.

#### **5.3.11 Aftermath of Section 12 Removal**

Respondents were asked about the aftermath of the removal of the child. Questions under this general heading sought to gather data on inter-agency cooperation and coordination, the availability of appropriate resources at appropriate times, and general systemic coordination within AGS itself.

##### ***Tusla Notification***

Consistent with the findings in the questionnaire stage of the audit, interview respondents overwhelmingly completed Tusla notification sheets as a matter of routine. However, as is dealt with in more detail below and in the discussion of the focus group stage, feedback from Tusla for such notifications was generally confined to confirmation of receipt of notification.

Beyond the formal notification documents, contact with Tusla was wholly dependent on two factors: whether the section 12 removal took place during normal working hours, or whether there was a formal Tusla out-of-hours service available. In all cases examined at the interview stage, section 12 was invoked outside of Tusla's standard service hours of 9am-5pm, Monday to Friday.

Also of note was Garda L's discussion of his perception of gender bias in the distribution of Tusla Notifications the Gardaí receive in relation to child protection and welfare risks. In his experience, female Garda members in his station were routinely tasked with dealing with such notifications. Garda L was critical of this practice, as it left those female Gardaí with time-consuming, and what he felt was also very often ineffective,<sup>85</sup> work in addition to their other duties. Garda L also suggested this work was not considered to be high value or prestige policing work, and that this was part of the reason it was distributed to female Garda members. The issue of gender bias was not a question considered by the audit for the interview stage, and was only raised by one interview respondent. However, it is explored in greater depth in the focus group analysis below.

### ***Garda Respondent Going Off-Duty***

Most respondents were still within their rostered working time when the handover of the child took place. However, a notable minority of respondents continued dealing with a case long beyond the end of their shift. For example, both Garda L and Garda R stayed beyond their rostered shifts to ensure children were dealt with properly in the handover. Garda N remained in the station completing reports for his Superintendent long after the handover of the children had taken place and his rostered working time had ended.

It is suggested this tendency by members to stay beyond their official working time is broadly consistent with, and reflective of, the audit's finding that members of AGS demonstrate very high levels of commitment to the welfare of children they have removed under section 12.

### ***Handover of the Child***

The circumstances of the handover, and the person(s) or agency into whose care the child was placed by the respondents, were varied. As most cases took place outside of Tusla's standard hours of service, a number of respondents placed the child removed under section 12 with emergency foster placements arranged through the Five Rivers organisation. In these cases, respondents often had to travel significant distances to the designated foster placement to hand over the child. For example, Garda W described

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<sup>85</sup> Garda L's perception was that involving AGS where there was suspected emotional abuse was ineffective – as they would be highly unlikely to observe such behaviour during a visit to the family home – and a waste of resources.



having to drive over an hour away from the station to the emergency foster placement, with another Garda from the station. Respondents, such as Garda L considered these handovers to be enormously time-consuming, and resource draining. It is also notable that respondents knew little or nothing about these placements, how they were organised, or the legal basis upon which these handovers took place.

Garda S's case was unusual, in that it was outside of standard Tusla service hours, so he contacted Five Rivers to arrange a placement. However, in that instance, Five Rivers contacted Tusla social workers, and arranged for the child to be placed into their care by the Gardaí. Garda S was unable to give any further information on this particular arrangement, and it was not encountered with any other interview respondent, or anywhere in the questionnaire stage.

In Garda R's case, due to what he perceived as repeated obstruction by the designated Tusla out-of-hours service, the child opted to return to the parent from whose care she had originally been removed, due to allegations of physical abuse. This was done with the consent of the Tusla social worker.

As discussed above, a number of respondents placed the children in the care of the local hospital. The interviewers understood from these accounts that the children would remain in the hospital until normal Tusla service hours resumed.

These findings in relation to the handover of the child indicate significant gaps in support for Gardaí undertaking their child protection function from other outside agencies – principally Tusla. The findings also detail a lack of procedures for managing children after they have been removed under section 12, and how Garda resources are managed and deployed to deal with children removed.

### ***Subsequent Proceedings in Court***

Respondents were asked whether court proceedings followed the section 12 removal, particularly if Tusla had applied for a section 13 order from the District Court in relation to the child. Consistent with the questionnaire stage of the audit, this line of questioning sought to examine a central question underpinning this audit, namely the rate at which section 12 removals lead to a care order being applied for or granted by the courts. It

also sought to evaluate the nature of inter-agency communication between Tusla and AGS, and processes and cultures among Tusla social workers to provide feedback on cases to Garda members who remove children under section 12.

Five respondents were able to explain whether or not there had been care order proceedings in their case, but none elaborated on the reasons why proceedings were pursued by Tusla. In Garda A's case, the Emergency Care Order was not granted, though he was not informed about the hearing. In Garda B's case, social workers decided not to apply for an Emergency Care Order under section 13 of the 1991 Act – the respondent suggested there may have been doubts about the child's claims of abuse.

In Garda Q's case, though he did not attend the hearing, the social worker provided follow-up in relation to the case, and informed him that Tusla had successfully applied for an Emergency Care Order before the courts. In Garda S's case, the respondent provided a report for, though was unable to attend, the subsequent Emergency Care Order hearing the following day, at which neither parent was present.<sup>86</sup>

The case involving Interpol, discussed above, was followed by a court hearing, before which the respondent Sergeant gave evidence. In that case, the respondent suggested the parents had attempted to have the care proceedings transferred to Ireland, as they perceived child care proceedings in the Irish legal framework were more likely to be decided in favour of the parents.

Garda T, echoing sentiments of other respondents, said he was not informed of any subsequent care order proceedings. In his case, the children were put in an emergency foster placement a substantial distance from his station, and outside the jurisdiction of the local Tusla office. Describing circumstances echoed in a narrative from the questionnaire stage,<sup>87</sup> Garda T explained that once the child left the local Tusla district, the connection between his station and the child was severed.

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<sup>86</sup> Garda S explained the mother's absence by the fact that she had a bench warrant for her arrest for an unrelated allegation of criminal wrongdoing.

<sup>87</sup> The narrative from the questionnaire response for Garda ZC involved section 12 being refused by the respondent (wrongly inputted into PULSE). In that case the child absconded from foster care, in which he had been placed voluntarily. The foster parent said she would no longer take care of him, and as a result the child presented himself to a Garda station around 1am. Out-of-hours social workers were contacted, but declined to attend the station. The respondent was highly critical of the out-of-hours

For a number of Garda respondents, exercise of section 12 was only thought to be a temporary removal of the child from the family home, with the expectation the child would be returned. Some, as in the case of Garda J, felt it would be a temporary removal until tensions between the family and the child died down. Others, such as Garda Z, felt it would be a temporary removal, not because the risk to the child had abated, but because in his view, Tusla was not interested in addressing the problems in that family.

Interview respondents also described a general situation where Tusla do not routinely provide feedback or updates to Garda members following handover of children into Tusla's care. As will be discussed below, this provides operational issues for Gardaí as they are not clear about whether they exercised section 12 in an appropriate or helpful manner, but it also creates personal concerns for Garda members who have an active personal interest in the welfare of the individual child. This absence of routine and meaningful feedback also reinforces the 'mystification' of Tusla's practices and procedures experienced by Garda members.

### ***Criminal Investigation***

Only one respondent, Garda Q, described on-going investigations by AGS in relation to the circumstances around the section 12 removal. That investigation was yet to interview the children and the mother in the case. Other respondents, such as Garda R and Garda Z, were questioned about the likelihood of criminal investigations into allegations of assault, which resulted in the section 12 removal in those cases. Both respondents explained criminal charges were highly unlikely to proceed, as the children would probably be unwilling to cooperate with any formal criminal investigation. Garda N explained that criminal proceedings were underway in another jurisdiction in relation to one of the parents. In Garda S's case, the mother was subject to criminal proceedings not directly related to the circumstances surrounding the section 12 invocation.

Criminal proceedings did not follow in any of the other cases examined in the interview stage of the audit though a number of these cases involved allegations of assault.

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service as he suggested the service refused to attend as the child was from outside of its jurisdictional responsibility. The respondent described the social worker as saying the child was "not their problem".

### ***PULSE Narratives and the GISC***

Due to the highly inconsistent approach to PULSE narratives discovered at the PULSE and questionnaire stages of the audit, interview respondents were asked about the training and procedures, and their own approaches to recording narratives for PULSE. The audit also enquired of respondents about what, if any, role the Garda Information Services Centre (GISC)<sup>88</sup> had in the recording of such narratives on PULSE.

Garda B explained that he believed he had received training in Templemore on how to use the PULSE system – a competence he and others said was refined while working in the field. Garda S explained any training he had received in Templemore was very limited.

Garda B provided an interesting insight into changing management approach in relation to the use of PULSE, in what he described as an improving accountability culture in his regional division of AGS. In this regard, Garda B explained that members in his region were increasingly encouraged to put as much detail as possible into PULSE, to provide a centralised account of the circumstances.

Garda S, who himself provided a very detailed narrative in PULSE for the case examined by the audit, explained that the detail and quality of PULSE narratives varied from Garda to Garda. Other respondents, such as Garda P, described very recent systemic improvements to PULSE, whereby members were given repeated automatic reminders (a “traffic light system”) to input case details into PULSE. Garda T attributed these changes to the increasing obligations on members as part of the introduction of the EU Victims’ Directive into Irish law.<sup>89</sup> It was not clear whether these experiences of PULSE were dependent on the particular management culture of their Garda Division, or pilot programmes operating only in their area.

In contrast to Garda B’s positive accountability-centred account of his approach to PULSE inputs, Garda Q explained that he preferred “to keep it short and sweet”, as

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<sup>88</sup> According to the AGS website, “The Garda Information Services Centre (GISC) is a contact centre for operational members of An Garda Síochána. After an incident, Gardaí contact the GISC on mobile phones instead of returning to their station to record the case details. They give the details to trained civilian call-takers who enter the details on the PULSE system (An Garda Síochána’s database).” <<http://garda.ie/Controller.aspx?Page=65&Lang=1>> (visited 10 May 2016).

<sup>89</sup> See Directive 2012/29/EU and the Criminal Justice (Victims of Crime) Bill 2016.

once an input was made, it was a permanent record. It is suggested this account may reflect a parallel culture among some Gardaí, or within certain divisions and regions, to under-report on the PULSE system, so as to limit the scope of subsequent accountability procedures that might seek to use the PULSE record as evidence. This issue might also be explained as an anxiety among some members of AGS that such permanent records might be taken out of context, or used against that Garda, if the account on PULSE turns out to be inaccurate, even if given honestly and genuinely.

Specifically on the role of the GISC, Garda L, like other respondents, said the GISC normally inputted the narrative as the respondent described it. However, Garda N described a more active or interventionist involvement of the GISC, in which the GISC may “follow my lead”, but that they have certain “boxes to be ticked” when inputting an incident into PULSE. Garda N also explained that the GISC could be helpful in explaining the appropriate way a case should be recorded on the system. Garda W similarly characterised the GISC’s role as guiding, rather than directing. Garda Q also described a more interventionist role for the GISC, one in which the GISC could sometimes reword a narrative.

Following the interview stage, there remain some outstanding questions and ambiguities in relation to Garda practices in recording case narratives on PULSE. AGS has confirmed that systemic reform of PULSE is underway, and this process of reform is clearly to be welcomed. However, ambiguities exist in relation to the role of the GISC in how narratives are recorded on PULSE, and whether it is aiding or undermining comprehensive and accurate reporting of cases on the system. It is unclear whether any system change that may be underway, will address the significant inconsistencies in narrative recording on PULSE. Finally, it is unclear whether the possible culture of accountability avoidance described above is widespread, and whether any of the reforms identified will address this issue.

### ***Attendance at Case Conferences or Strategy Meetings***

Respondents were asked about case conferences or strategy meetings they had attended in relation to the child removed under section 12, or more generally in relation to other children removed. This data formed part of the audit’s examination of inter-agency cooperation between AGS and Tusla, and the extent to which ordinary Gardaí are

required/encouraged to engage with Tusla. This data also provides a level of data consistency between audit stages.

Very few respondents were invited to case conferences or strategy meetings. Garda Q was invited to attend a case conference, but was unable to attend due to family commitments. He believed someone from his station attended. Garda Z was invited, but was not permitted by his station to attend due to overtime restrictions. Other respondents explained that their Sergeant dealt with and attended follow-up interactions with other agencies in relation to child protection cases.

The majority of respondents were not aware if such follow-up meetings had taken place in relation to the child in their case.

There appears to be no set procedure for who will deal with cooperation with Tusla in the aftermath of a removal of a child under section 12. Some stations appear to designate one senior member to undertake all inter-agency cooperation. Others, however, appear to allow or require the ordinary Garda member who exercised section 12 to deal with Tusla. In many instances, there was no follow up contact at all from Tusla, or more senior Gardaí who may be dealing with case conferences or strategy meetings. It is also not clear from the audit's finding what attendance rates at case conferences by AGS are, due to the localised, district-specific approach to such attendance. In other words, the audit was unable to determine if any member of AGS attended a case conference in relation to the child removed under section 12, as many respondents did not know if a more senior officer attended.

***Debriefing and Personal Support Following Section 12 Invocation, and the Background Context in which Section 12 Power is Used***

Respondents were asked what kind of supports were available to members following traumatic incidents, such as child protection cases resulting in section 12 removal. This question was asked to gain a broader insight into the emotional impact on members of AGS in undertaking their child protection functions. The question was also relevant to the broader issue of whether sufficient systems, procedures and cultures are in place within AGS, to facilitate and support its members undertaking its vital child protection functions.

The general feedback from respondents was that there was an absence of formal systems of individual support following traumatic incidents. While there may be designated Welfare Officers in stations, respondents explained they gained most support from peer-support. Garda B, for example, explained that his unit was a valuable source of support following a particularly traumatic case. Garda R said that resource constraints have limited the welfare supports for individual units, and that formal support was now provided through the station's welfare officer. Garda N explained that the Unit Sergeant is also used as a supporting authority figure for members.

Respondents were also asked to describe to interviewers what kind of workload they were dealing with that day, other than the section 12 incident. This question was asked to gain an insight into the pressures which individual Gardaí, and stations are under when the section 12 incidents, which this audit has found to be resource dense and time burdensome, take place.

For most respondents, the days (mostly nights) when section 12 removals took place were very busy, with many removals taking place on weekend evenings. Only Garda J answered that the station was not particularly busy the night he removed the child under section 12.

Garda N explained that the case required the majority of the station's resources, including the two available squad cars, for a number of hours, on a busy weekend evening. This resulted in a number of other planned operations – such as alcohol breath test checkpoints – being cancelled. Garda R described being “crazy busy” that day, where he and his partner also had to deal with a number of other youths causing significant disturbance while under the influence of alcohol. Garda S explained that on that day, as with most others, he was “juggling multiple commitments”.

In summary, Garda respondents described a general situation where children are brought to busy Garda stations, with lots of ‘prisoner traffic’ through them, in circumstances where Garda resources are already under pressure. When undertaking their child protection function following a section 12 removal, Gardaí dedicate a significant amount of these limited resources to manage the children.

### ***Expectation of Future Dealings with the Child***

Some respondents were asked, given the account of the case provided to the audit, if they anticipated having to deal with the child again in the future. This question is relevant to the respondent Garda's perception about the effectiveness of systems of child protection, social support, and policing in their area, as an expectation of future dealings suggest the issues will not be addressed by current social support and policing infrastructures.

A number of respondents told interviewers they expected to have future dealings with the child. Garda Z, for example, was forthright in saying he expected the same violent situation to arise with the child and her family, and that he or another member of the station would be called upon to deal with it. Garda W and Garda L, describing children with challenging behaviour and needs, also said they expected to have contact with the child again.

A number of respondents also expressed deep dismay with how these children were being managed by local social services, with Garda Z describing a situation where the family's designated social workers had "washed their hands" in relation to the family. Garda P explained that he had already had contact with the family since the incident.

These responses track a consistent finding throughout all stages of this audit, which suggest widespread systemic dysfunction in the provision of child protection and social support. The audit has consistently identified instances in each stage where children and families experiencing chronic dysfunction fail to receive appropriate kinds or levels of support, or are in some troubling instances completely ignored by social services.

#### **5.3.12 Experiences with Tusla**

Crucial questions around which this audit is centred focused on the degree of inter-agency communication, coordination, and cooperation between AGS and Tusla in the area of child protection. Respondents in the interview stage were asked numerous questions regarding their experiences with Tusla in the particular case, and more generally. Respondents were also asked for any insights from the perspective of a Garda, on the operation of Tusla.



### ***Communication, Cooperation, Information-sharing and Feedback***

The majority of respondents in the interview stage of the audit had difficulties contacting social workers immediately after removing the child under section 12, as the vast majority of incidents took place outside Tusla's standard hours of service. However, even where respondents did have access to an out-of-hours social work service, some respondents, such as Garda R, were highly critical of the quality of communication and engagement with that service. Others, such as Garda Z, in contrast said contact with out-of-hours social workers was made easily, and that they also provided a surprising and impressively quick response time.

The absence of out-of-hours social work services for consultation when dealing with scenarios where a child may need to be removed under section 12 was of concern to a number of Garda respondents. For example, Garda B, who also emphasised the lack of sufficient Garda training on child protection, said it was inappropriate that members exercised such extensive interventionary powers into a family's private life, without being able to consult a child protection expert. While Garda B conceded that some cases requiring section 12 removal of a child were straightforward and required no consultation, he was emphatic that the majority of cases required, or would at least benefit from, such consultation. Garda Q's general experience of Tusla was mixed, explaining that once the agency was involved he found them engaged, but that "initial contact is poor at best".

On the broader question of inter-agency cooperation, the sole Sergeant respondent in the interview stage of the audit, was very positive in his descriptions of inter-agency cooperation in his local Garda division. However, his account of cooperation was confined to engagement between ranking members of AGS and Tusla, not ordinary members. Garda T, a non-ranking member, was also very positive in his own experience of dealing with local Tusla social workers. However Garda T's experience of contacting social workers in other areas was far less positive. In his view, personal relationships were crucial. These accounts are consistent with accounts given by other respondents in the interview, questionnaire and focus group stages of the audit. This trend strongly suggests that where inter-agency cooperation exists at all, it is largely confined to members in higher levels of the Garda hierarchy, to particular Garda regional divisions, or to the

sporadic, informal development of strong professional relationships between Gardaí and social workers.

The vast majority of other respondents in the interview stage of the audit were not exposed to any form of inter-agency cooperation with Tusla. For example, Garda L, who has had continuing dealings with the same child with complex behavioural issues, conveyed his deep frustration at the failure of social workers to share or explain their strategy for managing the child. Garda Q's closing remark in his interview took the opportunity to re-emphasise his perception of a disjoint between Tusla and AGS in terms of their operational logics and practices.

A number of respondents, such as Garda Z, Garda W, and Garda Q, expressed a keen desire to understand how Tusla made its decisions in relation to the removal of children: to know what thresholds for intervention Tusla operate under, and what criteria informs its decision-making. Garda B, for example, echoed many respondents when he explained both the practical benefit of such feedback to help inform future potential uses of section 12, but also the personal desire of members of AGS to know they made a good judgment call when dealing with a very sensitive situation.

Follow-up and feedback from Tusla in the days and weeks after handover of the child was found to be similarly problematic for the majority of respondents. A number of respondents, such as Garda A, Garda P, and Garda J, said they had not received any notification or feedback from social workers regarding how cases progressed. Garda P and Garda B described significant efforts on their part to get information from social workers about how the child removed under section 12 had gotten along following the handover.

In summary, the interview findings mirror findings in the questionnaire and focus group stages in that there is little evidence of formal routine follow-up from Tusla regarding the progress of a particular case after a member of AGS has transferred responsibility over to Tusla. Considering at the same time the findings in relation to respondent participation in strategy meetings and case conferences, there is no evidence of effective and robust systems for inter-agency information-sharing and cooperation. Despite respondents clearly articulating a desire and need for feedback on how they handled a

case, and how it progressed, there is no systemic provision for such feedback. Unless a member of AGS commits a significant degree of his own time and energies to following up on a case, or unless he has an existing strong professional relationship with his local social work team, he is likely to be left in the dark about how a child's case progressed.

### ***Tusla Out-of-Hours Service***

As noted above, the vast majority of respondents did not have a dedicated Tusla out-of-hours service available when they dealt with their case. All respondents said an out-of-hours service was essential. Consistent with the finding in all stages of this audit, a number of respondents, such as Garda Q and Garda S explained that cases requiring section 12 removal of children do not normally arise during standard Tusla service hours.

For the majority of the respondents who did not have an out-of-hours service available to them, Five Rivers appears to operate as the *de facto* out-of-hours social work service for AGS.

Of the few respondents who did engage with Tusla's dedicated out-of-hours service, Garda R and Garda Z provided the most detailed accounts of their experiences. As noted above, Garda R was highly critical of this service. In Garda R's account, he felt the social worker was disinterested in the case, and failed to return repeated calls from the respondent. The respondent was also highly critical of the professional demeanour of the out-of-hours social worker during telephone conversations, and suggested the individual was not taking the respondent seriously. Garda R told the audit that this social worker explained to him that the decision concerning the next step for the child's care, lay largely with the child. Garda R vociferously rejected this approach to the management of the child, particularly given the nature of the physical abuse experienced by the child and the child's highly vulnerable emotional state. The case concluded with the child opting to return to the family home where he had been attacked, with the consent of the social worker. This decision, Garda R felt, was taken by the social worker, as it was the easiest option.

Garda Z, by contrast, was much more positive in his assessment of the out-of-hours service, though his comments were largely confined to the speed of the services' response. In his case, the social workers were immediately contactable, and explained

when they would be available to collect the child from the station. Garda Z expressed his surprise at their quick response time, which was within the hour. Garda Z did note, however, that it appeared the out-of-hours service did not have access to the child's case history, which he felt was a significant inadequacy for any such service. This issue of lack of access by out-of-hours Tusla social workers to case files was also echoed in a number of questionnaire responses, such as Garda ZD, where out-of-hours social workers did not have access to the Tusla database, and were therefore unable to advise the respondent if the family were already on Tusla's system, and if other incidents had been reported previously. This is in stark contrast to the information-sharing that occurs in similar circumstances in England and Wales, where out-of-hours local authority social workers have access to the case files on all children who have come into contact with children's welfare services.

In summary, most respondents did not have access to a Tusla out-of-hours service, though all those cases took place outside of Tusla's standard hours of service. Mirroring the findings from the focus group stage, all respondents at the interview stage felt such a service was essential. The provision of out-of-hours services by Tusla was, however, the subject of considerable criticism in relation to its professionalism and commitment. The existing service was also suggested to be systemically inadequate as it could not facilitate access to case files or information on particular children. This finding may suggest the absence of a comprehensive and unified system covering the children and families with whom Tusla is engaging.

### ***Different Risk Thresholds for Intervention***

A number of respondents were keen to discuss their views on what they perceived to be different thresholds for intervention in the private life of families for Tusla, when compared to AGS. This response data is relevant to the question of inter-agency understanding and communication on the question of child protection.

Some respondents, such as Garda Q, expressed anxiety at what he felt were inappropriate decisions by Tusla to return children to their parents. These decisions, he felt, were the result of different decision-making criteria – though he was not familiar with those criteria. Garda R was more strident in his criticism of Tusla. In his particular case, he felt Tusla would have advised the respondent not to remove the child under

section 12, if he had sought advice from Tusla in relation to the case prior to removal. This insight is interesting considering general findings from the questionnaire stage, which indicated a desire among many Gardaí for consultation with Tusla about the decision to remove a child under section 12.

Garda Z was the most confident in his understanding of Tusla, and explained to interviewers that Tusla did have higher thresholds for intervention – thresholds he felt were too high. In his case, Tusla took no further action in relation to the child. However, Garda Z felt that Tusla’s threshold had certainly been met, as the incident involved physical violence against the child by multiple members of her family, in the context of on-going issues within the family. Garda Z’s opinion was that while the threshold triggering Tusla’s obligations to the child had been met, the social workers were no longer interested in engaging with the family.

This data reflects a pattern identified in other aspects of this audit, which suggests the desire among Garda respondents to have the workings of Tusla “demystified”. It also reflects a vague understanding among Garda members, that AGS and Tusla do operate under different risk thresholds for intervention – but there is no real understanding of why those thresholds are different.

### ***Pressure to Invoke Section 12 by Tusla***

As with the questionnaire stage of the audit, interview respondents were asked if they had ever refused to exercise section 12 when requested by Tusla social workers, or if they had experienced pressure from a Tusla social worker to remove a child under section 12. This question relates to a pattern of findings in the questionnaire, interview and focus group stages of the audit, which suggested Tusla social workers are at times circumventing the need to apply for a section 13 order from the District Court, in order to remove a child.

A number of respondents, such as Garda L, spoke generally about a perception among Gardaí that Tusla sometimes used AGS to bypass the courts, or to offload responsibility for a child onto a fully 24 hour service. For example, Garda N was forthright in his view that a significant number of cases, which were properly the responsibility of other agencies, were effectively imposed on AGS, as those agencies know Gardaí are available

at all times, and that Gardaí cannot and will not shift their responsibility onto another agency.

One respondent's case provided what he felt was a clear example of this behaviour. In that case, Tusla contacted his station immediately before the end of their standard working day, and subsequently pressured the respondent to invoke section 12. A standoff ensued, with the respondent's Sergeant directing the respondent to persuade Tusla to take responsibility for the child, and the Tusla staff refusing. The respondent explained his sense that social workers were anxious for the encounter to end, as it was past the end of their standard working day. This encounter concluded with the respondent reluctantly removing the child under section 12 to the Garda station. The respondent commented "as soon as I invoked section 12, they were happy". It should be noted this respondent explained his previous experiences with Tusla were positive, but that this experience of pressure to exercise section 12 left him feeling frustrated and anxious about whether he had exercised section 12 appropriately. It was also notable in this case that the Tusla social workers who refused to take the child into care, contacted the out-of-hours service to advise them the child was removed to the Garda station. This final detail suggests a disconnect between ordinary Tusla social workers, and the out-of-hours team. This case appears to reflect a paradigm of the view among many Garda respondents that Tusla social workers are deflecting responsibility for a child at the close of its standard service hours.

Garda Z recalled another unrelated case in which he was requested to use section 12 by a social worker. In that case, Garda Z refused, as he felt it was more appropriate for the social worker to follow the section 13 route for removal.

Most cases examined were not initiated by Tusla, nor did Tusla become involved prior to section 12 invocation. However, the few cases listed above provide evidence which may suggest tendencies of some Tusla social worker teams to offload their responsibility to children at risk onto AGS.

### ***Concluding Comments***

While most respondents provided some critical comments regarding their experiences of Tusla, many of these were also very conscious of the difficult working environment

within which Tusla social workers operate. Most respondents, such as Garda R, were sympathetic to social workers, who they perceived to be under significant resource constraints. In line with comments from respondents in the focus group stage, a number of respondents, such as Garda T, explained their perception that there were insufficient numbers of social workers to deal with the caseloads required of them.

### **5.3.13 Other General Themes Emerging from Interviews**

This section outlines and examines themes that emerged during the interview process, which were not directly related to the questionnaires around which the interviews were based.

#### ***Role of An Garda Síochána***

In various interviews throughout the interview stage of this audit, a number of respondents cited their overriding professional obligations in terms of public protection, which flowed from their roles in AGS. Many, such as Garda R and Garda Z, spoke earnestly about their role as “first responder”. Garda B, while emphatic in his view that members of AGS were ill-equipped in terms of child protection training, was equally emphatic that child protection functions formed a part of a Garda’s core frontline functions.

Garda N noted that AGS was one of the few year-round, 24 hour public services: a service whose members are not in a position to refuse to take responsibility, particularly in the context of child protection and welfare. As a result of this, Garda N was of the opinion that AGS inevitably “picked up the slack” from other frontline public services. Garda Q discussed his view that child protection, like domestic violence, was a particular priority for him and his station, given the inherently vulnerable nature of children.

Garda R and Garda Z were unequivocal in explaining their view that child protection was a proper function of AGS. Garda R was, however, also critical of the expectations of some other agencies that they also perform a “babysitting” function. This criticism of perceived expectations that Gardaí perform this warehousing child protection function was echoed by other respondents, such as Garda W. Garda R was also critical of what he perceived to be a tendency in public discourse to blame AGS for failings in how it deals

with children, without questioning whether parental responsibility was a more significant factor in a case.

In summary, most interview respondents carried an overwhelming perception that they personally, and AGS in general, are the type of professionals who do not, and should not, shirk responsibility in terms of child protection. This was a role and level of responsibility Garda respondents were certainly proud of. However, there was also a sense among some respondents that other agencies exploited and abused this role and responsibility.

### ***‘Standard Operating Procedures’ in relation to Section 12***

A notable theme that emerged across both interview and focus group stages of this audit was the inconsistency in terms of procedures adopted by respondents in dealing with children removed under section 12. As noted above, it appears from the interview stage that some geographical divisions of AGS have expressly developed standard operating procedures in relation to the “initial place of safety” to which a child will be removed. Garda Z, for example, explained that his station had a ‘standard operating procedure’ in relation to section 12, something that was lacking with most other respondents in both the interview and focus group stages of the audit.

There also appear to be *ad hoc* systemic approaches as to which agency (public or private) should be contacted following the removal of a child. Some respondents described a clear understanding and adherence to the so-called “Five Rivers Protocol” (discussed below), while others, such as Garda Q, described having to use internet search engines to find details about Five Rivers. As discussed earlier, much appears to depend on particular decisions made at a management level in individual Garda divisions.

There was no evidence of clear guidance or procedures for the management of children in the Garda station, or elsewhere while in the care of AGS. Respondents appeared to effectively ‘muddle through’ using their common sense in attempting to limit the trauma that most respondents were aware was a risk while in Garda care.



### ***Demand on Resources/Absence of Appropriate Resources***

One of the most significant themes to emerge throughout this audit surrounds the general absence of appropriate resources to deal with complex child protection issues, and the significant burdens dealing with these cases places on already limited Garda resources. Respondents were also anxious to convey their understanding that other agencies, particularly Tusla, and its frontline staff, were similarly under-resourced.

Garda L and Garda W were particularly critical of the level of time and Garda personnel resources, which dealing with these cases required. Garda N explained specific details on how dealing with these cases infringed on other important Garda operational strategies, such as drunk driving detection on a busy weekend night.

In terms of availability of appropriate resources, Garda B was highly critical of the expectation that Gardaí deal with very sensitive child protection cases, involving highly vulnerable children, when they were not properly trained to do so. Garda N compared his resources directly with those available in England, where specialist teams were readily available to deal with complex and highly specialised cases.

### ***Accountability in An Garda Síochána***

A theme that emerged in a number of interviews surrounded accountability and accountability culture in AGS. These discussions were almost exclusively focused around interview stage questions about PULSE narrative write-ups, the GISC and the dissemination of HQ Directives.

There were two notable perspectives on this. The view proffered by one respondent, Garda B, was that the increasing use of PULSE and narrative inputting into PULSE encouraged by Garda management was a positive development.

The more common perspective among interview respondents was more cynical. For example, Garda Q preferred to limit the level of detail in his PULSE narratives, in what he explained was an effort to limit the scope of the permanent record of his involvement in a case.

Garda S, who was noted by interviewers for his fastidious note taking, and his provision of an excellent and highly detailed PULSE narrative, described a “cover [yourself]” culture in relation to dissemination of HQ Directives. He, like other respondents, found such documents unhelpful in terms of his day-to-day work, and believed their sole purpose was a bureaucratic attempt to deflect responsibility from the Garda hierarchy. Garda N expressed the same sentiments in almost identical terms.

These findings suggest the presence of a culture of accountability avoidance among some members and bureaucratic classes within AGS.

### ***Fallout from ‘Athlone’ and ‘Tallaght’ Cases***

Four respondents made express reference to the controversial ‘Athlone’ and ‘Tallaght’ cases, and their potential impact on decision-making by members of AGS in section 12 incidents.

Garda B, Garda Z, and Garda J all stated that the cases did not affect how they or other Gardaí approached situations where children potentially required removal under section 12. Garda B explained that members regularly “take a beating in the media” for decisions they make, and as a result, were somewhat immune from such criticisms. Garda J said he was aware of the cases, but that he was confident his case was wholly different, and that section 12 removal was wholly justifiable.

Garda T, however, detailed his and his Sergeant’s anxiety about the impact of those cases, when deciding to invoke section 12. Referring specifically to the Tallaght case, where the respondent felt Garda members had followed correct procedures – but still “got in trouble”, Garda T explained he was also worried about “getting into trouble” in spite of following correct protocols around section 12 invocation. This, he said, was a factor in the decision-making in his particular invocation of section 12.

While it is clear that the Athlone and Tallaght cases have had an impact on the collective conscience of AGS, the findings from this stage of the audit are unclear as to whether the cases have had a widespread and direct impact on Garda child protection practices.

### ***Five Rivers and Private Frontline Service Providers***

The use of the private fostering service Five Rivers as the *de facto* official out-of-hours child protection service by AGS was among the most prominent themes that emerged throughout this audit. Outside of the greater Dublin area, Five Rivers functions as almost the sole service to which members can turn when dealing with a section 12 removal, outside of Tusla's standard service hours.

As discussed above, this audit has found the majority of section 12 incidents take place outside of these standard hours of service. As a result, Five Rivers fulfils a significant role in the aftermath of section 12 removal. Only geographical divisions with an established policy of using hospitals as the designated initial place of safety appear to have little dealings with Five Rivers when section 12 is invoked, though respondents from those regions were still aware of the organisation and the service it provides.

Respondents who expressed opinions on the quality of the service, such as Garda W and Garda Q, were generally very positive. However, it is crucial to note that no respondent was able to give a detailed insight into the nature of the Five Rivers organisation. No respondent was in a position to explain the legal basis upon which children were transferred from the care of AGS, into the care of an emergency foster placement organised by the Five Rivers organisation. None of the interview respondents were able to provide information on the regulatory oversight, if any, of the Five Rivers organisation. A handful of interview respondents echoed a pattern of responses in the questionnaire stage, in suggesting a vague assumption that Five Rivers was contracted in some way by Tusla to provide the out-of-hours service.

The positive comments from respondents on Five Rivers were confined exclusively to their availability in out-of-hours situations. Garda respondents who dealt with Five Rivers were relieved to have some agency – which they assumed to be a specialist in child protection – available to advise them on how to proceed after removing a child under section 12. Respondents were also reassured that some agency was available in these out-of-hours circumstances to organise emergency placement of a child and relieve AGS of the onerous responsibility of caring for that child.

However, some narratives from the questionnaire stage were far less positive in their experiences of private service providers. For example, Garda ZE indicated he sought to place the child with Five Rivers, but it was unable to organise a placement for the child, as he had been violent in the home (the reason for his removal under section 12). Similarly in Garda ZF's case, the private service provider did not provide the child with a placement, as she was under the influence of drugs.

This pattern of refusing to organise placements for children with challenging behaviour highlights a key issue with heavy reliance by the State on a private, non-statutory frontline service provider. In these cases, there was no agency available out-of-hours with an express statutory obligation to take the child into care. Where Tusla provides no service, the private service providers who have filled the gap are under no statutory obligation to take children they deem to be too problematic or difficult. Additionally, it is not clear upon which criteria private service providers determine children too problematic to take into care.

Even in cases where a care home is provided by Tusla, some questionnaire respondents described instances of chronic failure. For example, Garda ZG (see below) noted "an extreme reluctance [by] other State bodies to abide by their statutory obligations/responsibilities"; a reluctance recounted critically in the respondent's report to his Superintendent.

An interesting pattern found in the questionnaire stage of the audit, was an apparent confusion about the private nature of Five Rivers. In a number of questionnaire narratives, for example Garda ZH appeared to assume Five Rivers was an agency within Tusla. Similarly, the respondent Garda ZI referred to "Fresh Start Residential Services" as Tusla. Fresh Start is, however, a private residential home, contracted by Tusla to provide residential services for children in State care.

Other examples such as Garda ZJ and Garda ZK reinforced a perception emerging from the audit that there is a high level of uncertainty among Garda members as to the nature of services available to them, and their ability to distinguish between public/private frontline services provision.

Although not encountered in the interview or focus group stages of this audit, a number of narratives from the questionnaire stage detailed significant and sometimes chronic failings by private care homes contracted by Tusla. For example, the child in Garda ZG's case approached the respondent Garda, as he felt unsafe in the private residential home in which he had been placed by Tusla. Five Rivers subsequently organised an emergency foster care placement for that child. Garda ZL was critical of private care home staff in how they managed two teenagers in their care, who repeatedly absconded.

In Garda ZG's case the respondent was very critical of a private service provider. In that case the child was aggressive towards staff at the private residential unit, producing a knife, but not threatening anyone with that knife. The staff were in fear of the child, and contacted the respondent's Garda station. The child was then removed under section 12 because of staff fears. In this case, there was no out-of-hours Tusla service available, and Five Rivers was unable to organise an emergency foster placement for the child. The respondent in this questionnaire was emphatically critical of the residential unit, explaining it has ultimate responsibility for the child. The respondent argued forcefully that the unit should ensure it has sufficient staffing and security measures to deal with such incidents. The respondent concluded by arguing that if the unit could not provide secure accommodation, it should address the situation of the particular child with Tusla.

The narrative from Garda ZM was another case where the Garda respondent was highly critical of Tusla, as he felt responsibility for a child was deflected on Gardaí due to systemic inadequacies in a residential unit. In that case, the child was reported missing from a Tusla-contracted residential unit, but was later found by his care worker. The care worker feared the youth was carrying drugs or a weapon, and contacted Gardaí. The child was subsequently arrested, and brought to the station. The residential worker refused to remain at the Garda station to take custody of the youth following his release. The respondent complained that the residential worker believed the child could be detained "for no lawful purpose" by the respondent. Section 12 was eventually invoked, as, after lengthy negotiation, the out-of-hours services agreed to be present when the child was released from the care of AGS. The respondent subsequently reported to the Superintendent complaining about the "dubious care of [the] child and breakdown of agreed protocols between Gardaí and HSE".

### ***Foster Care***

A theme that emerged in various stages of this audit centred on the capacity of some foster placements to care for children with complex and challenging needs.

A number of respondents, such as Garda W, spoke of foster care situations where the foster carers were unable to cope with children with complex needs. In his case, he described a child with challenging behavioural problems, who repeatedly absconded from the care of her foster carers. This respondent questioned the capacity of foster placements to deal with such children. Garda W echoed other respondents and stated that in some cases, properly resourced institutional settings were necessary for the proper care of the child.

There were also a number of cases from the questionnaire stage of the audit, such as with Garda ZN, where section 12 was invoked as the child had absconded from foster care, and the respondent feared he would abscond again if returned to the foster carers.

This evidence suggests there are issues with the management of children with complex and challenging needs by the foster care system in Ireland. While feedback on fostering in this audit was generally very positive, these examples raise doubts about the capacity of foster placements to manage and provide security and care for some children in the care system.

### ***Media and Public Awareness***

Some respondents offered interesting insights into their perceptions of media coverage of Garda use of section 12 and related powers. In an account touched on above, Garda B was critical of what he perceived to be unfair scrutiny of AGS generally. Garda W discussed improving public understanding of the nature and complexity of the wider child protection system – though he said it still fell far short of a sophisticated understanding.

### ***Reforms for Training in Child Protection***

Respondents were asked what kind of training they felt would be helpful and appropriate. As with all areas where respondents were asked to suggest possible changes

or improvements, this question was asked to help inform this audit's own suggestions for reform.

Of those who answered this question, a number, such as Garda B, Garda Q, Garda S, Garda T, and Garda Z, said they would like to have more joint training with social workers, to enable them to understand the systemic and environmental realities in which social workers make their decisions. Garda B felt it was important for Gardaí to be trained along with who he felt were the “actual professionals” in child protection in Ireland: child protection social workers. Garda Z explained that there was a need to “demystify” the decision-making processes, as there was a pervasive background assumption among many Garda members that social workers were often attempting to pass on responsibility for complex cases to AGS. Garda Z was also interested in understanding the different thresholds for intervention governing child protection social workers, and emphasised that trust between the two organisations was essential to ensure cooperation in cases involving children.

Some respondents, such as Garda Z, were asked if they felt annual training on child protection would be helpful to keep them up-to-date with best practice. All of those asked felt this regularity of retraining would be unnecessary. This particular position might be informed by the rarity in which members of AGS exercise section 12 powers.

#### **5.3.14 General Reform**

Respondents were asked if they had any suggestions for reform of the section 12 system of child removal. The most common suggested reform related to the provision of dedicated out-of-hours services by Tusla. As discussed above, a number of respondents, such as Garda B, were explicit in their calling for Tusla support to be available on a year-round, 24-hour basis. Another frequent suggestion for reform, also discussed above, centred on provision of inter-agency training in child protection, and greater inter-agency cooperation at an operational level. Garda T and Garda W, for example, both explained the operational value for Gardaí in being familiar with the systems and decision-making within Tusla.

Garda W spoke more generally on the need for a clearer strategy for dealing with children with challenging behavioural problems, with whom Gardaí are regularly in direct

contact. Garda W also echoed the desire of many respondents for feedback from Tusla – an issue discussed in more detail above.

### ***Laminated Card***

Finally, all respondents were asked to comment on the usefulness of a proposed laminated card (discussed in more detail at 6.3.10 and Appendix 4), which would contain clear, concise and accessible guidance on the threshold for section 12 removal, and information on how to manage a child in the immediate aftermath of a section 12 removal. All respondents said this proposal would be a useful tool in the performance of their child protection functions.

## **5.4 THE FOCUS GROUPS**

The following section will outline and examine findings from the two focus groups. This section will follow a similar chronology of thematic headings to that used to explore the interview stage of the audit. Where relevant, findings from the questionnaire narratives will be cited to enrich findings from the focus group stage.

Due to the different dynamics in focus groups compared to individual interviews, and the need to keep the focus groups confined to 90 minutes in length, a much shorter set of research questions was put to focus group respondents. Additionally, the focus groups provided an ideal opportunity to develop certain themes that had emerged in the earlier stages of the audit. This meant the focus groups had a slightly different direction to the interviews. In particular, the focus groups did not concentrate on the demographic or background details of the respondent Gardaí, or the children and families in their cases. As a result, the thematic headings that emerged with this analysis are somewhat different to the interview stage.

The focus group consisting of rank and file members of AGS will be referred to here as FG 1; the focus group consisting of senior ranking members of AGS will be referred to as FG 2.



#### **5.4.1 Respondent Details**

##### ***Respondent Gender***

FG 1 consisted of four female and two male members of AGS. FG 2 consisted of five male (four Sergeants and one Inspector) and one female Sergeant. This demographic data is noted to provide a degree of consistency across the different stages of this audit. Respondent gender is also noted, as the audit used gender as one of the central critical tools to evaluate all data derived in the questionnaire, interview and focus group stages of this audit.

#### **5.4.2 Garda Training**

##### ***Training in Child Protection***

As with the previous questionnaire and interview stages of the audit, focus group participants were asked about the training they had received, if any, as the question of appropriate training in child protection is central to the audit's examination of whether section 12 is being used appropriately and proportionately. Appropriate training in child protection is essential for members of AGS to have the capacity and competence to critically evaluate circumstances suggesting a risk to a child, in a manner that is sensitive to both the rights of the child and the parent, and also the risks associated with removal of a child. Additionally, this data also provides a degree of consistency across the different stages of this audit.

Specifically in relation to the exercise of powers under section 12 of the Child Care Act 1991, FG 1 participants suggested Garda members were possibly "afraid" to use their power to remove children under section 12. Noting the lack of specific training and guidance on how to deal with situations requiring protective removal of children, FG 1 participants said knowledge of how to use the power came from experience in using it: "Once you've done it, once, you kind of have an idea, you kind of fumble on." More generally, FG 1 participants suggested that unless members of AGS took an active personal interest in child protection, they would not gain any understanding of the child protection systems operating in Ireland.

This focus group also noted the rarity of situations in which they would individually be called upon to exercise their protective power to remove children, with one member explaining: "I know I'm the only person in my unit who's ever Section 12-ed anyone".

On child protection training generally, there was a consensus among FG 1 that training was wholly insufficient: “[t]here definitely should be more training in the guards in the area ... In Templemore, we did classic French, and did nothing in child care.” While most of FG 1’s participants had not undertaken *Children First* training, those who had did not find it helpful. One participant explained:

I’ve done the Children First course. I’d say I’ve done it about five times. And I honestly have no idea what I was supposed to learn of it. Not a clue.

This same participant suggested the manner in which these multiple training sessions in *Children First* were provided was of no relevance. He also explained the training failed to contextualise its content, so members of AGS could effectively operationalise it.

Some members of FG 1 also emphasised the lack of an appropriately trained and specialist child protection unit, highlighting such a unit as being a desirable resource. This came in response to general discussions about the nature of such specialist units, from a FG 1 participant who is a member of one such unit.

There was only one contribution on the topic of child protection training in FG 2. This participant focused exclusively on the appropriateness of AGS performing its child protection function, without appropriate training, and is worth quoting in full:

The guards are basically being asked to perform a function which is really health... Without any training whatsoever. We’re not psychiatric nurses. We’ve no expertise in child psychology or, you know, except for common sense... But that’s what we have to run anyway. Our own experience in common sense...

These findings mirror findings in other stages of this audit showing Garda training in child protection to be limited or non-existent. As with the interview stage, focus group participants put a premium on experience gained while being involved at an operational level with AGS, repeating earlier findings about the anxiety underlying the exercise of section 12 for many Gardaí, due to limited guidance and procedures on how to undertake a section 12 removal.

### ***Training in Cultural Competency and Understanding of Diversity***

In light of the increasing ethnic and cultural diversification of Irish society, and the distinct sensitivities this change demands of policing practices in general, and child protection practices in particular, focus group participants were asked what training they

received in how to deal with these changes. Evaluating levels of guidance and training on how members of AGS should address these on-going changes to Irish society is central to the broader audit question about whether AGS is, or is at risk of, racially profiling children in its exercise of section 12. This data is relevant to whether Garda members are equipped with the critical skills necessary to avoid racially profiling children when exercising their section 12 powers.

Only one member of FG 1 had received specific training on AGS's policing strategy for Ireland's increasingly diverse population. This participant was not enthusiastic about the training he had received, and noted that his two day training programme now meant he was the station's designated ethnic liaison officer – a role he was not confident he could perform. Another participant explained the “only training we have is that we have a lot of different nationalities living in our area.” None of the FG 1 participants were able to describe policies from AGS in relation to the changes to policing necessitated by an increasingly culturally and ethnically diverse Irish population.

FG 2 participants were not able to provide any details of any training they had received in cultural competency – nor did they provide any sophisticated understanding of the increasing ethnic complexity and diversity in contemporary Irish society.

This finding of an absence of training in how AGS should respond to the increasing diversity in Ireland's population is also reflected in the questionnaire and interview stages of this audit. This consistent finding raises issues that are central to the overarching question in this audit, namely racial profiling in the exercise of AGS's child protection function. As noted above, this audit has found no evidence of racial profiling in the use by Gardaí of section 12 of the Child Care Act 1991. That said, this finding must be tempered by the finding that certain ethnic and cultural demographic data does not appear to be routinely documented by AGS on the PULSE system. For example, whether a child or parent is an Irish Traveller does not appear to be routinely documented by Gardaí. This means any finding that there was no racial profiling in the PULSE, questionnaire, and focus group stages of this audit, must be somewhat qualified because of an absence of consistent documenting of a child's ethnic background.

Taken together, these findings suggest a possible lack of organisational coordination in how AGS should respond to both the historic ethnic diversity of Ireland, and also the changing ethnic and cultural face of its population. It also suggests a possible failure of any policies on how to deal with these changes, to reach through to all Garda members operating in the field. Additionally, it raises questions about whether those same ordinary members of AGS are equipped to deal with the new demands that are, and will continue to be placed on policing in Ireland.

#### **5.4.3 Circumstances Surrounding the Exercise of Section 12**

##### ***Who Initiated the Involvement of An Garda Síochána?***

While the purpose of the focus groups was not aimed specifically at gathering information on individual cases, one participant's account of his section 12 incident, and how he became involved in it, is worthy of note.

In this participant's case, a family with complex and chronic needs, and who had been in on-going receipt of support from Tusla social workers, moved into the participant's area. As this move brought the family into a new Tusla area office, they were placed on a waiting list for assessment by social workers from that new office. This meant the family were without Tusla supervision for a number of weeks following the move into the area. The same family were, however, also in receipt of support from a private housing and homecare support charity. Care workers from this charity became concerned for the welfare of the young children in this family, whose parents had chronic addiction issues. The care workers contacted the Garda participant in the local Garda station. The care worker and the participant then arranged to share the monitoring of the family, until such time as Tusla assessed the family.

The participant Garda was highly critical of the gap in continuity of support from Tusla for these very vulnerable children, despite repeated notifications from the support charity:

There was an abundance of reports done, and Tusla had done nothing ...  
The children needed to be taken into care. And so it got to the point where  
I got a phone call asking me would I go and check over the weekend.

#### **5.4.4 Respondent Actions prior to Section 12 Exercise**

Focus group participants were asked to account for the circumstances surrounding their section 12 removal of the child. From these accounts, data was gathered in relation to the actions and decision-making processes undertaken by participants. The aim of this data collection and analysis is to critically review the context in which a respondent Garda decided to remove the child, and the robustness of the decision-making process itself. This was done to evaluate the appropriateness and legality of section 12 removal in a diversity of circumstances faced by members of AGS.

##### ***Consultation with other Gardaí***

Data was gathered in relation to whether the participant consulted with other Garda members of the same, lower, or higher rank prior to the decision to remove the child under section 12. The question of consultation within the Garda organisation on a particular case reflects levels of critical self-reflection among Gardaí in their performance of their child protection functions.

FG 1 participants were asked whether they consulted with their Sergeant-in-Charge before their decision to exercise section 12 powers. All of FG 1 participants said they did not consult with their Sergeant before they exercised section 12. This finding is significant given the high percentage of respondents who said they consulted with their Sergeant-in-Charge (71% of those who consulted internally) before invocation of section 12 in the questionnaire stage of the audit.

##### ***Consultation with other Family Members***

FG 1 participants were asked whether they consulted, or would generally consult, with other family members before they decided to remove the child under section 12. The audit asked this question as part of the general assessment of whether section 12 removal was being used as a mechanism of last resort – i.e. were alternative carers sought within the child's family before the child was removed.

FG 1 participants focused on whether the family member could be trusted. Participants highlighted their responsibility for the child, and the risks inherent in passing custody of the child on to an unknown person, regardless of whether or not they were the child's family:

It's a risk that you're handing that child over to a person that you don't know ... if something were to happen to that child in their care, where does the responsibility lie then thereafter?

One participant described the different knowledge base of members of AGS serving in rural communities in this context:

I'm working in a country station, so generally speaking, we know the families, so we know the families we can leave them with ...

This finding supports earlier findings in relation to Garda efforts to assess suitable alternatives to removal of children under section 12.

### ***Consultation with the Child***

FG 1 participants were asked if they consulted, or would generally consult, with the child on whether there were alternative arrangements for his care. Again, this question was asked to evaluate whether section 12 removal was being used as a mechanism of last resort. It also served as part of the general exploration of how much weight, if any, members of AGS are giving to the voice of the child, in situations where section 12 removal was being considered.

FG 1 participants were unanimous in saying that it would depend very much on the child's age. One participant explained:

If we have a 10-year-old, and they say, 'can I go to my grandparents?' and they seem happy enough to go, I think at 10, if there was ever an issue in the grandparents' house, they'd know well at that point.

#### **5.4.5 Grounds for Invoking Section 12**

Data was gathered in relation to the grounds upon which the participant Garda based his decision to remove the child under section 12. This data was central to one of the principal questions throughout this audit: the appropriateness, proportionality, and legality of section 12 removals of children by members of AGS. The grounds upon which a Garda member removed a child are the main factual antecedents to the authority of a Garda member to remove a child under section 12 of the Child Care Act 1991. In documenting and critically evaluating these grounds for section 12 removal, the audit sought to account for the circumstances that members of AGS encounter, which require the use of extraordinary powers of intervention in the private life of the family.

As in the interview stage of the audit, the circumstances and grounds that led FG 1 participants to exercise section 12 were manifold and varied. Circumstances included parents suffering from chronic addiction problems, and children, as discussed above, who were effectively ignored by the local Tusla team for a period of weeks. Participants also described instances of suspected physical abuse in the home, mental health issues within the parent, and child abandonment. On the information available to the audit, all the cases described by FG 1 participants involved the exercise of section 12 powers that were wholly justifiable.

#### **5.4.6 Evidence of Critical Evaluation of Circumstances by Focus Group Participants**

Data was gathered in relation to evidence of critical evaluation of the circumstances by the participant Garda in his decision to remove the child under section 12. This data is central to one of the principal questions throughout this audit: the appropriateness, proportionality, and legality of section 12 removals of children by members of AGS. Evidence that a Garda participant critically examined the circumstances of a case, and evaluated the risks flowing from that examination, is central to the lawful authority of a Garda member to remove a child under section 12 of the Child Care Act 1991. In documenting such critical evaluations by Gardaí, the audit sought to account for the decision-making processes employed by members of AGS in child protection scenarios, and examine whether those processes are sufficiently critically sophisticated.

A number of FG 1's participants detailed the circumstances in which they made their decision to remove the child under section 12. The accounts given reflected the general quality of critical analysis found among respondents in the questionnaire and interview stage of this audit. Consistent with findings in the interview stage, there is no evidence that FG 1 participants exercised section 12 lightly. Indeed, the low levels of familiarity among members of AGS with their power under section 12, appear to engender a degree of caution among Gardaí about its use.

FG 1 provided an opportunity to examine the circumstances in which section 12 invocation was not appropriate, as one of the participants had decided not to remove a child under section 12. This participant was invited to discuss the case with the group. In that case, the participant and his Sergeant, who was also present at the scene, were placed under significant pressure by social workers to remove a child, due to their concerns

about the mental health of his mother. Having consulted with both the child, who was a 16-year-old male, and his mother, both decided it was inappropriate to remove him from the home. Indeed, the participant and his Sergeant were, at that time, sceptical about the concerns expressed by social workers about the child's welfare:

...we spoke outside ... we're not taking this child, there's no imminent danger.

This case represents a paradigm of a Garda member critically engaging with how section 12 powers should be lawfully operationalised in particularly sensitive and complex situations. Following urgent warnings from the social workers dealing with the case, the Garda, in consultation with his Sergeant, took time to satisfy himself that the child's situation did not meet the threshold for section 12 removal – as is required in the 1991 Act. In that case, it is suggested the constitutional rights of the mother and child were also vindicated, through consultation and genuine critical consideration of their views by the participant Garda.

Following their refusal to invoke section 12, the Garda participant and his Sergeant advised the social workers to bring their concerns to the District Court under a section 13 application. It should be noted the court later granted a section 13 order to the social workers. Despite this, the approach of the participant Garda is noteworthy and commendable in realising the independent and subjective nature of the section 12 power.

#### **5.4.7 Treatment of the Child Immediately Following Removal**

Focus group participants were asked specific questions in relation to the care of the child in the immediate aftermath of the child's removal under section 12. This data was relevant to the audit's examination of the experience of the child, critical review of the appropriateness of practices and procedures for managing children while in the care of AGS, and exploration of the realities of inter-agency coordination and cooperation with Tusla.

##### ***Initial Place of Safety***

The location of the initial place of safety, how children are cared for in that location, whether there are formal procedures regulating the use of that location as a place of safety, and the overall appropriateness of that place of safety, are central questions across the questionnaire, interview and focus group stages of this audit.



Most participants in FG 1 and FG 2 said the Garda Station was the designated initial place of safety. The FG 1 participant from the Specialist Child Protection Unit told the audit that children were removed to their office, which was not located in the Garda station, and was therefore a more child-friendly environment than the station. That participant felt their office was “better” as “the children don’t actually know they’re in the Garda station”.

FG 1 was asked whether their stations have any explicit practices or policies to deal with children who were removed to the Garda station under section 12. All participants said they were not aware of any policies on management of children when removed to the Garda station. One participant explained that children were typically kept in the station’s canteen.

### ***Appropriateness of the Initial Place of Safety***

FG 1 participants were unanimous in their belief that a Garda Station is wholly inappropriate as an initial place of safety. Some expressed concerns about the resources required to monitor the children while they were in the station. One participant added that his station, which dated from the 1800s, was in a physically decrepit state, lacking in any appropriate resources to entertain and distract the children:

...the station was built in the 1800s. And bringing kids back to our canteen isn’t ideal at all. And it’s to try and entertain them, you know what I mean? You’d be dealing with, maybe, children as an infant, not infants, but 3, 4-year-olds, to try and entertain them, which I’ve done four or five times for three or four hours while we are waiting for a foster home... It’s very difficult in the station that’s falling down around you, and... You’ve a snooker table, and... There’s only so many times you can throw a snooker ball on your own to entertain them.

FG 2 participants were equally emphatic that a Garda station was a wholly inappropriate environment for children: “A Garda station isn’t a place for children. It’s not.” FG 2 participants described very busy inner city Garda stations, with a heavy through traffic of prisoners and other members of the public: “...we’ve a lot of prisoners coming through. That’s not a place for anyone, really.”

Like FG 1, some participants focused on the quality of facilities in older Garda stations, and whether childcare was even a consideration in the design of modern stations:

So we have no place ... you should be bringing them ... There are no facilities for children at all in... Any of the Garda stations in the City Centre. I don't know, but the brand new stations, I don't think there is, either. They don't think of it.

FG 2 participants explained strategies used by Gardaí to limit the scope for children to be traumatised by the experience, and also paid credit to the Gardaí in their unit, for how they managed and interacted with children, when they are removed to the station:

...My lads really are brilliant, but I bring them up the back and play football. Depending on the age, if they're children and all that. It's an unbelievable experience, we do show'em around the station, say, if they're like 12, 13, 14... The whole of that. And bring them to a waiting room. But that's just members taking it on themselves, showing them around and trying to get them thinking 'you're not here for a bad reason, nothing like that'.

Some FG 2 participants described trying to make the experience fun for the children, who might be excited by being in a Garda car, with its "flashing blue lights". A number of participants from both groups explained how they themselves would buy the children bars of chocolate or food from their own resources, to relax and appease the children.

These findings are consistent with earlier findings in the interview stage of the audit. Garda members are in consensus regarding the inappropriateness of Garda Stations as initial places of safety.

### ***Participant's Perception of the Child's Experience***

As mentioned in the preceding paragraphs, FG 2 participants touched on their perceptions of the child's experience while in the care of AGS. While they were unanimous in describing Garda stations as wholly inappropriate, they also expressed the view that some children – such as older children in their early teens – may find the experience somewhat exciting, or that members of AGS would attempt to make the best of the scenario.

Another participant was less comfortable speculating about the child's experience, but was willing to venture a guess that children become quite bored, as the process of handing a child over to the next responsible agency or individual can be quite drawn out:

What a child thinks of it? I don't know. If you're waiting a long time, you do get bored. As a child does get bored we're trying our best to keep them happy while they're waiting to make sure they're safe.

What was unquestionably clear from both the interview and focus group stages of this audit is that members are very concerned at ensuring the child's experience in Garda care is not traumatising. Indeed, the overwhelming finding in this audit is that Garda members commit great efforts to treating children sensitively and compassionately when a child has been removed under section 12.

### ***Consultation with the Child***

As noted above, a number of participants from FG 1 described a strong tendency to consult with the child regarding the child's circumstances, while mindful of the child's age and maturity.

It is clear from both the interview and focus group stages of this audit, that the voice of the child removed under section 12 features strongly in the considerations and decision-making of members of AGS on the welfare and care of children.

### ***Access to a Lawyer***

In light of the strong legal and procedural rights afforded to both parents and children in Bunreacht na hÉireann, 1937, the focus groups were asked if there are routine procedures in relation to providing access to legal advice for parents from whose care the child has been removed.

One participant from FG 1 said he would advise parents to consult a lawyer, but said there was no formal structure or requirement on Gardaí to advise parents, nor is there a list of nearby family lawyers which Gardaí could provide to parents should they wish to acquire legal advice. Most other participants said they had never considered providing such advice to parents.

Some FG 2 participants were more explicit in why such advice for parents is unlikely to be considered by Gardaí removing children under section 12:

The parents are very much secondary ... I don't think that that sort of advice should be given by us at all.

When this participant was pushed on the rights of the parents, he offered the interesting response: "But a child has a higher right to their personal safety." Other FG 2

participants were doubtful as to whether it is their function to give out legal advice to those who were not under arrest.

#### **5.4.8 Aftermath of Section 12 Invocation**

Focus group participants were asked about the aftermath of the removal of the child. Questions under this general heading sought to gather data on inter-agency cooperation and coordination, the availability of appropriate resources at appropriate times, and general systemic coordination within AGS.

##### ***Tusla Notification***

A number of participants in FG 1 were highly critical of the Tusla notification system, doubting whether it was appropriate or effective in many cases to involve Tusla:

The guards have no final role essentially, because ... you're sending it on, and they're sending it back, maybe six months later ...

This line of commentary from FG 1 reflects a broader theme encountered in questionnaire and interview stages of this audit: 'notification is not communication'. As with critical commentary by interview respondents regarding notification systems between AGS and Tusla, FG 1 was similarly unenthusiastic when discussing what it considered an unnecessary bureaucratic instrument. Touching again on a perceived culture of superficial accountability, one participant noted "it's a paper exercise".

Another FG 1 participant provided the following insight into his concern that this excessive bureaucracy could jeopardise cases involving real and significant risks being picked up:

If there is something you need to stress, that is not getting lost in the mass of it all. Like, if there's one that, you know, this is a genuine issue, that's not just your old run-of-the-mill notification for everyone.

##### ***Court Proceedings***

Focus group participants were asked if court proceedings followed the section 12 removal, particularly if Tusla had applied for a section 13 order from the District Court in relation to the child. Consistent with the questionnaire and interview stages of the audit, this line of questioning sought to examine the nature of inter-agency communication between Tusla and AGS, and processes and cultures among Tusla social workers to provide feedback on cases to Garda members who remove children under

section 12. This data is also relevant to the question of whether the Courts Service in Ireland is making appropriate efforts to facilitate the operation of an effective child protection system.

In terms of practical issues around access to courts, one participant from FG 2 explained the circumstances surrounding the invocation of section 12 by a Garda in his station. In the following passage, he explains how section 12 was exercised to facilitate Tusla social workers in obtaining a section 13 order due to perceived delays in District Court sittings:

...there was a gap there, around two hours before the District Court, or three hours, I forget how long it was until it would take place. So, the risk was considered immediate. If they went off to get their care order, mammy would've been gone with the child.

Speaking more generally, that same participant from FG 2 was quick to explain that the District Court in his geographical area was willing to facilitate such an application. However, he also described a perceived reluctance on the part of Tusla to seek section 13 orders in the courts, and instead requesting Gardaí to exercise section 12, due to financial considerations around legal costs.

In an interesting exchange, a number of participants discussed the onerous requirement on families to travel to Dublin for High Court hearings relating to children requiring special care, and also whether the High Court was best placed to make such decisions on the child's care:

There's almost an arrogance about that. Families, troubled families are expected to travel to Dublin ... The Courts should come to them.

Agreeing with and echoing these sentiments, another participant also suggested such special care hearings should be dealt with locally, perhaps as the District Court's responsibility:

[The High Court sitting in Dublin] may as well be in Japan to some of these families, you know? Whereas the District Court... Chances are, you know, the local District Judge probably has a fair idea of the families they're dealing with, and they apply a higher degree of common sense, they certainly have a compassion, you know, for dealing with them.

Another participant focused on the potential traumatising impact that travelling to Dublin for court hearings could have on the child.

***Debriefing and Personal Support following section 12 invocation, and Background Context to Section 12 Use***

Focus group participants were asked what kind of supports were available to members following traumatic incidents, such as child protection cases resulting in section 12 removal, in which they may be involved. This question was asked, as the audit was also attempting to gain a broader insight into the emotional impact on members of AGS when undertaking their child protection functions. The question was also relevant to the broader issue of whether sufficient systems, procedures and cultures are in place within AGS to facilitate and support its members in undertaking its vital child protection functions.

As was found in the interview stage of this audit, FG 1 participants explained there was an absence of formal support structures for Gardaí in the aftermath of dealing with traumatic cases. Many also related this to the lack of feedback they receive following an event such as a section 12 removal:

That's where the follow-up would be a benefit to the guards. It's that if somebody rang or emailed to say 'listen, the kids are fine now, thanks a million'.

Others in FG 1 noted that dealing with children in such circumstances does affect members of AGS:

And you're supposed to forget about them. You do get emotionally attached in a space of a couple of hours.

FG 2 participants said there were some formal structures in place, but doubted whether they were appropriate or effective for the kind of trauma experienced by members in these cases:

...management ... would refer you to the employee assistance service in the job. But the adequateness of that, for something like this, is... [questionable]."

These more senior Gardaí drew the question back to resources: "There's not enough of them to begin with."

As was found in the interview stage, FG 2 participants also focused on inter-personal support provided by other members of a Garda's unit, or station – a supporting atmosphere provided, in part, through dialogue:

We deal with it ourselves, you know what I mean? I would put my man in, and I would chat, and we'd go out and go for a cup of coffee and such. Have a talk with ourselves ... And that's how we deal with certain situations.

There was general agreement in FG 2 that this was an organic and natural feature of the supporting infrastructure for members within the Garda organisation, though some were unsure if it was appropriate in itself: "And I think that's how we do it. Is it proper? I don't know, but that's how we deal with it."

#### **5.4.9 Experiences with Tusla**

Crucial questions around which this audit is centred focused on the degree of inter-agency communication, coordination, and cooperation between AGS and Tusla in the area of child protection. Focus group participants were therefore asked numerous questions regarding their experiences with Tusla in their particular case, and more generally. Participants were also asked for any insights from the perspective of a Garda, on the operation of Tusla.

##### ***Communication, Cooperation, Information-sharing and Feedback***

As with the questionnaire and interview stages of the audit, participants in FG 1 were critical of Tusla in terms of communication, information-sharing and feedback. One participant for example, was particularly annoyed at not being informed by Tusla that the children he had removed had been immediately returned to the parent. This participant explained that he discovered this when the father attended the station for a meeting with him:

...they [Tusla] took the kids away, and on the Monday evening, I'd arranged for the two parents to come in separately to make statements to me. And the father arrived in with all three children with him. At no point was I ever told that the kids were going back, I was never asked about any of the details of the situation...

This participant continued to describe what he perceived to be an apathetic attitude by social workers in relation to the case:

I told them but they didn't ask for any details, the situation, or the circumstances, like ... the kids were given straight back ... They [the parents] made their statements on the Monday, both parents, and on Tuesday they were back [at home] well outside of my reach. So it was kind of... A bit frustrating and... there seemed to be no information to this date. I still don't know what social worker was assigned.

The Sergeant of this Garda participant was a member of FG 2, and added more detail to this critical account. The Sergeant explained that the Gardaí had sought to pursue a criminal investigation in relation to their suspicions that there may have been a case of domestic violence. However, that investigation was undermined by Tusla's failure to communicate that the family had been reunited, and had returned to their home in the UK:

We investigated it. ... But Tusla entered it and got the kids back, never told us a word, next thing we had interviewed them, we had a file for prosecution, but they'd gone back. So they hadn't told us what they were going to do or what they are thinking. So, there was a lot of time [wasted] in relation to this.

Another participant from FG 1 was more positive about his relationship with his local Tusla team – however much of his contribution in this regard was centred on the benefits of a specialist child protection unit with well-developed personal working relationships with the local Tusla social workers.

Echoing findings from the questionnaire and interview stages of the audit, FG 1 participants also described a situation where relationships between Gardaí and Tusla were confined to those with senior ranking status. In other words, in many stations, perhaps only one Sergeant would deal with all operational interactions between that Garda station and Tusla. As a result of this practice, ordinary Gardaí felt excluded from all lines of communication with Tusla.

A number of participants in FG 1 also provided a new and significant insight into inter-agency communication not encountered in previous stages. This related to the limited email access Garda members have to contact individuals or agencies outside of AGS. FG 1 participants were frustrated that such access, which they felt was a simple change, was not forthcoming, and felt it was a significant obstacle to developing and maintaining lines of communication with agencies such as Tusla:

Yeah, I still can't get outside access. They won't give me outside access ... Honestly, that's ridiculous ... I have applied for it. They told me I was getting it, I still haven't got it...

In another exchange, one participant took issue with a refusal by Tusla staff to hand over information. Other FG 1 participants were, however, also mindful of data protection



concerns: “There would be an issue though, of the sharing of information, that’s if they ring the station looking for you, you can’t give information over the phone either.”

As discussed above, some participants were particularly critical of the Tusla notification system, which they felt was excessively bureaucratic and ineffective. Participants responded well to the thematic description used by the audit: “notification is not communication”.

FG 2 participants were similarly critical of what they perceived to be a general lack of feedback from Tusla:

...there’s no feedback in any situation. And we were put in a situation with very young children that we’re dealing with.

In contrast to this experience, the Sergeant from the specialist child protection unit who participated in FG 2 described a much more developed and engaged relationship with Tusla:

I appear for the whole district, and when we sit down like this, we each say what is happening with each of the cases.

In summary, what again emerged clearly from both focus groups was the central importance of personal relationships between Gardaí and social workers in realising positive levels of inter-agency cooperation, communication, information-sharing and feedback. As with interview respondents, focus group participants who had developed such personal work relationships were positive about their interactions with Tusla. These same Gardaí were also quick to defend social workers, and were sympathetic to the resource constraints and pressures experienced by Tusla social workers.

Additionally, as with previous stages of the audit, Gardaí placed a high premium on feedback from Tusla. Participants described both the personal emotional benefits of such feedback on particular cases, but also the practical operational benefits for members of AGS to be given evaluative feedback on their performance in such child protection cases.

### ***Tusla Out-of-Hours Service***

One FG 1 participant, who was also a respondent in the interview stage of this audit, repeated his extensive account of his experiences with Tusla's out-of-hours service in the greater Dublin region. As noted above, this participant spoke in very critical terms about this experience, in which he perceived the out-of-hours service social worker to be disengaged, disrespectful, unprofessional, and attempting to avoid taking responsibility for an extremely vulnerable child.

Another FG 1 participant described this same out-of-hours service as wholly under-resourced, with resulting delays in response times.

Some participants described a queue system that governed the distribution of the limited out-of-hours resources. Others detailed delays of 5 and 6 hours waiting for the out-of-hours social workers to attend the station.

Participants were also uncertain to what extent this out-of-hours service worked in tandem with the ordinary Tusla social workers in various offices throughout the region: "I don't even know if they hand over too much. I think they get, like, maybe a very basic report."

Another FG 1 participant described a common situation where homeless children were presenting themselves to Gardaí, in order to make contact with the out-of-hours service:

Somebody presents themselves ... a homeless 17-year-old... looking for out-of-hours to pick them up. Which we've had. I've experienced maybe five times. 'Would you ring the out-of-hours for me?'... So he has to wait in the public office. Well, you have to keep an eye on him, because, essentially, he is a child.

FG 2 participants also focused on delays experienced waiting for out-of-hours social workers to attend the station, returning again to the Garda personnel and resource implications of having children in the station:

By the time you look for the out-of-hours, and get the out-of-hours, spend time with the kids, it can be a lengthy enough time.

Those participants in FG 2 who were based outside of the area covered by out-of-hours, echoed general commentary encountered in earlier stages of this audit, in describing

circumstances where Tusla social workers refused to become involved in cases once standard service hours were finished:

I am aware of a school having a problem there last weekend, and... Basically, they did get on to Tusla, and... It was in relation to daddy allegedly, you know, beating the child and that type of thing. But, basically, the reaction that was given was, uh, you know... 'Well, I'm off work on Friday, I'm on holidays'. And the question asked was, 'who's there to replace you?'

### ***Different Thresholds for Intervention***

Some FG 1 participants felt there may be reluctance on the part of Tusla to intervene to remove children because the legal thresholds they operate under were much higher than that for members of AGS under section 12. However, one participant who had extensive working experience with Tusla social workers believed resources, not legal thresholds, were the principal reason for this reluctance: "I think they would intervene had they got the resources, as in, more social workers."

Another FG 1 participant expressed his concern that Tusla social workers were operating under presumptions for action that were, in his experience, incorrect:

I remember one thing. I overheard her (a social worker) saying to a colleague of mine. It's that the safest place for that child to be is at home. And I remember thinking, how naive that was to say, you know what I mean? Not always and not from the guard in the field who had to invoke section 12. It's not the safest place. Get them away from the danger, but when the danger abates, it's okay if they want to go back. And like... That's not always the case, you know?

One FG 2 participant also believed there were different thresholds for intervention between AGS and Tusla, which he attributed to a culture of avoiding responsibility and accountability in Tusla.

### ***Structural Issues with Tusla Organisation***

Some participants in FG 2 were somewhat critical of what they considered to be opaqueness in the organisational structure of Tusla. Comparing it to the explicitly and transparently hierarchical structure in AGS, which he suggested was a more accountable model, one participant commented:

...there's no structure at all to Tusla. You know if you ring the Garda station, there's a guard ... You're not happy, he ignores you, there is a sergeant. Then you have the inspector, the superintendent ... I feel [with Tusla] ... [y]ou don't know who you're talking to.

***Avoidance of Responsibility or Accountability and Pressure to Invoke Section 12 by Tusla***

As with the questionnaire stage of the audit, interview respondents were asked if they had ever refused to exercise section 12 when requested by Tusla social workers, or if they had experienced pressure from a Tusla social worker to remove a child under section 12. This question relates to a pattern of findings in the questionnaire, interview and focus group stages of the audit, which suggested Tusla social workers are at times circumventing the need to apply for a section 13 order from the District Court, in order to remove a child. The question also sought to examine evidence of perceptions among Gardaí that Tusla was avoiding responsibility for children at risk.

FG 1 participants discussed both personal experiences and general experience by other members of AGS of what they perceived to be attempts by Tusla social workers to abdicate responsibility for a child at risk. For example, one participant suggested social workers had either intentionally or incompetently delayed involving AGS until just before the standard service hours of Tusla came to an end:

We get a lot of, is the... call at five to five from social workers saying they want this place checked on over a weekend, and the first we hear about it is at five minutes to five. And it's just they're, about to finish off for the weekend. And they're like, 'oh, we've major concerns about this... home'.

Another participant, discussed above, detailed his experience of Tusla delaying interviewing a family who had just moved into the area, but who were already subject to Tusla social worker engagement and support. In this case, the participant described concerns arising from care workers in a private housing support charity for the welfare of the children in this family. Despite these concerns being communicated to Tusla by the care workers, Tusla took no immediate action until the participant was forced to remove the children under section 12. This removal can only be described as a very traumatic circumstance for the children, as the intoxicated mother became very agitated and aggressive during the removal. The following transcript details these circumstances in full:

This case had been going on for a while, Tusla were aware of the family, but they did absolutely nothing. The family are living in social housing, ... and so [the housing support charity] have interaction with care workers and people like that. They come on a regular basis to the family. And they had huge concerns in relation to this family. There was, like, an abundance of reports done, and Tusla had done nothing. The children needed to be taken into care. And so it got to the point where I got a phone call asking me

would I go and check over the weekend. This particular weekend. ... [we] had made arrangements that we do, spot checks on the house over the weekend, and... on the morning [I removed the children], I got a phone call to say that the children, one of the children was left in the house on his own. Well, he wasn't on his own, the mother was in the house, but she was unconscious. And they had tried for an hour to wake her up, and this child is eighteen months old, in the house, left to his own devices. So I rang the social workers but we went in, we had to enact a section 12, because I felt he was at immediate risk. He was in the house, ... [the housing support charity] tried for an hour to wake the mother, and she hadn't woken up, and when I went in, of course, it all kicked off, because she realised I was a guard and I was in there, and I explained everything. I felt afterwards, it shouldn't have got to that point. It shouldn't have got to the point where I had to go in there, take a child from a screaming mother, when the social workers had been involved, ... [the housing support charity] had been involved for a long period... They had done up loads of reports in relation to the family, and yet it was still left to us to go in and take a screaming child from his mother on a Friday morning. That shouldn't have happened. They should've already had the things put in place beforehand. They had been aware of it, and they had done nothing. So, for me, obviously, I was happy to invoke section 12, because I felt that child was at immediate and serious risk. ... After we had intervened, she took an overdose in front of the other guards who were there to keep her calm. So she ended up in hospital ... And had serious health implications. But I felt it shouldn't have got to that point. The kids are still in care now.

It should be noted that this particular focus group participant, while clearly heavily critical of how this case was managed by Tusla, was also emphatic in his view that the principal reason his area was experiencing severe delays in Tusla interviewing families deemed at risk, was chronic under-resourcing.

Another FG 1 participant, also discussed above, described his experience of out-of-hours social workers refusing to take the perceived risk to the child seriously, and effectively leaving the decision for the vulnerable child's care with the child.

FG 1 participants were unanimous in their belief that Tusla social workers are using section 12 to avoid pursuing court orders due to the onerous evidential thresholds that they must satisfy. One participant described section 12 as the "default" initial route for social workers seeking to remove a child.

Another participant described a situation where he felt pressure from social workers to exercise section 12, despite having come to a decision in consultation with his Sergeant, and the child, that the threshold for removal had not been met. This participant

speculated that part of the reason for this was the social workers wanting to avoid going to court at that time.

Overall, there was a perception among participants from both focus groups that social workers viewed Gardaí and section 12 as easier to remove a child, one that bypassed the courts. As with findings in other stages of this audit, focus group participants viewed Tusla as a somewhat dysfunctional organisation, with some taking a particularly cynical view on their experiences with Tusla.

#### **5.4.10 Role of An Garda Síochána**

At various points, focus group participants touched on the responsibilities and the deep cultural sense of obligation among members, that flowed from their role as Gardaí. For example, in discussions about whether there were alternative carers available to avoid having to remove the child to the care of AGS, participants expressed anxieties about handing the child into the care of someone not properly vetted by them – even if they were related to or known by the child.

As discussed above, members of FG 1 described their sense that AGS was improperly treated as the “default” child protection service.

Those in senior roles who participated in FG 2 also demonstrated a precautionary logic in resource distribution where children at risk were concerned, even where they suspected they may be being pressured into action by Tusla:

I wouldn't feel right if we get a phone call or a fax at 5 o'clock on a Friday with concerns over this weekend. I wouldn't feel right if I didn't get my lads to go up and make sure everything is alright. I just wouldn't...

#### ***Demand on Resources/Absence of Appropriate Resources***

As was found during the interview stage of the audit, FG 1 participants discussed the drain on already thin Garda resources involved in removing children under section 12.

As was found in the interview stage, various factors such as whether an out-of-hours service was available, and whether the station was in an urban or rural area, were relevant to how significant a drain on resources section 12 removals were for AGS.

In discussions noted above, focus group participants provided detailed insights into the time and personnel resources that are consumed in managing children when they are removed to the station:

...the length of time that we have, you know, by the time you look for the out-of-hours, and get to the out-of-hours ... I think, you know, you have to make up that time. Spend time with the kids, or deal with the kids for that time it takes them to come in, which can be a lengthy enough time as well.

Also examined above, focus group participants described Garda members who felt ill-equipped, and at times anxious, about exercising their child protection powers, and Garda stations that were wholly inappropriate for the care of children. The absence of out-of-hours social workers outside of the greater Dublin region was consistently raised as a major concern for participants in terms of resourcing and support of members when exercising their child protection function.

### ***Specialist Child Protection Units in An Garda Síochána***

A theme that was central in much of FG 1's discussions, and which was largely absent from other stages of this audit, was the value in specialist child protection units within AGS. One participant in FG 1, who was deployed in such a unit in Dublin city, was able to describe the role he performed, and crucially, the working relationships this role allowed him to develop with Tusla. This participant demonstrated the most detailed insight into the operation of Tusla of all Garda respondents in this audit.

This participant was unequivocal in his view that the specialist unit was an effective asset for AGS in fulfilling its child protection functions, though his unit had the drawback of not being a 24 hour, year-round service:

A child protection unit? Definitely works. In terms of [my station's district] you'd have to, the volume of files coming in and out... The child protection unit definitely works. But the only thing is, obviously, we're not 24/7...

The participant was quick to explain that he would still make himself available out-of-hours if someone from his station contacted him looking for advice or assistance:

...[if] someone rang me and looked, at 3 in the morning, looked for me to come in and... I'd come in, to be honest. And the same with most of us in my office. If it was a case of a child being at serious risk, we would come in...

However, this participant noted that the creation of such units was not an automatic means to achieve strong inter-agency cooperation and communication:

I know of other places, even in other Garda stations, not too far from where I am, they've only started up child protection units and they're finding it really difficult to make the connection with the social workers in Tusla. They don't want to know, the guards, they don't want to have the interaction.

The kind of connections in his specialist unit, he explained, took years to develop – but were now extremely productive and valuable.

The other members of FG 1 were unanimous in their view that such units would be helpful in performing their child protection functions. That said, there was a mixture of views about whether the same model would work in all areas of the country:

Even if it was a divisional thing, for 24/7... I think child protection units need to be in every station. Because there's children at risk from the smallest area to large cities to towns. There's children at risk all the time. And so, I don't know whether the work would be there to justify having guards 24/7, all the time, but definitely, I think... we need, the child protection units.

Interestingly, the participant from the specialist unit, was careful to emphasise that such units are not a panacea in ensuring correct performance of child protection functions by AGS.

### ***Gender Bias in An Garda Síochána***

In response to findings in the interview stage, focus groups were asked if there was evidence in their experience of gender bias in the distribution of child protection related work among Gardaí. In particular, participants were asked if female members of AGS were more likely to be delegated such work, than male members.

Responses to this question were interestingly mixed. One participant in FG 1 said all child protection work was given to female members, but this was not something he necessarily had an issue with: "I don't mind, it doesn't bother me. I actually probably prefer them."

Other FG 1 participants (both male and female) felt that such practices were not an issue for the force anymore, and that "things have changed".



FG 2 was unanimous in the view that “things had changed” and that the organisation had “come a long way”.

These and earlier findings in the audit suggest that delegation of what may sometimes be considered ‘low value’ and low prestige child protection work to female Gardaí may be a localised phenomenon within AGS.

#### **5.4.11 Other General Themes**

##### ***Perceived Changes in Child Protection Services***

Focus group participants were asked if they felt child protection systems had improved in Ireland in the past decade. Responses to this question were notable in that there was a striking division in perspective between FG 1 and FG 2.

Participants in FG 1 felt that there had been no significant improvement in the past ten years. One participant explained that the instances of chronic systemic failure in relation to children with challenging behaviour were still commonplace. Another participant added that a culture of superficial accountability was now pervasive.

The responses of ranking Garda members who participated in FG 2 to this question were at variance with the view of rank and file Gardaí. FG 2 participants all felt services were better, with one pointing out how it was now easier to source someone to take responsibility for a child, though conceding there was an urban / rural divide in terms of quality of support: “I would feel tonight, now, at 3 o’clock in the morning, I will make a phone call, I will have someone to come to me, where the lads in the country wouldn’t.”

When it was explained that FG 1 had expressed a different perspective, some participants suggested this difference was due to length of service differences (i.e. the senior ranking members had been in the service longer, and had seen child protection services when they were much worse). Others felt that senior ranking members were more likely to be in a close working relationship with other agencies, and therefore more likely to see the improvements to child protection systems and practices.

These findings echo other findings in this audit of a disconnect between rank and file and management levels of AGS: here, in terms of perception within the organisation.

### ***FG Participant Understanding of Section 12***

Focus group participants were asked about their understanding of the “immediate and serious” risk threshold for removal of a child under section 12. This question is central to the audit’s examination of participant understanding of Garda powers to remove children from their family or legal guardian; the boundaries of that power; and participant understanding of the justifications for that power and its boundaries.

FG 1 participants all mentioned neglect as a major background consideration for the decision to remove a child. If there is evidence of on-going neglect in the family home, or in the child’s appearance, this would be significant:

But if they were neglected and it’s been an on-going thing. If you went in and a child was seriously hungry, you can see it in them, they haven’t eaten or drank. That’s neglect, but it’s got to the point where it could become a health factor.

Other participants focused on a soon-to-be-realised risk of physical harm:

I would perceive it as, as neglect, serious risk of where they are at that time, as in, are they going to do themselves damage? If the child was seriously injured just before you arrived. If you felt that there was a danger, that if you left, that something would happen to that child. And because you didn’t take it away, you’re responsible, that’s your responsibility.

Other participants characterised the decision in terms of a balance of harms between removal and non-removal:

...if I left the child and went away, the child would be in a worse situation. That child was on their own, or in a situation where they could hurt themselves, basically if I leave the child there and don’t take it, that’s in a worse situation than me taking it.

One participant offered an interesting nuanced perspective on the question of immediacy and risk – an insight that includes a Garda member’s background understanding of broader institutional failure on the part of State child protection services:

Mightn’t be in serious danger immediately, in the next hour or two. It’s not that the child is going to immediately die this day. But if nobody’s done anything to this point, and if you walk away no one is going to do anything...

One FG 2 participant was more hesitant in offering his view, and was critical of the Child Care Act 1991, for not providing sufficient definitional clarity for the concept of “immediate and serious risk”:

I was looking up this, and the Act doesn't define it, which is I feel a deficiency in the Act itself. Immediate is... Easy enough to find, alright, I think. But the 'serious'... One person's serious is not another person's serious. I would be talking about, ... Physical... You know physical or psychological harm. I think it's a bit simplistic to say that it has to be life-threatening.

#### **5.4.12 Suggestions for Reform**

The vast majority of focus group participants' suggestions for reform centred on the provision of properly resourced out-of-hours social work services, and specialist child protection units within AGS. In relation to the specialist child protection units, there was no clear consensus on whether the unit should be wholly independent within each station, or each division; or whether each Garda unit should have at least one person properly trained in child protection.

Part of this absence of consensus between FG 1 participants was focused on regional (urban versus rural) differences in resource allocation, and the varying demands on those resources due to those regional differences: "...[in the country] we wouldn't have the work for a full time anything. Like, we barely can cover a unit as it is".

All agreed that, at the very least, Gardaí should have another Garda member, who is a child protection specialist, and who is always available to contact to ask for advice.

Participants also argued that whoever takes responsibility for child protection in a unit, station or division, is also in a position to develop and maintain close professional and working connections with social workers in his local Tusla station. Among FG 1 participants, the heavy reliance on Unit Sergeants for advice on complex child protection measures was considered inadequate, especially where that Sergeant is newly promoted:

Let's say a new Sergeant that's been promoted. They might've never had any dealings with children at all. And they don't know exactly ... Everyone has to ask for help eventually.

However, one rurally based participant noted the need for all Garda members to be trained and empowered to make tough decisions when there was not a specialist member, unit, or social work team available for consultation.

All focus group participants agreed on the need for appropriate facilities to manage

children when in the temporary care of AGS.

Though not suggested directly by the focus groups, the audit also noted a lack of familiarity with procedural guidelines for members to follow in circumstances where they have removed children to a Garda Station. While both focus group participants and interview respondents alike demonstrated a very high level of commitment to avoiding retraumatising children while they were in their care, the audit found Garda members generally rely on their own common sense, instinct and decency in how they care for vulnerable children.

The need for feedback from Tusla also represented a major convergence of opinion among focus group participants. As was found in the interview stage, focus group participants repeatedly highlighted the frustration experienced in not getting follow-up as a matter of routine from Tusla. Participants also emphasised the educational and operational value in getting such feedback.

Neither FG 1 nor FG 2 participants were able to offer any suggestions for reform in the area of cultural competency. This absence of ideas reflects the findings from the interview stage of this audit, that suggest an absence of understanding among members of AGS about the growing cultural complexity of Irish society, and the new policing demands that this paradigm creates.

### ***Laminated Card***

As with the interview stage, focus groups were asked about the value of a proposed laminated card to guide members when considering whether to invoke section 12 to remove a child. Participants reacted favourably to this suggestion, particularly to the suggestion that the card would contain a list of agencies and numbers in the station's locality for the Garda to contact in the event of a section 12 removal.

**CHAPTER 6:**

**GENERAL DISCUSSION, CONCLUSIONS AND  
RECOMMENDATIONS**

## 6.1 INTRODUCTION

The invocation of section 12 powers involves a legal decision by AGS that intrudes into the private domain. While the overwhelming finding in this audit is that Garda members commit great efforts to treating children sensitively and compassionately when a child has been removed under section 12, it also identifies problems within AGS and the child protection system. In relation to agencies charged with child protection responsibilities: along with a lack of adherence to the legislation and regulations currently in place, there is evidence of problems with appropriate resourcing, facilities, and the general ethos of professionals within those agencies. Moreover, there is evidence that some vulnerable children are being failed by the very system which is responsible for their protection, their safety, and is designed to put their needs first.

As found by the audit, the profile of children that are the subject of section 12 powers suggest that these are typically very vulnerable children who have experienced significant stressors in their lives. It is noteworthy that according to questionnaire findings in this audit, 70% of children removed under section 12 were under 16 years of age, with 54% of respondents in the questionnaire phase of the audit stating the child and/or family were previously known to members of AGS.

As a number of these children were already in the care system when removed under section 12, there is a high likelihood for some that their difficulties are on-going, with a serious resulting impact on their self-esteem, their capacity to self-regulate, and their sense of self-efficacy. While each child's story is unique to them, they share a history of having, at one or more times, been deemed to be at immediate and serious risk necessitating section 12 removal by AGS. How services respond to their situation then assumes critical importance.

From the wealth of data compiled during the audit – including analysis of PULSE data, responses by members of AGS to questionnaires, and, particularly, themes that emerged from individual Garda interviews and from the two focus group discussions – it is possible to make a number of comments and draw a number of conclusions.

## **6.2 CONCLUSIONS**

### **6.2.1 Use of Section 12 Powers**

The audit found that the children and families in which section 12 is invoked are typically experiencing some level of social dysfunction, trauma or insecurity.

Overall, the audit did not find evidence to suggest over-zealous use of section 12 removal of children from families living in social or economic deprivation.

### **6.2.2 Reluctance to Use Section 12 Powers**

While the audit demonstrates that section 12 removal was generally appropriate in the cases reviewed, there is evidence of a potentially problematic reluctance among some members to remove children even where good grounds exist.

### **6.2.3 Role Ambiguity**

One of the overarching conclusions of this audit is that members of AGS do not exercise section 12 powers lightly. These findings also support the other overarching conclusion that Gardaí are uncertain about certain specificities of their role and powers in child protection. While respondents were clear that they had such a role, they were often unsure about the legal boundaries of this role. The high level of consultation with senior officers also reflects the highly hierarchical command structure of AGS, and the decision-making deference of junior officers to their supervising officers.

### **6.2.4 Gender**

The audit found no evidence to suggest that gender is a significant determiner in whether a Garda is more likely to exercise section 12 powers if he or she is male or female. Female members of AGS do not appear to be over or under represented to a significant degree in section 12 use, and the interview and focus groups stages indicated a materially comparable approach to the use of section 12 powers among male and female Gardaí. However, the gender of the children removed under section 12 is significant, with adolescent males most likely to be subject to section 12 removal.

### **6.2.5 Garda Age and Years of Service**

Garda members with longer periods of service were the most likely to exercise section 12 powers. This was in part due to the impact of the recruitment embargo in AGS, but also partly due to the decision to remove a child under section 12 requiring a high level of professional experience and confidence from Gardaí. This latter point was reinforced by findings from the interview and focus group stages, which indicated a high level of caution among Garda members in exercising section 12 powers of removal against children and families.

### **6.2.6 PULSE**

Following the audit, there remain some outstanding questions, ambiguities, and concerns in relation to Garda practices in recording data and case narratives on PULSE. The audit found inconsistencies in relation to incident recording practices between members of AGS, and the quality of incident reports on PULSE. This raises concerns for appropriate oversight and accountability within AGS. AGS has confirmed that systemic reform of PULSE is underway, and this process of reform is clearly to be welcomed. However, ambiguities exist in relation to the role of the GISC in how narratives are recorded on PULSE, and whether it is aiding or undermining comprehensive and accurate reporting of cases on the system. It is also unclear whether any system change that may be underway, will address the inconsistencies in data and narrative recording on PULSE identified in chapter 3 of this audit.

### **6.2.7 Ethnicity/Nationality**

Despite uncertainties around the ethnicity and/or nationality of children removed, the audit could find no evidence that the ethnic background of a child, or their nationality, was a significant consideration in the decision to remove a child. While the nationality of the children and family in one case involving Police and Social Services in England and Wales was undoubtedly a central concern – this factor is relevant due to international legal obligations on the Irish State, rather than any issue of racial profiling. As such, the audit found no evidence of racial profiling in decisions to remove children under section 12.

This finding must be tempered by three considerations: firstly, by necessity, the sample size in the interview stage is not sufficiently large to draw general conclusions about the



presence or absence of racial or ethnic profiling in Garda use of section 12 powers. The interview stage provided the audit with very valuable insights into the culture and professional practices of members of AGS in the performance of their child protection functions, but was not designed to generate data of statistical significance.

Secondly, as noted in chapters 3 and 4, the apparent absence of a requirement for routine gathering of ethnic data on children, or other individuals, in the PULSE system makes it difficult for the audit to make firm determinations on the presence or absence of racial or ethnic profiling by AGS in the performance of its child protection functions.

Finally, the audit was focused on the question of how members of AGS deal with children when they are performing their child protection functions. Any findings in this regard cannot be treated as relevant to the performance of other policing functions by members of AGS. More specifically, the audit's findings cannot be used to draw inferences or conclusions on the question of whether children, their families, or any other adults, are racially profiled by members of AGS, when those people are considered to be possible offenders. The remit of this audit was confined exclusively to examine cases where a child was removed under section 12 – it did not examine any cases where the child was arrested for suspected commission of a criminal offence.

#### **6.2.8 Inter-Agency Cooperation**

A common finding throughout the audit was the lack of information-sharing between agencies involved in child protection. A broad theme encountered in the various stages of this audit is that 'notification is not communication', in that while there exist notification systems between Tusla and AGS, those systems are superficial, ineffective, and under-resourced. Touching again on a perceived culture of superficial accountability, one participant noted "it's a paper exercise".

For older children who have had previous involvement in the child welfare system, the lack of systemic and substantive co-ordination between services, along with difficulties members of AGS have in accessing services for those children at times of crisis, can result in feelings of disillusionment with and abandonment by the system.

Children who have experienced inadequate or abusive parental behaviours may already have internal representations of themselves as being “unlovable” and unworthy. If the services’ response to children removed under the section is delivered in a disorganised and fragmented manner, the potential exists to exacerbate children’s feelings of isolation, of not belonging, and being unwanted.

During interviews and focus group discussions, members of AGS spoke openly of the difficulties – at times outright resistance from partner agencies – they experienced in engaging follow-on services for children removed under section 12. Respondents described circumstances of children having to be kept occupied for hours in Garda Stations, while attempts were made to access the appropriate support services. Members spoke of how they had to attend to children’s basic care needs of providing food and clothing in the absence of child care services being available. A number spoke of how the plight of some of these children impacted upon them at a human level and how, when rostered off-duty, they carried a residual concern as to what child care arrangements were being put in place for the child. This issue is explored in detail at sections 5.3 and 5.4 of this audit.

Respondents spoke of their frustration if the child was the subject of a number of successive “section 12s” due to the inadequacy or ineffectiveness, or complete lack, of a care plan. They also explained how some children had to be criminalised or pathologised in order to gain access to necessary support and welfare services.

While the vast majority of members of AGS were confident in the necessity and justification for their use of section 12 powers, some were less confident of the adequacy of the response from the child care system, and whether children’s best interests were being served by it. There were notable examples where respondents described their total lack of confidence in the wider child protection infrastructure.

It is speculative to discuss the degree to which children are aware of the tensions between services charged with their welfare, particularly in relation to securing a place of safety for them. However it is reasonable to assume that older children will have some degree of awareness of this systemic dysfunction, which can lead to a lack of confidence in services and a questioning of “Whom can I depend on? Whom can I trust?”

### **6.2.9 Lack of Early Intervention**

The audit's findings contain numerous instances of children being subject to repeated removal under section 12. This evidence suggests systemic failings with regard to the child protection systems in Ireland. There were also multiple examples in each stage of the audit highlighting chronic systemic failures to help children with challenging behaviour, prior to the involvement of AGS.

There is a persistent perception among a number of Garda respondents that Tusla social workers sometimes delay addressing a particular risk to a child, in order to force the involvement of AGS in the case, due to AGS organisation's 24 hour operational basis.

This data reflects a wider pattern identified in other aspects of this audit, which suggests the desire among Garda respondents to have the workings of Tusla "demystified". It also reflects a vague understanding among Garda members that AGS and Tusla operate under different risk thresholds for intervention – but there is no real understanding of why those thresholds are different.

### **6.2.10 Location of a Place of Safety**

Respondents in the various stages of this audit agreed that Garda Stations and hospitals were not appropriate locations to remove highly vulnerable children to. However, given the late times or weekends during which the majority of section 12 removals take place, they are typically the only available locations of safety. It is clear from findings in both the interview and focus group stages of this audit that Garda members generally attempt to manage the child in a sensitive manner. They are conscious that the experience in the Garda Station poses a risk of added trauma to the child, and generally do their best to minimise that risk. However, Garda members are left in a situation where there is no formal guidance on how a child is to be managed following a section 12 removal. Garda members receive no guidance on how children should be treated when in an environment such as a Garda station to avoid greater traumatisation. Combined with the general absence of training in child protection among members of AGS, this leaves children at high risk of further traumatisation following section 12 removal.

As stated earlier in this audit, 58% of respondents to the questionnaire identified a hospital or Garda Station as the initial location to where the child was removed, with the

majority stating that the average time spent in this location was in the time range of 1 to 6 hours. Gardaí do not have access to appropriate dedicated facilities for children following section 12 removal: children subject to a power designed to remove them to a place of safety.

For a child to be removed from family care in and of itself may cause distress. This is particularly so in cases of forced removal, and where the child may have witnessed his or her parent actively resisting the removal. This issue is fully explored at page 129 of this audit where it is stated that members of AGS experienced resistance in 25.5% of all cases where section 12 powers were invoked – the vast majority of these cases involving parental resistance.

In addition to maltreatment, disruptive attachments, mental health issues, substance abuse issues, and other traumas the audit found as justifications for section 12 removal, the child in most instances has to cope with being removed to an environment that is alien to him or her. The child then has to wait for several hours until an appropriate placement is found.

#### **6.2.11 Handover**

The circumstances of the handover of care of the child, and the person or agency into whose care the child was placed, were varied. As the majority of these cases took place outside of Tusla's standard hours of service, a number of respondents in the various stages of the audit placed the child removed under section 12 with emergency foster placements arranged through the Five Rivers organisation. In these cases, respondents often had to travel significant distances to the designated foster placement, to hand over the child. For example, Garda W described having to drive over an hour away from the station to the emergency foster placement, with another Garda from the station. Respondents, such as Garda L considered these handovers to be enormously time-consuming, and resource draining. It is also notable that respondents knew little or nothing about these placements, how they were organised, or the legal basis upon which these handovers took place.

#### **6.2.12 Follow-on Services**

The lack of appropriate follow-on services available in a timely, seamless manner has the potential to further compound the difficulties already experienced by the child. This can result in feelings of uncertainty, isolation, shock, confusion, embarrassment and anxiety within the child.

Garda members who invoke the section 12 powers are generally unaware of what follow-on services are available to them until they try to access such services. In many instances, their supervising Sergeants were also unaware of available services, with most describing a vague awareness of the Five Rivers organisation as performing some important function. As a result, they cannot convey any sense of confidence or certainty to the child as to what will happen next, who will be taking care of him or her, in what location and for how long. Such uncertainty has the capacity to engender feelings of anxiety particularly in younger children. The fact that in many instances children subject to section 12 powers are taken to a Garda Station or hospital may contribute to an erroneous belief that they have done something wrong, or are in some way ill and in need of hospitalisation with other sick children.

#### **6.2.13 Out-of-Hours Service**

Most respondents in the various stages of the audit were stationed in regions of Ireland that did not have access to a Tusla out-of-hours service, though many of those incidents of section 12 removal took place outside of Tusla's standard hours of service.

The existing, geographically-limited out-of-hours service provided by Tusla was also suggested to be systemically inadequate as it could not facilitate access to case files on particular children by out-of-hours social workers. This finding may suggest the absence of a comprehensive and unified system covering the children and families with whom Tusla is engaging.

#### **6.2.14 Private Agencies**

The use of the private fostering service Five Rivers as the *de facto* official out-of-hours child protection service by AGS was among the most prominent themes that emerged throughout this audit. In nearly all areas outside of greater Dublin, Five Rivers functions

as the sole service to which members can turn when dealing with a section 12 removal, outside of Tusla's standard service hours.

Respondents who expressed opinions on the quality of the service, such as Garda W and Garda Q, were generally very positive. However, these positive responses were largely confined to the 24 hour, year round, availability of Five Rivers. It is also crucial to note that no respondent was able to give a detailed insight into the nature of the Five Rivers organisation. No respondent was in a position to explain the legal basis upon which children were transferred from the care of AGS into the care of an emergency foster placement organised by the Five Rivers organisation. None of the interview respondents were in a position to provide information on the regulatory oversight, if any, of the Five Rivers organisation. A handful of interview respondents echoed a pattern of responses in the questionnaire stage, in suggesting a vague assumption that Five Rivers were contracted in some way by Tusla to provide the out-of-hours service.

### **History of Private Social Service and Care Provision in Ireland**

Since before the foundation of the Irish State, the private and voluntary sectors have played, and continue to play a central role in the provision of essential educational, health, addiction, homelessness, and childcare services in Ireland.<sup>90</sup> This effective contracting-out of responsibility for the provision of essential social and health services by the State to non-State actors – typically religious organisations – is also central to the history of institutional abuse and exploitation of children, women, and adults with mental health issues in post-independent Ireland.<sup>91</sup> The audit's findings show that the Irish state continues to heavily rely on private organisations in the provision of emergency foster care services in Ireland.

The central role of the private sector in the provision of essential emergency foster care services poses two key concerns. Firstly, the contracting-out of such services to non-

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<sup>90</sup> Sarah-Anne Buckley, *The Cruelty Man: Child Welfare, the NSPCC and the State in Ireland, 1889-1956* (Manchester University Press 2013); Caroline Skehill, "The Origins of Child Welfare Under the Poor Law and the Emergence of the Institutional versus Family Care Debate", in Crossman and Gray (eds), *Poverty and Welfare in Ireland 1838-1948* (Irish Academic Press 2011).

<sup>91</sup> *Commission to Inquire into Child Abuse*, Chapter 4, prepared by Eoin O'Sullivan, "Residential Child Welfare in Ireland, 1965–2008: An Outline of Policy, Legislation and Practice: A Paper Prepared for the Commission to Inquire into Child Abuse" <http://www.childabusecommission.ie/rpt/04-04.php> (visited 29 March 2016); James Smith, *Ireland's Magdalen Laundries and the Nation's Architecture of Containment* (Notre Dame 2007).

State bodies, dilutes and diminishes the understanding that it is the responsibility of the State to provide such child protection services.

Secondly, the current privatised model of emergency foster care services in Ireland effectively removes those services from the broader public services industrial relations infrastructure.

#### **6.2.15 Children with Challenging Behaviour**

The audit also revealed a pattern of private service providers refusing to organise placements for children with challenging behaviour. This highlights a key issue with the heavy reliance by the State on private, non-statutory frontline service providers. In a large proportion of cases, there was no agency available out-of-hours with an express statutory obligation to take the child into care. Where Tusla provides no service, the private service providers who have filled the gap appear to be under no statutory obligation to take children they deem to be too problematic or difficult, creating a significant and troubling gap in the child protection infrastructure in Ireland. Additionally, it is not clear upon which criteria private service providers determine children too problematic to take into care.

#### **6.2.16 Foster Care**

A theme that emerged in various stages of this audit, centred on the capacity of some foster placements to care for children with complex and challenging needs. While this is technically beyond the scope of the audit, many respondents offered accounts of their experiences of the foster care system, and its capacity to manage children with challenging behaviour.

The evidence from the audit suggests there are issues with the management of children with complex and challenging needs by the foster care system in Ireland. While feedback on fostering in this audit was generally very positive, some cases reviewed raise doubts about the capacity of foster placements to manage and provide security and care for some children in the care system.

All children needing substitute care, whatever their age, physical, mental or emotional disabilities, should have the opportunity to live in a foster family. That said, one of the

most serious problems facing social workers in Tusla is locating suitable placements for adolescents with behavioural difficulties. Foster placements for such adolescents appear highly fraught and susceptible to disruption. This is not surprising given the fact that troubled adolescents present the greatest challenge for those involved in the child care system. They often display serious behavioural problems and may have very serious needs. Troubled adolescents present social workers with the task of locating appropriate, yet scarce placements. They also present a challenge to foster parents in terms of managing their needs and behaviour. Training for foster parents should be a prerequisite of this form of care before and during placement, and also for social workers involved in the supervision of these placements.

In order to assist foster parents in the challenge of caring for troubled adolescents, supports must be constructed around this type of placement. This might take the form of:

- (i) child care workers who can give foster parents a break or assistance in periods of acute stress;
- (ii) linking foster parents with residential centres which can give respite care and training/support;
- (iii) additional allowances and monetary assistance; and
- (iv) support from adolescent services, created by linking the efforts of current agencies and personnel in the field, for example Tusla and youth services.

It is vital in planning foster care for adolescents with behavioural difficulties to be clear about the limits of foster care. International research and experience signposts the need for caution. Some young people have no desire to be placed in a family. Others have needs that cannot be satisfied in a family setting. It impacts negatively on the lives of young people and of foster families, and the overall perception of foster care, if these realities are ignored. The initial enthusiasm for foster care can blind many to its limitations. It has a critical and significant role to play in a network of services for adolescents at risk, but a policy that dictates that foster care can or should provide all placements in care for all adolescents is quite misguided. It is therefore necessary to develop a strong and cohesive residential care service alongside a thriving foster-care service.



### **6.2.17 Training in Child Protection**

The findings from both the interview stage, and mirrored in the questionnaire and focus group stages of this audit, are clear that there is little or no emphasis on formal training of Gardaí in relation to child protection.

The vast majority of respondents explained that any training on the invocation of section 12 was basic, and had little impact on them. Other respondents explained that little or no emphasis was placed on children's rights, or on child welfare or protection, in the core assessment during Garda basic training in Templemore College.

There is an explicit, widespread, and deeply-held culture within AGS of privileging on-the-job learning, which has undermined respect for the value of core training in Templemore. This organisation-wide relegation of the importance of formal basic training may also reflect a cultural tendency within the Templemore College itself, to diminish the value of basic training.

Of those members who provided information to the audit, a number, such as Garda B, Garda Q, Garda S, Garda T, and Garda Z, said they would like to have more joint training with social workers, to enable them to understand the systemic and environmental realities in which social workers make their decisions. Garda B felt it was important for Gardaí to be trained along with what he felt were the "actual professionals" in child protection in Ireland: child protection social workers. Garda Z explained that there was a need to "demystify" the decision-making processes, as there was a pervasive background assumption among many Garda members that social workers were often attempting to pass on responsibility for complex cases to AGS. Garda Z was also interested in understanding the different thresholds for intervention governing child protection social workers, and emphasised that trust between the two organisations was essential to ensure cooperation in cases involving children.

### **6.2.18 Training in Ethnic and Cultural Diversity**

In light of the increasing ethnic and cultural diversity in Irish society, and the distinct sensitivities this change demands of policing practices in general, and child protection practices in particular, respondents in the various stages of the audit were asked what training they received in how to deal with these changes. Evaluating levels of guidance

and training on how members of AGS should address these on-going changes to Irish society is also central to whether AGS is racially profiling children in their exercise of section 12 powers. Finally, this data is relevant to the equally important prospective question of whether Garda members are equipped with the critical skills necessary to avoid racially profiling children when exercising their section 12 powers in an ethnoculturally diverse Ireland.

All but one of the interview stage respondents said they had not received training in ethnic and cultural diversity, or had no memory of having received such training. These findings suggest a possible lack of organisational coordination in how AGS should respond to contemporary ethnic and cultural diversity in the population. These findings also suggest a policy failure on the part of AGS management on how to deal with these changes, or to ensure such policies reach through to Garda members operating in the field. Given the recent problematic experiences, failures and successes in neighbouring jurisdictions (most notably policing in England), in adapting to multiculturalism from a policing perspective, it is important that AGS learn from its colleagues abroad. Additionally, AGS should seek to engage with independent child protection, policing, and critical race theorists and researchers, both in Ireland and abroad, when developing a new policy direction.

#### **6.2.19 Aftermath**

This audit reveals an absence of formal support structures for Gardaí in the aftermath of dealing with traumatic cases.

### **6.3 RECOMMENDATIONS**

The audit recommends therefore that the following measures be taken:

#### **6.3.1 Change of Ethos**

A key recommendation of this audit is the need for a cultural change in the child protection system as a whole. Each and every person working within the system must take responsibility for his or her own role in promoting the welfare of children and in ensuring their protection.

### **Recommendation**

*A cultural change must occur within the child protection system. Each and every person working within the system must take responsibility for his or her own role in promoting the welfare of children and in ensuring their protection.*

#### **6.3.2 Risk Assessment**

AGS members must conduct risk assessments prior to invoking section 12 powers, independent of the risk assessment undertaken by Tusla. It is imperative that the psychological and mental health needs of children and young people form part of that risk assessment.

In terms of a risk assessment, it is accepted that there are certain behaviours that are clear and strong indicators that the child/young person may be at risk or vulnerable. These include alcohol, drug, solvent abuse and fire-setting. Escalating patterns of ‘at risk’ behaviour, and poor impulse control should trigger immediate attention and responses from all professionals involved.

### **Recommendation**

*AGS members must conduct risk assessments prior to invoking section 12 powers, independent of the risk assessment undertaken by Tusla. It is imperative that the psychological and mental health needs of children and young people form part of the risk assessment.*

### **Risk Principles**

Professor Eileen Munro’s comprehensive review of child protection systems in England and Wales<sup>92</sup> examined whether social workers should follow the lead of the Association of Chief Police Officers (ACPO) in adopting a “Statement of Risk Principles”.<sup>93</sup> Such guidance on the exercise of professional judgment is rooted in a concern that uncertainty in relation to probabilities that particular child protection risks might occur requires a mature and appropriate evaluation of the competing risks between intervention and non-intervention by social workers or police. In other words: “Those involved in child protection must be ‘risk sensible’.”<sup>94</sup> This understanding of uncertainty around risk and

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<sup>92</sup> Professor Eileen Munro, The Munro Review of Child Protection: Final Report – A Child-Centred System (Department for Education, May 2011).

<sup>93</sup> Munro Review – Interim Report 2011, para 4.48.

<sup>94</sup> Munro Review: Final Report, para 3.18.

probability emphasises that all options for child protection professionals, whether interventionary or not, pose some risk of harm to the child, and requires such professionals to challenge tendencies towards an unrealistic position of risk aversion.

The Munro Review recommends that all child protection professionals in England adopt a similar, modified statement of risk principles to those adopted by the ACPO.<sup>95</sup> The ten recommended risk principles are couched in pragmatic, yet generalised form, and encourage the empowerment of child protection professionals to engage with the inherent reality of risk uncertainty and competition, in circumstances where they as key decision-makers must act (Principle 1). The overarching welfare-oriented objectives, to all individuals and communities, of the activities of child protection professionals (Principle 2), and the requirement that those professionals balance the various potential harms between intervention and non-intervention to these various individuals and groups (Principle 3), are also included. Principle 4 explains, “Harm can never totally be prevented”, and encourages an emphasis on the quality of the process, rather than outcome, in professional decision-making. Principles 5 and 9 envisage, and encourage greater inter-agency cooperation and risk sharing, in pursuit of error reduction in child protection decision-making. Principle 6 calls for consistency in child protection logics and decision-making between different institutions involved in child protection. Principle 7 deals with record-keeping. Principles 8 and 10 encourage operational learning through successes as well as failures, and the fostering of good quality decision-making.

Munro also outlines the need to depart from the culture of blame following instances of individual failure, as this undermines the fostering of mature and intelligent decision-making, and encourages risk-averse logics and practices that themselves risk harming children, families and communities.<sup>96</sup> The operationalisation of the risk principles requires such a departure from this culture of blame. Relatedly, the Review also recommends learning from the lengthy experience of the police in its media relations practices and policies, and outlines the need for social workers, like other actors in the child protection framework, to adopt more sophisticated strategies to engage with, and manage the media, and public trust and confidence in the system.<sup>97</sup> Munro explains that appropriate management of communications following highly-publicised child protection

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<sup>95</sup> Munro Review: Final Report, para 3.18.

<sup>96</sup> Munro Review: Final Report, para 7.9.

<sup>97</sup> Munro Review: Final Report, para 7.65-7.72.

failures is necessary to avoid the natural tendency of front-line professionals towards risk aversion following intense negative media scrutiny.

The findings of this audit indicate a heavy reliance on “common sense” decision-making by members of AGS when undertaking their child protection functions. While “common sense” decision-making can often, as seen in this audit, lead to appropriate judgments and desirable outcomes, its opaqueness and lack of structure can lead to inconsistency, and can also intentionally or subconsciously mask prejudiced value judgments. As a result, the audit recommends the development of a more structured decision-making process to identify and learn from good and bad decision-making, and enable more consistent decisions on coercive intervention by Gardaí. In line with the Association of Chief Police Officers’ (ACPO)<sup>98</sup> Statement of Risk Principles, and the risk principles set out in the recommendations of the Munro Review 2011,<sup>99</sup> the following set of risk principles should be adopted by AGS to enhance the transparency and quality of its decision-making processes in child protection scenarios, and to encourage the greater development of a reflexive policing practice by AGS. Like the ACPO and Munro risk principles, these principles are designed to encourage mature decision-making in scenarios where members of AGS feel they may be required to exercise their child protection powers. The following principles are context-specific to the operation of policing and child protection in Ireland, and the distinct legal and organisational frameworks in which it operates. These principles are also informed by the general findings and conclusions of this audit.

## **Recommendation**

### *Risk Principles for An Garda Síochána*

*Principle 1: An Garda Síochána performs a central role in the child protection system in Ireland. Like all professionals working in child protection, members of AGS are required to make decisions in conditions where the degree of probability that a risk to a child’s welfare will materialise is uncertain.*

*Principle 2: The Irish legal order expressly recognises distinct constitutional rights of the child, of the family, and of communities of religious belief. As agents of the State with distinct protective functions and*

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<sup>98</sup> See <https://s3-eu-west-1.amazonaws.com/rbi-communities/wpcontent/uploads/importedimages/acpo-risk-principles.pdf> (visited 11 April 2016).

<sup>99</sup> Professor Eileen Munro, *The Munro Review of Child Protection: Final Report, A Child Centred System* (Crown Publications 2011).

*responsibilities, members of An Garda Síochána are required to respect and vindicate those rights in any decision-making that has the potential to infringe those rights.*

*Principle 3: Maintaining and protecting the safety, security, well-being, and constitutional rights of individuals and communities is a primary consideration in risk decision-making by State agents involved in child protection.*

*Principle 4: Risk-taking involves judgment and balance, with decision-makers required to consider the value and likelihood of the possible benefits of a particular decision, against the seriousness and likelihood of any possible harms.*

*Principle 5: Harm can never be totally prevented. Risk decisions should, therefore, be judged by the quality of the information-gathering and decision-making, not the outcome.*

*Principle 6: Taking risk decisions and reviewing others' risk decision-making is difficult. Account should therefore be taken of whether that decision-making involved dilemmas, emergencies, was part of a sequence of decisions, or might properly be taken to other agencies, or actors.*

*Principle 7: If the decision-making is shared with appropriate partner agencies and actors, then the risk is also shared, and the risk of error is reduced. Decision-making on child protection concerns should therefore involve meaningful engagement, information-sharing, and cooperation with all responsible and competent partner agencies, so that a wealth of experience and insight can be brought to bear on the risk decision.*

*Principle 8: Since good risk-taking depends on quality information, those working in child protection should share relevant information with partner agencies about people in the household affected who pose a risk of harm to themselves or others, or people who are vulnerable to the risk of being harmed, and devise effective structures, procedures and systems to facilitate information-sharing between partner agencies.*

*Principle 9: The standard expected and required of those working in child protection is that their risk decisions should be consistent with those that would have been made in the same circumstances by professionals of similar specialism or experience.*

*Principle 10: To reduce risk aversion and improve decision-making, child protection needs a culture that learns from successes as well as failures. Good risk-taking decision-making should be identified, commended and shared in a regular review of significant events.*

### **6.3.3 Early Intervention**

Where concerns or referrals are made to Tusla with regard to a child/young person, it is essential that Tusla respond appropriately and immediately. The vast majority of such reports are likely to be genuine and require consideration within an agreed national assessment framework.

Such early intervention is necessary to ensure that the safety, protection and well-being of the child/young person is given due priority. In a number of cases subject to section 12 powers, and reviewed during the audit, the families and children involved were known to Tusla for some time prior to invocation of the section 12 power.

In the case of *HSE v LW & GW*,<sup>100</sup> it was noted that social work support and interventions were put in place for the family as far back as 1998 but the court noted that “this intervention does not appear to have been sufficient to effect any change in the family dynamic.” The court noted that the children were registered under the Child Protection Register in 2004 under the category of neglect. The *Guardian Ad Litem* in that case was highly critical that, despite the children being on the register, further abuse and neglect occurred of the child that remained in the home.

#### **Recommendation**

*Where particular needs are identified by Tusla in dealing with a family, it must be ensured that supports or interventions that are put in place respond to those needs and are not merely generic or standardised response programmes.*

### **6.3.4 New Garda Protocol**

As discussed in detail in chapters 1 and 2, Part III of the Child Care Act 1991 seeks to secure the protection of children in emergency situations and provides AGS and Tusla with certain powers in emergency situations. Under section 12 of the 1991 Act, a member of AGS is given the power to remove a child to safety where there are

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<sup>100</sup> [2012] IEDC 4.

reasonable grounds for believing that there is (a) an immediate and serious risk to the health or welfare of the child and (b) the delay necessitated in seeking an emergency protection order under section 13 of the Act or applying for a warrant under section 35 of the Act would not sufficiently protect the child.

When exercising his or her powers under section 12, a member of AGS does not require a warrant and may, where necessary, be accompanied by such other persons as may be necessary (e.g. a social worker). Where a child is removed under section 12, he or she must be placed in the custody of Tusla in the area as soon as is possible<sup>101</sup> and where the child is not returned to his or her parents, custodians or guardians, Tusla is obliged to make an application for an emergency care order at the next sitting of the local District Court, and the court must be satisfied that the criteria in section 13 of the 1991 Act are fulfilled.<sup>102</sup>

Section 13 provides that a judge of the District Court can make an emergency care order which provides for short-term emergency protection on the application of Tusla where the Court is of the opinion that:

- (a) there is an immediate and serious risk to the health or welfare of the child which necessitates his being placed in the care of Tusla; or
- (b) there is likely to be such a risk if the child is removed from the place where he is for the time being.

The threshold for granting an emergency care order is lower than that required for other orders under the 1991 Act as the Court need only form an “opinion” that there is reasonable cause to believe that either of the grounds set out in (a) or (b) are in play. It should also be noted that the temporary nature of the emergency care order (i.e. it can remain valid for up to 8 days although a court may reduce this) means that it is unlikely that it is in itself unconstitutional as it aims to strike a balance between giving Tusla time to prepare an application for a care order while ensuring that parents are not denied custody for an extensive period of time.

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<sup>101</sup> Child Care Act 1991, section 12(3).

<sup>102</sup> Child Care Act 1991, section 12(4).



Applications for emergency care orders must also be made on notice to the relevant parties and no provision allows for a direction to be sought at shorter notice.

However, even in circumstances where there is an immediate and serious risk to the child, it may not be necessary to grant an emergency care order. An example of this is where the risk to a child can be alleviated by removing the abusive or hostile party, either by the other party applying for a barring or safety order under sections 2 or 3 of the Domestic Violence Act 1996 or by Tusla applying on behalf of that other party under section 6 of the 1996 Act. The Supreme Court in *The State (DD) v Groarke*<sup>103</sup> was clear that a court must positively inquire into whether the welfare of the child requires the removal of the child from the innocent parent. Thus a court would only be justified in removing the child where the innocent parent was unable to protect the child from the abusing parent.

### **England and Wales**

The position in England and Wales has been discussed in detail in Chapter 2.

### **Site Visit to London Metropolitan Police**

In February 2016, a site visit was undertaken to meet with senior members of the London Metropolitan Police's (Met) Child Protection Command, at Holborn Police Station. Detective Superintendent Steve Williams, Detective Chief Inspector John Foulkes and Detective Inspector Anthony McKeown participated in the meeting, and gave a general overview of the operational framework of the Command, and answered specific questions relevant to the audit. The Child Protection Command also organised and facilitated a meeting with two child protection social work managers from two local authorities within the Met's jurisdiction.

The visit sought to gain organisational and operational insights into how the Met undertakes its child protection responsibilities under section 46 of the Children Act 1989. The visit also sought to examine the operational aspects of inter-agency cooperation between the Met and its child protection partners in local authority social work teams, and elsewhere.

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<sup>103</sup> [1990] 1 IR 305.

There are some obvious differences between the English and Irish contexts – principally population numbers and density, along with significant differences in ethno-cultural diversity. There were also some notable differences with regard to how Met Police become involved in section 46 cases, with most of their referrals coming from schools – a pattern remarkably different from the findings of this audit in relation to instigations of Garda involvement in section 12 cases in Ireland.

Briefly, the Child Protection Command in the Met comprises of 4 divisions; each division includes four teams; each team approximately consists of 1 Detective Inspector, 2 Detective Sergeants, and 4 Detective Constables. Teams normally cover 2 Boroughs, though some, such as Haringey (the Borough in which the Baby P case took place) have one dedicated team. Each team is divided up into units, to provide 24 hour, year-round cover. The entire Command, which covers a population of approximately 8 million, is comprised of 480 specialist child protection police officers.

In 2015, Met officers exercised their section 46 powers 1,845 times, a rate higher than other territorial police forces in England and Wales. Interestingly, section 12 of the Child Care Act 1991 was invoked by AGS in respect of 718 incidents in 2015.

Management from both the Met and the local authority social workers were emphatic that the specialist child protection units were essential. The model of specialist police units – the “CAIT” (Child Abuse Investigation Teams) – with a closely structured working relationship with local authority social workers, is viewed as the most effective approach, and a refined result of various high-profile child protection failures, and their subsequent public investigations. The development of these coordinated inter-agency partnerships is also the result of strategic reorganisations of resources following reduced investment in policing, and cutbacks in local authority social work teams. A large proportion of these specialist units also operate as “Sapphire Units” which investigate sexual assault, exploitation and paedophilia. The Met interviewees explained that the Met envisaged future strategic co-location of the domestic violence specialist units with the child protection, and sexual abuse and exploitation units. Each station in the Met has someone dealing with child protection issues – a member of a CAIT. This officer liaises with other specialist teams and management in the Child Protection Command, and helps expand the knowledge of child protection issues at a local level.

In terms of training, all members of these specialist units under the Child Protection Command undertake, at a minimum, the Met's dedicated one-week child protection training package before beginning work on their team. There is also a 2-week follow-up training programme, along with specialist interview training.

All Met officers are required to undergo computerised diversity training, though the interviewees felt the best cultural sensitivity training was derived from exposure to London's highly ethnically diverse population. Early community engagement was seen as essential to avoid tension and potentially damaging coercive police interventions, due to cultural norms that conflict with criminal laws and child protection objectives. In this regard, the Met interviewees gave the example of measures being undertaken to address highly politicised concerns over female genital mutilation. They also advised that such community engagement efforts must be committed to at management level, and properly resourced, in order to be effective. These strategies, the interviewees highlighted, were the result of some serious systemic and cultural failures on the part of the Met, in cases such as the Stephen Lawrence murder investigation and its aftermath. The interviewees were also emphatic that other police forces, such as AGS, can learn from the costly policy and practice mistakes they had made while adapting to increasing cultural diversity.

The Command also takes overall responsibility to increase awareness of child protection issues in the general police force. Part of this involves circulating case examples, which illustrate complex borderline cases where child protection decision-making was involved, and the appropriateness of that process. The interviewees emphasised the need to share knowledge and experiences with the wider force for contextualised learning.

Regarding recruitment, the Met interviewees explained that candidates tend to be self-selecting: people who want to do the job; officers with empathy. These candidates are psychologically screened on an on-going annual basis, as part of a mandatory screening programme.

Burnout is a consideration management attempt to monitor, though resource constraints limit the degree to which the Command is able to rotate specialist officers off frontline duty. They explained the average time in service within the Command is 3 to 5 years.

In relation to oversight and accountability, the Office for Standards in Education, Children's Services and Skills (Ofsted) monitors and provides opinions on the exercise of section 46 by the Met. These Ofsted reports compare rates of section 46 use between different territorial police forces in England and Wales. The Met interviewees also detailed instances involving the formalised Serious Case Review system, in which independent Local Safeguarding Children Boards undertake statutorily-guided investigations into cases of child protection failures.<sup>104</sup> This process allows for external investigation into such failures, and publishes findings and recommendations, so that operational practices, cultures and systems can be developed to avoid future failures. The social worker interviewees were very enthusiastic in their descriptions of the Serious Case Review system as a mechanism of oversight and accountability in child protection. Learning from errors was seen by both groups as essential.

All three Met interviewees noted their concern over critical Ofsted reports on excessive exercise of section 46. They felt this risked creating a chilling effect where police were fearful of removing children under section 46, thereby putting children at risk.

A general account was provided by the Met interviewees regarding normal procedures for section 46 removal. They explained standard practice is to try to remove the child with a social worker present. It is noteworthy that the social worker interviewees were emphatic that the decision to remove is wholly the police officers', and is exercised under different thresholds and logics to the local authority social workers. The social workers were also highly sensitive to the subjective nature of the section 46 power.

Following removal under section 46, the social worker then has immediate responsibility to accommodate the child – not the police officer or his or her 'designated' supervising officer. They explained it was extremely rare for a child to be brought to a station and kept there for lengthy periods of time waiting for a social worker. The officers also explained that most exercises of section 46 do not take place during the night, as many referrals come from schools, and the power is normally used to remove the child on the school premises.

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<sup>104</sup> See <http://www.nspcc.org.uk/preventing-abuse/child-protection-system/england/serious-case-reviews/> (visited 29 March 2016).

If a removal is undertaken at night or at a weekend, each Borough local authority has an emergency social work team on duty, generally consisting of one social worker. The social worker interviewees explained this emergency duty social worker has full remote access to the local authority's child protection system. However, the local authorities do not operate a combined city wide database which all social workers can access.

When a child is removed by police under section 46, various demographic details are recorded as routine, including the child's ethnicity and the child's views on the removal. A case incident cannot be closed on the Met's computer system until all the child's details and case information is inputted. The process is overseen by the 'designated officer' until social services confirm the child is in stable accommodation, and the incident is closed.

The social worker interviewees explained that emergency foster placement of a child following removal is wholly the responsibility of the social worker. While the local authorities manage their own list of emergency foster carers, for some older children the local authority may need to have recourse to a private provider. However, all private providers are Ofsted regulated.

In relation to information-sharing, social worker interviewees explained that child protection priorities override any data protection concerns, and they felt it was operationally essential for both social work teams and police to share information on child protection cases. Past experiences and findings from Serious Case Reviews have consistently pushed for greater inter-agency pooling of knowledge, expertise, and operational coordination.

The social worker interviewees also explained that the police officers on the CAITs have access to the local authority's social worker database – though it was not clear whether those officers' access is confined to the database for the Borough their station is in, or whether they have access to all databases from all Borough social work teams. This access allows these police officers to immediately examine if the child is subject to a child protection plan. These police officers also assess the suitability of the potential family or friends as alternative placements following the removal on behalf of the social worker.

As part of this overarching organisational and ideological push towards systemic integration and coordination in child protection, the social work interviewees explained that local hospitals in the Borough have a list of children who are subject to child protection plans by the local authority. It is not clear if these hospitals would have access to lists of children from other local authority child protection teams.

Met interviewees described a change of culture within the Child Protection Command in the last five years. Prior to this change, it had not been seen as an operationally significant, or strategically coordinated division. This shift had seen the development of a robust offender management programme, and a performance and outcomes focused culture, with performance meetings once a month where detection rates are carefully monitored by the senior management.

It is suggested this shift in the Met's policing priorities is part of an emerging organisational realignment in policing across England and Wales, which is seeing child protection and sexual violence policing reprioritised in a higher position in the hierarchy of policing strategies and objectives.<sup>105</sup> However, all Met interviewees expressed the view that the area is still 'low-prestige', and only gains public attention when there is a major failure.

### **Scotland**

Under the Children (Scotland) Act 1995 the police in Scotland have the power to ensure the immediate protection of children believed to be suffering from, or at risk of, significant harm. Section 61 of the 1995 Act provides that in an emergency situation where a police officer has reasonable cause to believe that the conditions for making a child protection order are satisfied, and that it is not practical in the circumstances to make such an application, the officer may remove the child to a place of safety.<sup>106</sup> However, it is also possible for a local authority or any other person to make an application to a justice of the peace seeking authorisation to remove a child to a place of safety or to prevent the child from being removed from a place where he or she is being

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<sup>105</sup> See former Chief Constable Sara Thornton's John Harris Memorial Lecture for the Policing Foundation on 20 July 2015: "We Must Re-Imagine Policing in the UK" <http://news.npcc.police.uk/releases/npcc-chair-sara-thornton-we-must-re-imagine-policing-in-the-uk> (visited 29 March 2016).

<sup>106</sup> Children (Scotland) Act 1995, section 61(5).

accommodated.<sup>107</sup>

The primary difference between the use of such powers in Scotland and those in operation in Ireland, and England and Wales is the length of time for which they are valid – under the 1995 Act in Scotland, the powers granted by section 61 last for a maximum of twenty-four hours.<sup>108</sup>

If the officer has reasonable cause to believe that the conditions for making a child protection order under section 57(1) of the Act are no longer satisfied and that it is no longer necessary to keep the child in order to protect him or her from significant harm, then he or she must not continue to keep the child. A child may not be kept in a place of safety under the powers conferred under section 61 if the principal report considers that the conditions for the exercise of that power are not satisfied or that it is no longer in the child's interest that he or she should be so kept.

The Scottish provisions contained in the 1995 Act draw substantially on the experience of England and Wales.<sup>109</sup> However, in addition to the shorter validity of the order, it is also necessary for an officer to be satisfied that it is not practicable to apply to a sheriff for a child protection order.<sup>110</sup>

### **Australia**

In the Australian State of New South Wales, under section 46 of the Children and Young Persons (Care and Protection) Act 1998 where there is an urgent need to protect a child or young person, the community services can apply to the Children's Court for an Emergency Care and Protection Order (ECPO). The Children's Court can make an ECPO where it is satisfied that the child or young person is at risk of serious harm. The ECPO places the young person in the care of the "Secretary of the Department" or the person specified in the order and has effect for a maximum of fourteen days and can be extended once only for another fourteen days.

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<sup>107</sup> Children (Scotland) Act 1995, sections 61(1) and 61(2).

<sup>108</sup> Children (Scotland) Act 1995, section 61(4).

<sup>109</sup> J. Masson with D. McGovern, K. Pick and M. Winn Oakley, *Protecting Powers: Emergency Intervention for Children's Protection*, (Wiley, 2007) at p. 47.

<sup>110</sup> Children (Scotland) Act 1995, section 61(5).

### **Site visit to New York City**

In April 2016 a site visit was undertaken in New York City, where inter-agency child protection innovations have been legislatively formalised in the aftermath of the death of Nixzmary Brown in 2006. The New York Police Department Special Victims Division coordinates its child protection functions through Child Advocacy Centres to promote inter-agency cooperation in circumstances where a child is removed by a police officer. A child is taken to a Child Advocacy Centre by the police officer where all child protection partner agencies, which are co-located onsite, jointly handle the case. The Centres house a specialist child protection unit and a forensic paediatrician. These inter-agency teams interview not only victims but also siblings to obtain a complete picture of the circumstances surrounding the removal of the child.

The audit examined the impact of the innovations in the Bronx district of New York in which the latest Child Advocacy Centre was opened in 2015. A site visit, organised by the Deputy Chief Commanding Officer of the New York Police Department Special Victims Division, Michael J. Osgood, provided the audit with an invaluable insight as to the operation of the Centre.

The Centre is a safe, child-focused space for a child to be interviewed. A team of highly motivated professionals from law enforcement, child protection services, the prosecution services and medical services all work together in the same place to respond to the child protection concerns. The co-location of services includes investigation and prosecution of child abuse, support services and counselling for victims. This on-going co-location of these child-protection disciplines in the same unit promotes meaningful inter-agency cooperation through genuine partnership in child protection. Moreover, the availability of a forensic paediatrician improves the quality of the evidence gathered during engagement with a child, to enhance the prospect of both detection of child abuse, and successful prosecution.

The Child Advocacy Centre (CAC) model<sup>111</sup> offers many advantages, including reductions in expenditure in pursuing child abuse investigations, and court proceedings.

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<sup>111</sup> A similar multidisciplinary model, called the Children's House (see <http://www.bvs.is/media/forsida/Barnahus-an-overview.pdf>), has been pioneered in Iceland and is currently being piloted by the Crown Prosecution Service in London: [https://www.cps.gov.uk/news/articles/children\\_and\\_young\\_people\\_as\\_witnesses\\_-\\_alison\\_saunders\\_dpp/](https://www.cps.gov.uk/news/articles/children_and_young_people_as_witnesses_-_alison_saunders_dpp/).



The US National Children's Alliance estimates that the CAC model achieves \$1,000 savings per case compared to non-CAC approaches. The CAC model provides significantly higher rates of coordinated investigations and increased successful prosecution of child abuse perpetrators. An indirect benefit of the CAC model sees child victims of sexual abuse receiving services at CACs as four times more likely to receive forensic medical examinations and referral for mental health treatment, when compared to non-CAC approaches.

### **Recommendations**

*The section 12 power is not subject to any external oversight prior to its execution and while such extraordinary measures may be necessary at times to protect the health and welfare of vulnerable children, it should be stressed that these measures are to be used as a last resort. Clear guidelines for the use of Garda powers under section 12 of the Child Care Act 1991 should be produced and made available to the public. Such guidelines should clearly stipulate that the powers granted under section 12 of the Child Care Act are to be used only as a last resort.*

*AGS should develop a protocol requiring the exercise of section 12 powers to be confirmed by a member not below the rank of Sergeant at the earliest possible convenience following removal.*

#### **6.3.5 Drug and Alcohol Abuse**

In a significant number of cases reviewed as part of the audit, it was evident that drug and/or alcohol abuse by parents was compromising their ability to consistently parent their child. Indeed, in some cases, drug and/or alcohol abuse by the child was the key factor in the child/young person being referred to Tusla or being subject to section 12 powers. This is a problem which has to be tackled. When a social worker comes into contact with a family where drug/alcohol abuse is significantly disrupting familial life, it is essential that such abuse is addressed in a robust and meaningful manner. Additionally AGS, Tusla and other relevant partner State agencies and NGOs should be coordinated to ensure addiction services, and other supports are available and accessible.

### **Recommendation**

*Drug and alcohol abuse place an insurmountable burden on the State agencies and must be viewed as a key risk indicator in terms of child protection.*

### 6.3.6 Data Sharing

Data sharing between AGS and Tusla should be provided for on a statutory basis with a premium placed on child protection. The Data Protection Acts 1988 - 2003 contain rules relating to the protection of personal data. “Personal data” is defined in section 1 of the Data Protection Act 1988 as amended by the Data Protection Act 2003 as data relating to a living individual who is or can be identified either from the data or from the data in conjunction with other information that is, or is likely to come into, the possession of the data controller. The requirements of the Data Protection Acts are heightened if the relevant data falls within what is termed “Sensitive Personal Data”, which includes data as to racial or ethnic origin, physical or mental health, and the commission or alleged commission of any offence. “Sensitive personal data” is defined as personal data as to:

- the racial or ethnic origin, the political opinions or the religious or philosophical beliefs of the data subject;
- whether the data subject is a member of a trade union;
- the physical or mental health or condition or sexual life of a data subject;
- the commission or alleged commission of any offence by the data subject; or
- any proceedings for an offence committed or alleged to have been committed by the data subject, the disposal of such proceedings or the sentence of any court in such proceedings.

The data subject refers to the individual who is the subject of personal data.

Pursuant to section 2 of the 1988 Act as amended, the data controller must, *inter alia*, take appropriate security measures against unauthorised access, alteration, disclosure or destruction of personal data. Section 2A states that personal data shall not be processed (the definition of which includes disclosure) until section 2 is complied with and one of the conditions within section 2A is met. The conditions under section 2A are:

- The consent of the data subject or person acting on his or her behalf (only in certain circumstances) is obtained;
- The processing is necessary for the performance of a contract, to take steps at the request of the data subject prior to entering a contract or for compliance with a legal obligation to which the data controller is subject (other than a contractual obligation);

- To prevent injury or damage to the health of the data subject or serious loss of or damage to the property of the data subject;
- The processing is necessary for the administration of justice, for the performance of a legislative function conferred on a person, for the performance of a function of the Government or a Government Minister or for the performance of any other function of a public nature performed in the public interest by a person; or
- The processing is necessary for the legitimate interests pursued by the data controller or a third party to whom the data is disclosed except where the processing is unwarranted in any particular case by reason of prejudice to the fundamental rights and freedoms or legitimate interests of the data subject.

It is essential that agencies under the umbrella of the child protection services can share information relating to vulnerable children and their families. Such free flow of communication is imperative to the proper functioning of the services. It may be necessary to amend the existing legislation and communications infrastructures to allow for the passing of information between agencies involved in child protection. While there is an immediate need to reorganise and reform internal communications within the child protection system, it is also essential that any reforms enhance the robustness of external security and protection for that information database. This includes appropriate training on data protection responsibilities of all individuals with access to such databases.

Garda Z noted that it appeared the out-of-hours service did not have access to the child's case history, which he felt was a significant inadequacy for any such service. This is in stark contrast to the information-sharing that occurs in similar circumstances in England and Wales. Tusla should consider developing a database that is not restricted by regional barriers, as children can easily find themselves in districts outside of their normal area of residence.

### **Recommendation**

*The Data Protection Acts, and the operationalisation of the Acts by State agencies, should be reviewed in an appropriate way to ensure no legislative roadblock impedes child protection services sharing information relating to vulnerable children and their families.*

### **6.3.7 Inter-Agency Cooperation**

The audit provides clear evidence of a professional silo mentality in protecting vulnerable children. Canada is a jurisdiction that provides a template for placing trust at the centre of inter-agency cooperation with a focus on building personal relationships. In Alberta, for example, trust is implicit in inter-agency cooperation. While the Children First Act 2015 provides an improved legislative framework for promoting inter-agency cooperation, cultural change within AGS and Tusla is required to respect the role of both organisations in protecting children.

#### **Recommendation**

*The implementation of the Children First Act 2015 (when fully commenced) should be reviewed from the perspective of An Garda Síochána and clear guidelines on how cooperation should work in practice between An Garda Síochána and other State agencies should be drafted.*

### **6.3.8 Training**

The audit identified significant weaknesses in the training within AGS, and the view that didactic lectures are of limited value in terms of learning outcomes. Comprehensive training on child protection should be provided as part of the training programme reflecting the current law and international best practice, together with case study examples. There should be appropriate assessment of this coursework to ensure meaningful engagement with the material. Child protection should be given due importance in basic Garda training, to tackle perceptions that it is low-prestige and low-importance work. Contextualising the importance of child protection in broader contemporary policing strategies would be helpful and appropriate in this regard.

#### **Recommendation**

*Comprehensive training on child protection should be provided as part of the Garda training programme reflecting the current law and international best practice.*

### **6.3.9 PULSE**

Members should be required to complete mandatory information fields on PULSE, as set out in Appendix 6. The objective in having clearly defined categories in PULSE is to obviate, insofar as possible, the use of the narrative field as the main source of information or record. This appears to be the position at present. The necessity to

complete each field should also act as a safeguard or check for members, and indeed a reminder, to complete each step in compliance with the stipulated requirements.

AGS should introduce a standardised ethnic identifier as part of the data inputted into PULSE as per recommendation 5 of the 2016 Report on policy and practice in ethnic data collection and monitoring entitled *Counting Us In – Human Rights Count*.<sup>112</sup> Full and accurate demographic data collection is an essential tool for on-going oversight and assessment of policing practices and policies.

A monthly or other regular review by an appropriate person of data entries relating to the invocation of section 12 powers is also recommended. Such a post-event review process should capture difficulties and/or errors, if any, with regard to correct practice and procedure. It would also allow a practical review of the operation of any new provisions to be introduced in due course.

The Garda PULSE system does not routinely record instances where section 12 was considered but decided against. Such information should be recorded on PULSE. Indeed, it is suggested the findings of Garda reluctance in some instances to use section 12 may create a situation where children are not removed from situations where it would be best to do so.

### **Recommendations**

*Members should be required to complete mandatory information fields on PULSE as set out in Appendix 6. The Garda PULSE system does not routinely record instances where section 12 was considered but decided against. Such information should be recorded on PULSE.*

*In overall terms, the average number of section 12 removals per annum is not so large that a full reporting of relevant information would present an onerous task for a Garda member. A monthly or other regular review by an appropriate person of data entries relating to the invocation of section 12 powers is also recommended. Such a post-event review process should capture difficulties and/or errors, if any, with regard to correct practice and procedure. It would also allow a practical review of the operation of any new provisions to be introduced in due course.*

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<sup>112</sup> Pavee Point, *Counting Us In – Human Rights Count!* (March 2016).

#### **6.3.10 Laminated Card**

A laminated card as set out in Appendix 4 should be furnished to every member of AGS.

#### **Recommendation**

*A laminated card as set out in Appendix 4 should be furnished to every member of AGS.*

#### **6.3.11 Child Safety Belts and Car Seats**

All Garda vehicles should be equipped with child safety belts and car seats, in the event that it is necessary to drive with children following the use of section 12 powers.

#### **Recommendation**

*All Garda vehicles should be equipped with child safety belts and car seats in accordance with the law.*

#### **6.3.12 Specialist Child Protection Units**

The vast majority of suggestions for reform by audit respondents centred on the provision of properly resourced out-of-hours social work services, and specialist child protection units within AGS. In relation to the specialist child protection units, there was no clear consensus on whether the unit should be wholly independent within each station, or each division; or whether each Garda unit should have at least one person properly trained in child protection. However, it was clear that such units must be located in a manner effective in terms of access, availability, and local knowledge (i.e. knowledge of local operational strategies and practices, local cases, and local relationships with partner agencies).

#### **Recommendation**

*Specialist child protection units within An Garda Síochána should be established on a national basis.*

#### **6.3.13 Social Workers Assigned to Specialist Child Protection Units**

Consideration should be given to having social workers assigned to specialist child protection units. There are various models used in England and Wales, with some, such as Thames Valley Police's Multi-Agency Safeguarding Hub, employing a co-location model where social workers and specialist police operate from the same office. Further research should be undertaken to examine which partnership model of child protection would best suit the Irish context.

## **Recommendation**

*Consideration should be given to having social workers assigned to specialist child protection units.*

### **6.3.14 Child Welfare and Mental Health**

From a child welfare perspective when considering the findings that emerged from the audit, three recommendations in particular emerge:

#### ***Recommendations***

*From a child welfare perspective, any child who is the subject of section 12 of the Child Care Act 1991 should have a developmentally informed, culturally sensitive, comprehensive assessment that addresses his or her basic needs, his or her safety, barriers to effective parenting, the appropriate fit between the type of care needed and between caregiver and child. This assessment should also address the child's medical, educational, emotional and behavioural needs.*

*The assessment should of necessity be sensitive to any emotional trauma the child may have experienced as a result of being removed under the section and address the effects of separation from his or her family and the effects of disrupted attachments. In particular if a child, as a result of the section being invoked, has been placed in a different geographical location away from community, school and peer supports, the assessment should address as a matter of priority, how to return the child to his or her natural environment as soon as is possible and practicable.*

*An awareness of the likely traumatic impact of the predisposing factors that exist in the child's life prior to the section being invoked, together with a sensitivity of the likely impact on children who are removed under section 12, should permeate all aspects of organisational functioning within AGS and Tusla.*

### **6.3.15 Education, State Care and Social Mobility**

International research literature<sup>113</sup> shows a strong correlation between children who are subject to State removal from parental care, and low levels of educational achievement by those children. This low educational achievement is rooted in a number of factors,

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<sup>113</sup> O'Higgins, Sebba & Luke, *What is the relationship between being in care and the educational outcomes of children? An international systematic review* (REES Centre in Fostering and Education, University of Oxford, September 2015).

[http://reescentre.education.ox.ac.uk/wordpress/wpcontent/uploads/2015/09/ReesCentreReview\\_EducationalOutcomes.pdf](http://reescentre.education.ox.ac.uk/wordpress/wpcontent/uploads/2015/09/ReesCentreReview_EducationalOutcomes.pdf) (visited 29 February 2016); Dill, Flynn, Hollingshead, & Fernandes, "Improving the Educational Achievement of Young People in Out-Of-Home Care" (2012) 34(6) *Children and Youth Services Review* 108.

including low educational achievement among the parents of those children, other pre-care environmental factors affecting the child, and generally unstable home lives which necessitated State interventions that are detrimental to academic success.<sup>114</sup> This low educational achievement is in turn relevant to social mobility for those subject to removal from the family home, and other social achievements.<sup>115</sup> While the international research evidence does not show that State care is itself harmful for a child's educational prospects, it does show that State care does not significantly improve the child's educational prospects.<sup>116</sup>

Evidence from international comparative research also suggests a strong correlation between access to, and achievement in higher education and social mobility.<sup>117</sup> In some jurisdictions, such as England and Wales,<sup>118</sup> the fact that a child spent a month or more in State care is a relevant consideration to the evaluation of academic achievements in university application processes. This procedural and substantive consideration of a child's history in care, reflects institutional acceptance that those removed from parental care have limited future educational and employment prospects, that State care does little to improve those prospects, and that measures must be taken at a much later institutional level to enable children removed from parental care to access those significant social and economic benefits. Such measures may include consideration of a child's history in State care as part of the CAO application process for third-level education.

### ***Recommendation***

*Measures must be taken at a much later institutional level to enhance and enable children removed from parental care to access significant social and economic benefits lost due to the reception into care.*

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<sup>114</sup> O'Higgins *et al* (2015).

<sup>115</sup> Dill *et al* (2012).

<sup>116</sup> O'Higgins *et al* (2015).

<sup>117</sup> The Equality Trust, *Social Mobility and Education*: <https://www.equalitytrust.org.uk/social-mobility-and-education> (visited 28 February 2016); Kate Pickett and Richard Wilkinson, *The Spirit Level: Why Equality Makes Societies Stronger* (Bloomsbury 2011).

<sup>118</sup> For example, see the University of Oxford's undergraduate admissions criteria guidelines on "Contextual Data": <https://www.ox.ac.uk/admissions/undergraduate/applying-to-oxford/decisions/contextual-data?wssl=1> (visited 20 March 2016).



### **6.3.16 Diversity Training**

In establishing the Garda Racial and Intercultural Office (now named the Garda Racial, Intercultural and Diversity Office: GRIDO), AGS demonstrated a commitment to responding to the fact that 12% of the Irish population are non-Irish nationals.

The appointment of 277 Ethnic Liaison Officers for the purpose of directly engaging with members of ethnic minority communities and the Traveller Community is a positive development in building trust and confidence between AGS and all sections of Ireland's minority communities. However, in light of this audit's findings in relation to Garda members' cultural sensitivity, which indicates current policies and practices in this regard have not filtered through to most Garda members, AGS should undertake further training to promote diversity and cultural awareness and sensitivity among all Garda members. AGS should also pursue wider organisational research and strategies to meaningfully engage with Ireland's minority ethnic communities.

#### ***Recommendations***

*GRIDO should be expanded and reviewed to ensure that the positive work undertaken by the Office is relevant to all members of An Garda Síochána and not only members occupying the higher levels within the organisation's hierarchy.*

*All members of An Garda Síochána should be required to undergo diversity training.*

### **6.3.17 Out-of-Hours Social Work Service and Private Providers**

A key issue to emerge in the audit was the widespread use of private providers in the provision of emergency child protection placements.

In November 2015, Tusla commenced an Emergency Out-of-Hours Social Work Service (EOHS) which cooperates with and supports AGS in relation to the removal of a child from his or her family under section 12 of the Child Care Act 1991 and separated children seeking asylum. Through the service, AGS can contact a social worker by phone or arrange access to a local on-call social worker. The EOHS is to be welcomed as it strengthens inter-agency cooperation. That said, there continues to be no comprehensive social work service that is directly accessible to children or families at risk outside of office hours.

## The Legal Position

During the audit, a number of questions emerged concerning the legal position pertaining to private providers involved in emergency accommodation which may be distilled as follows:

- A. Whether Tusla can delegate a core part of its child protection work to an entity that is essentially a private provider?
- B. Whether section 38 of the Health Act 2004 was properly extended to cover Tusla upon the latter's creation?
- C. Does placing children in emergency situations with a private provider come within section 36(1)(a) of the Child Care Act 1991?
- D. Do the 1995 Regulations (S.I. 260 of 1995) apply to emergency placements and can a private provider be absolved from the application of the Child Care Act 1991 or regulations made thereunder?

In answering these questions, a number of documents were received from Tusla. These are set out below:

- A one page letter of May 2009 from external legal advisors on behalf of the HSE to the Department of Health ('the Letter').
- A document from Tusla entitled 'Tusla Out of Hours Services: Section 12 referrals and placements'.
- A 'Service Arrangement' contract between the HSE and a private provider for the period 1 April 2013 to 30 September 2013.

*Whether Tusla can delegate its functions arising out of section 12(4) of the 1991 Act to an entity which is a private provider?*

Section 12(4) of the Child Care Act 1991 provides:

(4) Where a child is delivered up to the custody of [the Agency] in accordance with subsection (3), [the Agency] shall, unless it returns the child to the parent having custody of him or a person acting in loco parentis [or an order referred to in section 35 has been made in respect of the child], make application for an emergency care order at the next sitting of the District Court held in the same district court district or, in the event that the next such sitting is not due to be held within three days of the date on which the child is delivered up to the custody of [the Agency], at a sitting of the District Court, which has been specially arranged under section 13(4), held within the said three days, and it shall be lawful for [the Agency] to retain custody of the child pending the hearing of that application.

It should also be noted that subsections (1) and (2) of section 13 of the 1991 Act provide:

13.—(1) If a justice of the District Court is of opinion on the application of [the Agency] that there is reasonable cause to believe that—

(a) there is an immediate and serious risk to the health or welfare of a child which necessitates his being placed in the care of [the Agency], or

(b) there is likely to be such a risk if the child is removed from the place where he is for the time being,

the justice may make an order to be known and in this Act referred to as an “emergency care order”.

(2) An emergency care order shall place the child under the care of [the Agency] for a period of eight days or such shorter period as may be specified in the order.

*Whether delegation to a private provider gives rise to constitutional considerations?*

Article 15.2.1 of the Constitution places limits on the delegation by the Oireachtas of law-making powers to other entities, in that the Oireachtas must always stipulate the ‘principles and policies’ which are to apply, although others can ‘fill in the details’<sup>119</sup>. Article 34.1 and Article 37.1 provide that only limited powers and functions of a judicial nature can be delegated or conferred upon entities which are not courts, and only then in non-criminal matters. Article 28.2 seems to envisage at least some facility for delegation of the Executive power because it provides that such power shall be exercised “by or on the authority of the Government”.

Insofar as they apply to private providers, the relevant functions at issue are certainly not legislative or judicial, nor do they seem to be executive. They are functions conferred under statute and might be characterised as part of the ‘administrative’ power of the State.

In *An Blascaod Mór Teoranta v Commissioner of Public Works*<sup>120</sup> Budd J., referring to the An Blascaod Mór National Park Act 1989 stated:

Section 5(2) expressly excludes from the ambit of delegations the functions of the Commissioners in respect of the making of bye-laws in section 3 and in regard to acquisition of land in section 4 and in the schedule. Accordingly, it would seem that all other functions of the Commissioners are capable of delegation and this would include the power of the Commissioners under section 8(5) to appoint in writing a person to be an authorised person for the purposes of section 8 which gives powers to members of the Garda Síochána and authorised persons to police the park. If this power under section 8(5) of the Commissioners was to be excluded from the provisions authorising delegation in section 5(2) then one would expect mention of this exclusion as there is of

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<sup>119</sup> *Cityview Press v AnCO* [1980] IR 381.

<sup>120</sup> [1998] IEHC 38.

sections 3 and 4 and the schedule to the Act. While it seems highly unusual that park-ranger type persons might be appointed by the Foundation after delegation of authority from the Commissioners, nevertheless no Irish case has been cited on the point that this giving of policing powers to a private body with no obvious public accountability would be repugnant to the Constitution. Furthermore, section 5(5) makes provision for an order delegating functions by the Minister to the Foundation to be laid before each House of the Oireachtas as soon as may be after it is made. The Oireachtas may pass within 21 days a resolution annulling the order and thus retains some supervisory role in respect of this delegation of power. I accept the Plaintiffs' points that delegation of policing and park-ranger powers to a private body seems dubious and places the Commissioners in the role of a conduit pipe for these powers and functions. Nevertheless in the absence of an Irish case or other strong authority indicating that this is repugnant to the Constitution, and being conscious of the presumptions in favour of constitutionality, I am not persuaded that the provisions enabling such delegation, subject to the supervisory powers contained in section 5(5), are invalid.<sup>121</sup>

Thus, even delegations which might “seem dubious” will not be struck down as unconstitutional unless there is a constitutional basis for so doing.

As stated in chapter 2, Article 42A.2.1° of the Constitution provides:

In exceptional cases, where the parents, regardless of their marital status, fail in their duty towards their children to such extent that the safety or welfare of any of their children is likely to be prejudicially affected, the State as guardian of the common good shall, by proportionate means as provided by law, endeavour to supply the place of the parents, but always with due regard for the natural and imprescriptible rights of the child.<sup>122</sup>

It is doubtful that the reference here to ‘the State’ would be such as to render questionable the placement (under and by virtue of statute) of children with private parties. First, all foster parents are by definition not “the State” and there is no indication that the Article (or its predecessor the former Article 42.5) was intended to apply a monopolistic and exclusive view of the State in this regard. Second, the State shall endeavour to supply the place of the parents “by proportionate means as provided by law”. The facility for a placement of a child with a private entity does indeed appear to be “provided by law” (see further below) and may well be more “proportionate”, in the sense of having a lesser adverse impact on the child than placement in ‘State care’ as such.

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<sup>121</sup> Emphasis added.

<sup>122</sup> Emphasis added.

The better view is that there is no evident basis for considering that the delegation to a private provider would be unconstitutional. It is not a delegation of either the legislative, executive or judicial powers of the State. As such, everything will depend on whether statute enables it or not. That question will be examined next.

*Section 15 of the Child Care Act 1991 as amended and the arrangement as characterised by the HSE Letter of 29 May 2009*

Section 15 of the Child Care Act 1991 (as substituted by the Health Act 2007) provides:

15.—The [Child and Family Agency] shall provide or make arrangements with suitable persons for the provision of suitable accommodation for the purposes of this Part.<sup>123</sup>

The reference to ‘this Part’ is to Part III of the 1991 Act which includes both section 12 and section 13.

Section 18 of the Interpretation Act 2005 is of relevance here. It provides that references in legislation to a “person” include references to a body corporate, unless the context otherwise requires. Therefore the fact that a private provider may be a company does not necessarily prevent it from being a “suitable person” for the purposes of section 15.

Section 15 may confer a legal basis for Tusla to enter into arrangements with a private provider. The HSE had the same power prior to the commencement of the Child and Family Agency Act 2013. It should be noted that the relevant power is not a power to place a child for fostering or with a foster parent but only for suitable “accommodation” to be provided. Notwithstanding that limitation – and indeed perhaps because of it – section 15 appears to be in harmony (subject to three caveats) with how the HSE Letter described the arrangement between the HSE and the private provider for the purposes of section 12(4). This is because:

Paragraph 2 of the Letter described the HSE as “...making an arrangement with [the private provider] to provide accommodation for children placed in its custody by An Garda Síochána under section 12(4) ...”

Paragraph 4 of the Letter states that: “The placement of children in emergency situations with [a private provider] is not regarded by the HSE as a fostering arrangement within the meaning of section 36(1)(a) of the Child Care Act 1991”, which is correct in respect of section 15, because the role which section 15 envisages in respect of a “suitable person” does not extend that far.

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<sup>123</sup> Emphasis added.

The second sentence of paragraph 5 of the Letter states:

The HSE retains its powers, duties and functions under section 12 of the Child Care Act.

The three caveats alluded to above are as follows.

First, paragraph 2 of the Letter states that the legal basis for the arrangement is in fact section 38(1) of the Health Act 2004. However, the omission to quote section 15 should not necessarily be regarded as a statement or indication that it is legally irrelevant (although, as set out below, there are indications that it may not in fact be broad enough).

Second, paragraph 6 of the Letter states that “Day to day care will be provided by [the private provider] as agent for the HSE”. This seems to indicate - contrary to the intimation in paragraph 2 of the Letter that the relevant function is “to provide accommodation” - that more is at play than “accommodation”. Indeed, “care” is a concept which surfaces elsewhere in the 1991 Act. Thus, while section 12(4) refers to a child being in the “custody” of Tusla before an emergency care order is applied for, section 13(2) provides that the effect of such an order is to place the child “under the care” of Tusla.

However, case law exists indicating that a statutory power or function also confers power to do things which are ‘necessary or incidental’ to that power or function (e.g. the Supreme Court in *McCarron v Superintendent Kearney*<sup>124</sup>). Thus, it could not entirely be excluded that if section 15 confers a power for Tusla to enter into arrangements with a provider for the purposes of providing accommodation in the emergency situations envisaged by Part III of the 1991 Act, that this might also extend to a power to contract with the provider for the provision of meals etc.

The third caveat is possibly the most important. The first sentence of paragraph 6 of the Letter states:

The HSE will formally confirm in writing to An Garda Síochána that the HSE retains custody, within the meaning of section 12 of the Child Care Act, through

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<sup>124</sup> [2010] 3 IR 302.

its agent [the private provider], of a child placed with [the private provider] by An Garda Síochána under section 12(4) of the Child Care Act, 1991.<sup>125</sup>

Although this sentence is merely a statement of what will be set out in correspondence, the interaction between this first sentence of paragraph 6, and the second sentence of paragraph 5, is not without vagueness.

Paragraph 6 does appear to suggest, however, that the private provider itself is actually exercising custody, albeit that it is doing so on behalf of the HSE/Tusla.

The question of custody rather than mere accommodation (and ancillary matters such as meals) is important. ‘Custody’ implies additional rights and powers in respect of the child. What if the child were to seek to run away for example, or exercise their ordinary liberty or freedom of movement in ways that were a danger to themselves or others? It is not evident that the provision of accommodation under section 15, even if stretched to what is necessary or incidental, would extend to coercive powers or authority. There is an argument that coercive powers or authority (not least because they infringe upon a child’s constitutional and other rights) would have to be clearly conferred. The reference to Tusla having “custody” over the child is probably sufficient for that purpose, but it is not clear that the statute (at least in section 15) clearly provides that Tusla may delegate such custody to an agent in a section 12(4) situation. This point is of relevance to the audit in that the most problematic cases and the cases where children received a sub-optimal service were cases where children had emotional or behavioural problems. These cases are set out in section 3.7 of this report.

The foregoing discussion gives rise to the question of what a private provider is actually doing in an emergency situation. This is not clear, though the Letter asserts that it is not a fostering arrangement within the meaning of section 36. The fact that section 15 may not be broad enough to allow ‘custody’ to be delegated (if indeed that is what is happening) makes it necessary to look to other statutory provisions. For this reason, it may be prudent to amend the Child Care Act 1991 to remove any ambiguity surrounding the status of private providers.

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<sup>125</sup> Emphasis added.

## Provisions in respect of service provision

Section 9 of the 1991 Act provided:

9.—(1) A health board may, subject to any general directions given by the Minister and on such terms or conditions as it sees fit, make arrangements with voluntary bodies or other persons for the provision by those bodies or other persons on behalf of the health board of child care and family support services which the board is empowered to provide under this Act.<sup>126</sup>

However, this was deleted by the Health Act 2004 (possibly in light of the provision made in section 38(1) of that Act).

Section 38(1) of the Health Act 2004 (which does not appear to have been amended) provides:

The Executive may, subject to its available resources and any directions issued by the Minister under section 10, enter, on such terms and conditions as it considers appropriate, into an arrangement with a person for the provision of a health or personal social service by that person on behalf of the Executive.

Section 2 of the 2004 Act provides *inter alia*:

“health and personal social services” means services that immediately before the establishment day were provided under the Acts referred to in Schedule 1 by a specified body as defined in section 56 of this Act, and references in this Act to a health or personal social service are to be read as references to any of those services.

The “Child Care Acts 1991 and 2001” are listed in Schedule 1 to the 2004 Act.

Section 56 of the Child and Family Agency Act 2013 (entitled ‘Arrangements with service providers’, in the marginal note) now provides as follows:

(1) The Agency may, subject to its available resources and having regard to the required level of service identified in the corporate plan or annual business plan and any directions issued by the Minister under section 47, enter, on such terms and conditions as it considers appropriate, into an arrangement with a person for the provision of child and family services or services provided pursuant to section 8 (3)(b).

...

(6) The Agency may make such arrangements as it considers appropriate to monitor—

(a) the expenditure incurred in the provision of services by service providers exempted under subsection (5), and

(b) the provision of those services by such service providers.

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<sup>126</sup> Emphasis added.



(8) The Agency may request from a service provider any information that it considers material to the provision of a service by the service provider.

...

(12) Nothing in this Act shall empower the Agency to delegate to a service provider the duty imposed on it under section 4 of the Child Care Act 1991 to take a child into its care or to make an application for an order under Part III, IV, IVA (as amended by the Child Care (Amendment) Act 2011) or VI of that Act.

(13) The Minister may prescribe requirements in respect of—

(a) the expenditure incurred by the Agency in the provision of services by service providers, and

(b) the provision of those services by service providers.

(14) For the avoidance of doubt, an arrangement under this section shall not give rise to an employment relationship between a service provider, its employees or agents on the one hand and the Agency on the other.

(15) In this section “service provider” means a person involved in the provision of child and family services otherwise than for profit, which services, in the opinion of the Agency, are services that are similar to activities carried out by the Agency and consistent with its functions.<sup>127</sup>

Although section 56(1) refers to Tusla entering into an arrangement with “a person” the remainder of the section proceeds to refer to a “service provider”. That in turn is defined in section 56(15) as the provision of child and family services “otherwise than for profit”. There are indications that existing private providers may in fact meet the definition of conducting relevant operations “otherwise than for profit”.

The question nonetheless arises whether the power/function referred to in section 12(4) of the 1991 Act – namely that “it shall be lawful for the Agency to retain custody of the child pending the hearing of that application” i.e. within 3 days – is in fact apposite to fall within the concept of an “arrangement with a person for the provision of child and family services or services provided pursuant to section 8 (3)(b)” for the purposes of section 56(1) of the 2013 Act. For example, such custody would not easily fall within the ordinary literal understanding of a ‘service’.

This point is not without uncertainty and would benefit from clarity in amending legislation. That said, it is possible to argue that such a service can be contracted out under section 56.

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<sup>127</sup> Emphasis added.

First, “child and family services” are not defined in the interpretation section of the 2013 Act. The phrase only appears twice in the Act, on both occasions in section 56 itself. It would therefore appear that the definition is provided by section 56(15) namely that the relevant services are those which “in the opinion of the Agency, are services that are similar to activities carried out by the Agency and consistent with its functions”.<sup>128</sup> This is important because, although there is an argument that Tusla’s functions under section 12(4) of the 1991 Act are not ‘services’ per se, there is a clear argument that can be made that they are in fact ‘activities’.<sup>129</sup>

Second, section 56(12) provides that:

Nothing in this Act shall empower the Agency to delegate to a service provider the duty imposed on it under section 4 of the Child Care Act 1991 to take a child into its care or to make an application for an order under Part III, IV, IVA (as amended by the Child Care (Amendment) Act 2011) or VI of that Act.<sup>130</sup>

This might be argued to indicate that the Oireachtas did indeed give consideration to what types of powers and functions could not be contracted out, and specifically did not include the three days of custody referred to in section 12(4). Rather, non-delegability was only provided for in respect of the “application” for a Part III order, and indeed the “duty” under section 4 to take a child into care (although not the care itself). Although such *inclusio unius exclusio alterius* arguments can tend to sweep quite broadly, they can sometimes be a guide of sorts to the legislature’s intent.

Third, section 8(3) of the 2013 Act provides:

(3) Without prejudice to the generality of subsection (1), in supporting and encouraging the effective functioning of families pursuant to subsection (1)(c), the Agency shall provide— ... (b) care and protection for victims of domestic, sexual or gender-based violence, whether in the context of the family or otherwise.

Although the power/function appears to be made subject to “supporting and encouraging the effective functioning of families”, it may well be possible to argue that that is not always incompatible with taking children into care, in particular for a short or emergency period. On one view, therefore this stipulation is very apposite to emergency

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<sup>128</sup> Emphasis added.

<sup>129</sup> In this respect there seems to be a clear difference with “health and personal services” under sections 2 and 38(1) of the Health Act 2004.

<sup>130</sup> Emphasis added.

out-of-hours services, if the out-of-hours services are necessary by reason of children being the victims of any of the types of violence referred to.

Even if section 8(3)(b) is not co-extensive or overlapping with the section 12(4) provisions as to custody – and the two are indeed separate statutory provisions – the fact that section 8(3)(b) was expressly stipulated by the Oireachtas to be something which was delegable to a private (not for profit) service provider does confer an argument that it is not inconceivable that the Oireachtas also intended that the not dissimilar functions in section 12(4) of the 1991 Act would also be delegable (and indeed it did not exclude it from the scope of delegation, although other powers/functions were excluded as already noted).

Fourth, the fact that as far back as the Child Care Act 1991, through section 15 (already considered above), the Oireachtas made provision for arrangements with “suitable persons” to be made in respect of the provision of accommodation where necessary under Part III, is once again consistent with the proposition that private sector involvement in the section 12(4) process cannot have been considered an anathema to the Oireachtas, which strengthens the argument on the interpretation of section 56 set out above.

*Whether section 38 of the Health Act 2004 was properly extended to cover the Child and Family Agency / Tusla upon the latter’s creation?*

This question has essentially been addressed above. It is not clear that section 38 remains of relevance for present purposes in circumstances where the Oireachtas has, through section 56 of the 2013 Act, conferred powers upon Tusla to delegate to service providers.

*Does placing children in emergency situations with a private provider come within section 36(1)(a) of the 1991 Act?*

Section 36(1) of the 1991 Act (as substituted by the Health Act 2007, and subsequently further amended) provides as follows:

36.—(1) Where a child is in the care of the Agency, the Agency shall provide such care for him, subject to its control and supervision, in such of the following ways as it considers to be in his best interests—

(a) by placing him with a foster parent,

(b) by placing him or her in residential care (whether in a children’s residential centre or in a school or other suitable place of residence), ...<sup>131</sup>

Section 36(2) provides:

(2) In this Act, ‘foster parent’ means a person other than a relative of a child who is taking care of the child on behalf of the Agency in accordance with regulations made under section 39 and “foster care” shall be construed accordingly.

The Letter states at paragraph 4:

The placing of children in emergency situations with [the private provider] is not regarded by the HSE as a fostering arrangement within the meaning of section 36(1)(a) of the Child Care Act, 1991.

The approach taken by the Letter in this regard is problematic, first of all, due to the fact that the private provider alluded to in the Letter describes and holds itself out as being connected with fostering and indeed a “provider” of fostering services.

Moreover, it is questionable whether an emergency placement is necessarily inconsistent with foster care because Reg. 6(2) of S.I. 260 of 1995 provides:

(2) Where a child is placed with foster parents in an emergency, the health board shall carry out an assessment of the child’s circumstances as soon as practicable.

Similarly, Reg. 11(2) of the same Regulations provides that:

(2) Where a child is placed with foster parents in an emergency, the health board shall prepare [a care] plan as soon as practicable.

The approach taken in the Letter may be justified by reference to the fact that sections 12(4) and 13(2) are discrete statutory provisions, which do not refer to fostering, and which stand separately from section 36.

Moreover, section 12(4) provides that a child shall be in the “custody” of Tusla, but section 36 is concerned with a situation “where a child is in the care” of Tusla. Although there is a risk of making too much of linguistic differences, there is an argument that a child is not in the “care” of Tusla until an order has been made under section 13(2), because the latter subsection provides that that is the effect of an emergency care order.

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<sup>131</sup> Emphasis added.

Furthermore, it is not clear whether the private provider referred to in the Letter is itself a “foster parent” for the purposes of section 36. A perusal of one of the private providers company’s website reveals, on the main page, under the title ‘What we do’ that: “At [the private provider], we recruit, train and support Foster Parents and Foster Children.” This might suggest that it is something of a middleman. In the ‘About Us’ section of its website, under ‘Aims and Objectives’ it states: “[The private provider’s] main objective is to be a leading provider of high quality foster care services” and that “...[The private provider] has a wide range of foster families available and can offer many different types of foster families who can meet various placement needs.”

Legislative clarity is recommended in that while the statement at paragraph 4 of the Letter is arguably a basis for the position taken, there are certainly grounds for questioning it.

However, even if the Letter is correct in that respect, this does not mean that standards and safeguards could not be provided for, or do not apply, in emergency situations, and indeed (as noted) S.I. 260 of 1995 does appear to refer to emergency situations (although the relevant basis for present purposes of the legal basis under which the Regulations have been made does appear to be section 39 which admittedly refers back to section 36).

*Do the 1995 Regulations apply and can a private provider be absolved from the application of the Child Care Act 1991 or regulations made thereunder?*

While the Letter does not necessarily take the position that the 1995 Regulations do not apply, it appears to take the position that the 1995 Regulations do not afford “the legal basis for the new service”. This is a justifiable position. There is an argument that the legal basis is afforded by the interaction of section 12(4) with what is now section 56 of the 2013 Act and/or perhaps section 15 of the 1991 Act.

The audit concludes that it would be absurd or would fail to reflect the Oireachtas’ intent for the purposes of section 5 of the Interpretation Act 2005 if an agency like Tusla could take children outside the sphere of statutory provisions simply by delegating (even if lawfully) certain of its activities to a private provider. Moreover, it would be absurd or fail to reflect the Oireachtas’ intent if the level of protection available to children could

vary (in legal/regulatory terms) depending on the type of person or service provider they were placed with.

The foregoing argument is particularly strong in respect of the provisions of the Child Care Act 1991 itself. For example, and although the context is slightly different, it may be noted that in *Burke v Minister for Labour*,<sup>132</sup> Henchy J., giving the judgment of the Supreme Court in respect of powers delegated to Joint Labour Committees by the Industrial Relations Act 1946, stated at 361-62:

Where Parliament has delegated functions of that nature, it is to be necessarily inferred as part of the legislative intention that the body which makes the orders will exercise its functions, not only with constitutional propriety and due regard to natural justice, but also within the framework of the terms and objects of the relevant Act and with basic fairness, reasonableness and good faith. The absoluteness of the delegation is susceptible of unjust and tyrannous abuse unless its operation is thus confined; so it is entirely proper to ascribe to the Oireachtas (being the Parliament of a State which is constitutionally bound to protect, by its laws, its citizens from unjust attack) an intention that the delegated functions must be exercised within those limitations.

The audit concludes that it is highly likely that when the Oireachtas made provision in respect of the delegation of certain child care matters or functions to private parties (e.g. in section 56 of the 2013 Act) an intention is similarly to be imputed to the Oireachtas that such delegated functions would be exercised “within the framework of” and therefore subject to, the relevant legislative framework, including the Child Care Act 1991.

Furthermore, the definition of what may be delegated under section 56(15) of the 2013 Act is “services that are similar to activities carried out by the Agency and consistent with its functions” and the latter use of words might indicate or support an intention on the part of the Oireachtas that relevant provisions of statute are to continue to apply, and not to be ousted in the event of a delegation.

Regarding whether a private provider can be absolved from the provisions of a statutory instrument, there is an argument that section 56 of the 2013 Act provides full scope for the same (or indeed, higher) levels of regulatory requirements or oversight to be applied to private service providers. Thus, section 56(6) provides that Tusla may make arrangements in respect of the monitoring of the provision of services by private

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<sup>132</sup> [1979] IR 354.

providers and section 56(13) provides that the Minister may stipulate requirements in respect of the provision of those services.

It is also, of course, possible to do so by contract, in addition to these powers. The April-September 2013 contract between the HSE and the private provider makes reference to various provisions of statute and statutory instrument. The 1995 Regulations do not appear to be included here. It is not clear why such a key component of the child protection infrastructure has not been included in the contract. Given the non-inclusion, the private provider may well have an argument, at least as a matter of contract law, that its contractual obligations do not include compliance with the 1995 Regulations per se – an unsatisfactory position with regard to the protection of the rights and interests of the child.

Even if such a contractual obligation did exist between the private provider and Tusla with regard to the 1995 Regulations, this still creates an accountability gap between the provider of an essential frontline service to the child, and the statutory agency responsible for that child's welfare when removed from parental care. As a matter of contract law, a child cannot enforce the contractual obligations of the private provider to Tusla – this is a legal right held only by Tusla. If the service provider fails to adhere to the standards set out in the Regulations, and that failure results in actionable damage to the child, the child must bring an action against Tusla for that failure. This particular route to legal accountability against the State, where children are in receipt of essential State services through State-funded private providers, has been profoundly problematic in the area of primary education.<sup>133</sup>

### **Key Issues**

Given the social nature of the Child Care Act 1991 and the vital role Tusla performs under this statute, it is imperative that absolute clarity exists when it delegates its powers.

The ambiguities around both the operational and legal meaning of concepts of “child and family services”, “suitable accommodation” and “custody”, raise questions about the legality of some of the activities performed by private providers.

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<sup>133</sup> *O’Keeffe v Hickey* [2008] IESC 72.

In circumstances where a private provider is the only service available out-of-hours, is it lawfully empowered to make decisions about the *custody*<sup>134</sup> of the child (i.e. in circumstances where it advises the Gardaí to return the child to the family home, or advises the Gardaí to hand the child over to another family member)?

With regard to section 12 specifically, the concept of providing “suitable accommodation” is qualitatively and substantively different from other core decision-making which Tusla is statutorily obliged to undertake in protecting the health and welfare of the child. In many circumstances, Tusla’s decision-making is informed by access to its own child protection files and databases – which it is assumed the private provider does not have access to out-of-hours. In many instances reviewed for the purposes of the audit, the post section 12 removal circumstances involve, far more than mere provision of alternative accommodation for the night/day.

This other core decision-making may be captured by the concept of “child and family services” – which would suggest that under section 56 of the 2013 Act, Tusla can delegate that kind of core decision-making. This might mean that a private provider is able to provide both “suitable accommodation” under section 12, and also make other core decision-making with regard to the child’s welfare in the post section 12 removal stage, under the lawful delegation of “child and family services”. However, this depends on how the interplay of these different legal provisions is constructed.

With regard to the non-delegability of Tusla’s statutory duties to the child: Tusla can only create contractual duties with the private provider. This poses a number of problems for children seeking accountability. Importantly, the child cannot enforce any contractual rights against a private provider for a failure of service – only Tusla can do this. This is a legal obstacle to accountability. This could be remedied by the child taking a case against Tusla, with it in turn being able to join the private provider as a third party to seek indemnity/contribution assuming the provider did not agree to indemnify. If the child comes to harm that would presumably be a breach of the express or implied terms of the provider’s contract with Tusla. The ‘child’ (when an adult or otherwise) does not have any contract with the private provider and would be barred by lack of privity from suing in contract, although there could be a suit in negligence – depending on the nature of the

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<sup>134</sup> Emphasis added.



failure. However, this added level of legal complexity in seeking accountability is an additional obstacle in the already onerous mechanisms for accountability in our legal system – creating potential injustice.

Many of the concerns of the audit on the subject of private providers do not concern the legality of private providers – they are practical and ethical concerns about the legal frameworks in which these services are provided. The data emanating from the audit reveals a core area of child protection ‘work’ being delegated by Tusla when the young person is most vulnerable. This is an issue of concern given the history of institutional failure to protect children in Ireland due to heavy reliance on non-State actors.

### ***Recommendations***

1. There is no evident basis for considering that the delegation or arrangement as between Tusla and a private entity would be unconstitutional. It is not a delegation of either the legislative, executive or judicial powers of the State. As such, everything will depend on whether statute enables it or not. Section 15 of the 1991 Act permits Tusla to enter into arrangements with other persons for the provision of accommodation for the purposes of Part III of that Act, which includes sections 12 and 13. There is authority that statutory powers can extend to what is necessary or incidental to their exercise, and as such this might include the provision of meals etc. Notwithstanding this, it does not appear that section 15 would be broad enough for present purposes to encompass the full extent of the section 12(4) function that might be involved (and it is unclear what the private providers’ precise role and activities are in this regard). However, it is possible to argue that section 56 of the Child and Family Agency Act 2013 is in fact broad enough to enable Tusla to contract with a private not-for-profit provider with respect to emergency placements under section 12(4). That said, legislative clarity in this regard is desirable.

2. There may be grounds for questioning the statement at paragraph 4 of the HSE letter that the placing of children in emergency situations with a private provider is not regarded as a fostering arrangement within the meaning of section 36(1)(b). Legislative clarity in this regard is desirable. Even if the Letter is correct in that respect, this does not mean that standards, safeguards etc. could not be provided for, or do not apply, in emergency situations, and indeed S.I. 260 of 1995 does appear to refer to emergency situations.

3. The audit concludes that Tusla cannot, through delegation under section 56, absolve a private provider of compliance with the 1991 Act. Section 56(6) and section 56(13) of the 2013 Act provide ample scope for both Tusla and the Minister for Children to subject private providers to the provisions of S.I. 260 of 1995, although it is noted that the 1995 Regulations do not appear to be expressly referred to in the 2013 contract between the HSE and the private provider. *The 1995 Foster Care Regulations should be expressly referred to in any contract between Tusla and a private provider.*

4. *The legal framework applying to emergency placements with private providers should be clarified to remove any ambiguity as to the standards to be applied in respect of such placements, particularly in cases where children have emotional and behavioural problems.*

5. *A social work service that is directly accessible to children or families at risk outside of office hours should be developed as a matter of priority to ensure a comprehensive and unified child protection system.*

### **6.3.18 Implementation and Review**

Ultimately recommendations are meaningless unless given effect to. Experience suggests that reports are often commissioned by way of reaction to the revelation of serious child protection and welfare issues, and in many cases to quell public anger directed towards politicians. However, child protection and welfare ought not to be merely reactive but must also be proactive. Action needs to be taken on foot of reports.

#### ***Recommendations***

*To address any concern that the section 12 power is not being used appropriately and proportionately, An Garda Síochána should publish statistics on an annual basis on the invocation of section 12 in the preceding year. This reporting should also include details on the challenges/difficulties experienced by Gardaí in the exercise of the power.*

*Any review process on the exercise of section 12 should make explicit reference to the monitoring of ethno-cultural demographic patterns in those children subject to section 12 removal, with the possibility of a robust investigation of such patterns, using a methodology comparable to this audit (access to all PULSE data, and the authority to interview select Gardaí about particular cases of relevance).*

*It is suggested that one year after submission of this report, An Garda Síochána examine the implementation of the recommendations of this audit and, if any recommendations may not have been*

*implemented, provide reasons explaining why they have not been implemented, together with proposals to address such an event.*

## 6.4 CONCLUSION

Children grow up best in an environment that is nurturing, enduring and predictable. The requirement for stability and security in their lives coupled with a need to feel that their environment is attuned to their needs cannot be overstated.

The invocation of section 12 powers is just one part of a child protection and welfare system. It is an emergency response and needs to be followed by continuity of care informed by cooperation and integration with other child welfare systems to ensure the best interests of the child are always being met. Communication that goes beyond a paper exercise of notification, and appropriate feedback between agencies as to who is doing what, when and for what purpose, is essential to ensure that the “best interests of the child principle” does not become a meaningless construct.

Such communication and feedback will also ensure that interventions with children are proportionate, developmentally appropriate and culturally sensitive.

In the absence of such cooperation and coordination, the very real potential exists that services designed to ensure children’s welfare and protection at a time when children are most in need of them, will themselves cause further trauma and impact on children’s view of themselves, others and the world.

## **APPENDIX 1**

### **Audit of Processes and Procedures adopted by An Garda Síochána in initiating the provisions of Section 12 of the Child Care Act 1991**

**Aim of Audit:** To conduct a comprehensive review of what the current work practices are in this area, with a particular emphasis on what works well and what shortcomings exist, with a view to informing policy and practice.

#### **Process of Audit**

- Analyse data compiled by An Garda Síochána (File review/PULSE system review);
- Questionnaires;
- Semi-structured interviews - random sample of Gardaí;
- Focus Groups;
- Interview additional professionals that could provide useful information for the audit;
- Examine work practices in other jurisdictions;
- Research literature on international best practice.

## **Data to be Collected**

Need to determine what is desirable/what is essential data for review to be completed.

## **Different Stakeholders**

### **Questions for Gardaí**

1. What were the circumstances surrounding the section 12 powers being invoked?
2. What evidence was available prior to invoking the section 12 powers?
3. Evidence of critical evaluation of the information furnished?
4. Were discreet inquiries made before section 12 powers were invoked?
5. Is there any evidence of the application of HQ Directive 48/2013 i.e. application of the policy on the investigation of sexual crime, crimes against children and child welfare (2013)?
6. Is the subsequent history of the case recorded on PULSE?
7. Is there an annual internal audit of the use of the section 12 powers?
8. What training documents are used?
9. Is specific guidance provided on unusual situations?
10. What training is provided?
11. Is any interdisciplinary training provided?
12. What evidence exists of diversity training and compliance with the Garda Síochána Diversity Strategy 2014 – 2016?
13. How many members of An Garda Síochána were involved?
14. Was there a risk assessment?
15. Was the Tusla social worker contacted prior to the section 12 powers being invoked?
16. What support do Gardaí receive after the exercise of section 12 powers (i.e. debriefing)?

### **Demographic Data**

In relation to child and family;

1. Age
2. Gender
3. Area in which they reside

4. Socio-economic background of family (Is there an adult in the household in full or part-time employment? What kind of employment are they engaged in? Is the family in receipt of social welfare assistance? Are the family residing in local authority housing?)
5. Nationality?
  - Irish
  - Irish Traveller “settled”/ not
  - EU National
  - Non-EU National
6. Home Circumstances (e.g. living with parents, NFA, Hostel, Traveller)?
7. Country of Birth?
8. Religion?
9. Disability?
10. Number of children in the family?
11. Family previously known to Gardaí?

**In relation to Garda involved in initiating section 12**

1. Gender?
2. Number of years in force?
3. Training in child protection?
4. If yes, what kind of training?
5. Joint training with social workers or internal Garda training?
6. If yes, what kind of training?
7. Training in cultural competency?
8. If yes, what kind of training?

**Process involved in initiating section 12**

1. Who initiated involvement of Gardaí? (Family member/ G.P./Hospital/ Mental Health/ Tusla/ Neighbour etc.)
2. What time of day?
3. Number of children removed?
4. Were any children left?
5. Place to where children removed, including initial place of safety and handover place of safety?
6. Length of time child/children spent in place of safety?

7. Grounds on which child/children removed?
  - located within child i.e. abuse or neglect
  - located within parent i.e. Domestic Violence/ Mental Health issues
8. Parents present at time of removal?
9. Gardaí experience resistance at time of removal of children (from parents or child or other)?
10. If so, did children witness this?
11. Were Gardaí accompanied by social workers when children were removed?

### **Criminal Investigations**

Was there a criminal investigation subsequent to the section 12 powers being invoked?

### **Communication**

Both internally within An Garda Síochána and externally with other agencies and with other family members pre, during and post initiating section 12 powers.

#### During consideration to invoke section 12 power:

1. Consultation with Sergeant, Inspector, Superintendent (or other known 'expert' Garda) during consideration to invoke section 12?
2. Consultation with Tusla depending on time/circumstances/relationship?
3. Consultation with other NGOs/agencies who are present at the home/reported concerns?
4. Contact with Tusla to arrange delivery of children?

#### Post section 12:

1. Contact with Tusla to arrange delivery of children?
2. PULSE recording?
3. Report to Superintendent?
4. Tusla Notification for Superintendent to sign and forward?
5. Daily Performance Accountability Framework (PAF) Meetings?
6. Strategy meetings, case conferences with Tusla?

#### If Garda Rostered Off-Duty?

1. If the Garda went off-duty during the incident, to whom was responsibility handed over?



## Questions for Tusla

1. Had child protection social services previous engagements with that family?
2. If yes, for how long had the family been engaging with those services?
3. During 2014, did a Garda refuse to exercise his or her section 12 powers when requested by you to do so?
4. Was an Emergency Care Order applied for?
5. If not, why not, in so far as this information may be ascertainable?
6. Was the child received into voluntary care following exercise of the section 12 powers?
7. If an Emergency Care Order was applied for, was it granted?
8. If not, why not in so far as this information may be ascertainable?
9. Was an Interim Care Order applied for?
10. If not, why not?
11. Was a full Care Order applied for?
12. If not, why not?
13. Was the Garda or other Gardaí involved in case conferences, strategy meetings or care order hearings?

### **Questions for Gardaí and Tusla**

1. Ascertain whether a joint notification sheet between the Gardaí and Tusla as recommended in the Children First Guidelines was completed. (This question addresses the notifications made re child abuse or the Joint Action Plan.)
2. Do members of An Garda Síochána have access to Tusla's National Child Care Information System?

### **Questions for Courts Service**

1. Was an Emergency Care Order subsequently granted?
2. If not, why not?
3. Was an Interim Care Order subsequently granted?
4. If not, why not?
5. Was a Supervision Order subsequently granted?
6. If not, why not?
7. Was a Care Order subsequently granted?
8. If not, why not?
9. Was the Garda or other Gardaí involved in the care order hearings?

## **Outcome of Cases**

1. Emergency Care order sought?
2. If so, was it granted?
3. What evidence was adduced before the Court?
4. What was the foundational evidence?
5. Interim Care Order sought?
6. If so, was it granted?
7. Supervision Order sought?
8. If so, was it granted?
9. Care Order sought?
10. If so, was it granted?
11. Voluntary Care?
12. When was the child returned to the family?
13. Was the case discussed at the CPCC?

### **More subjective questions for semi-structured interviews**

1. Was section 12 invoked after 5 p.m.?
2. Was an out-of-hours social work service available?
3. If not, would section 12 powers have been invoked if such a service had been available at the time?
4. Were efforts made to contact a responsible / competent relative to care for the child/children to avoid exercising section 12?
5. Was there an attempt to encourage the parent/s to cooperate voluntarily with having the child removed from the household?
6. Is the potential exercise of section 12 ever used, either expressly or implicitly, to encourage voluntary cooperation from parent/s?
7. Is section 12 used to bypass delays in obtaining court orders?
8. Are social workers reliant on police use of section 12 to undertake ordinary child protection tasks (i.e. is section 12 used where a court order could have been obtained with little or no additional risk to the child)?
9. What general presumptions operate for Gardaí in their use of emergency protective powers for children (e.g. does the Garda generally presume a child is best left in the care of their parents or another family member, or do Gardaí operate under a precautionary logic – i.e. best to remove a child where any doubt about his or her safety exists)?
10. How seriously do Gardaí or Social Workers or other professional respondents view the exercise of section 12 powers by the Gardaí?
11. Do Gardaí consider they have sufficient training in child abuse/cultural issues?
12. Do Gardaí consider they receive sufficient feedback from Tusla on the final disposition of a case such as to inform their policy and practice?
13. Do Gardaí understand the threshold criteria?
14. Do Gardaí understand the evidence required to satisfy the threshold criteria?
15. Do other professionals feel that section 12 powers are being misused?
16. If so, what needs to be done to address this issue?

- Discuss the transfer between the Gardaí, out-of-hours and day teams.
- Access to a lawyer?
- How long has the social worker been aware of a situation and failed to apply for a section 13 Order?
- What has changed to suddenly create an immediate and serious risk to the welfare of the child?
- Despite this, there may be an immediate and serious risk now and Gardaí must consider that issue.
- The immediate and serious risk must exist in the mind of the Garda but Garda may rely on information provided by the social worker.

## APPENDIX 2

### Questionnaire

*This questionnaire relates to occasions on which section 12 powers were invoked during 2014. A questionnaire must be completed in respect of each time section 12 powers have been invoked.*

#### PART 1

**Provide an account of the circumstances which led you to exercise the section 12 powers.**

---

#### PART 2

1. Gender
  2. Number of years working in An Garda Síochána
  3. Garda District in which you were based in at the time of invoking section 12 powers
  4. PULSE incident number for the section 12 event
  5. Is there a paper file?
  6. Have you had training in child protection?  
**Yes/No**
  7. If **yes**: Was this part of your general training?  
**Yes/No**
  8. Was this specialist training?  
**Yes/No**
  9. Was this training conducted jointly with social workers?  
**Yes/No**
  10. Do you think you have had sufficient training in child protection?  
**Yes/No**
  11. Do you have available to you any training documents/directives that assist you in reaching a determination regarding the invoking of section 12 powers?  
**Yes/No**  

If **yes**, please specify
  12. Have you had any training in diversity?  
**Yes/No**
-

### PART 3

#### In relation to the case/cases wherein you have invoked section 12 powers:

1. Who initiated involvement of Gardaí?
2. Number of children removed
3. Initial place to where child/children removed
4. Age of child/children
5. Length of time (approximately) child/children spent in initial place of safety
6. What location was the handover place of safety?
7. Into whose care was/were the child/children placed?
  - Tusla Social Worker
  - Hospital Staff
  - Residential Unit
  - Other (please specify)
8. Length of time (approximately) child/children spent in this location after the handover
9. Were you accompanied at the time of invoking section 12 powers? **Yes /No**
  - If yes, who accompanied you?
    - Garda colleague/colleagues. **Yes/ No**
    - How many?
    - Tusla social worker/workers. **Yes/No**
    - How many?
    - Other (please specify)
10. Did you experience resistance? **Yes/No**
  - If **yes**, please specify from whom
11. Grounds on which you invoked the section 12 powers
  - Suspicion or concern that child being abused or neglected
    - Concern for child welfare (public safety)
    - Suspected emotional abuse
    - Suspected neglect
    - Suspected physical abuse
    - Suspected sexual abuse
  - Child a danger to self/others
  - Domestic violence
  - Mental health issues within parents
  - Mental health issues within child
  - Active substance abuse within parents leading to abuse or neglect
  - Other, please specify
12. From whose care was the child removed?
13. Was this child or family previously known to you or your colleagues? **Yes/No**
14. Did you have an opportunity to gather background information on the family? **Yes/No**
  - If **yes**, from what source?
15. During your consideration to invoke section 12 powers, did you consult with anyone? **Yes/No**
  - If **yes**, was this within your own agency and if so with whom?
  - Was this with an outside agency and if so with whom?
16. Have you ever declined to exercise your section 12 powers when requested by a social worker? **Yes/No**
17. Would you have liked to have a consultation on the case but were unable to do so? **Yes/No**
  - If **yes**, reason why this opportunity was not available



18. Did you complete a HSE/Tusla notification form? **Yes /No**
19. Was a joint action plan completed? **Yes /No/Don't know**
20. Did you subsequently attend at either:  
 A strategy meeting  
 Child protection case conference  
 Care order hearing  
 (If **yes**, please circle above as it applies)  
 If you didn't attend such a meeting was this because  
 (a) you weren't asked to  
 (b) you were invited but were unable to attend  
 (c) case didn't require such a meeting
21. Do you consider you received appropriate feedback on the final disposition of the case? **Yes/No**  
 If **yes**, was this from your own agency?  
 Tusla?
22. If the section 12 powers were invoked after 5 p.m. or at a weekend was an out-of-hours social work service available to you? **Yes/No**
23. If yes, what did it involve?
24. If no, would section 12 powers have been invoked if such a service had been available at the time? **Yes/ No/ Not Sure**

**Many thanks for your cooperation in completing this questionnaire.**

## APPENDIX 3

### Focus Group Questions – Garda Questions

1. Was an out-of-hours social work service available? If not, would section 12 powers have been invoked if such a service had been available at the time?
2. Were efforts made to contact a responsible / competent relative to care for the child/children to avoid exercising section 12? What general presumptions operate for Gardaí in their use of emergency protective powers for children (e.g. does the Garda generally presume a child is best left in the care of their parents or another family member, or do Gardaí operate under a precautionary logic – i.e. best to remove a child where any doubt about his or her safety exists)?
3. Is section 12 used to bypass delays in obtaining court orders?
4. Do Gardaí consider they have sufficient training in child protection/cultural issues? Do Gardaí consider they receive sufficient feedback from Tusla on the final disposition of a case such as to inform their policy and practice?
5. What is the evidence required to satisfy the threshold criteria? What has changed to suddenly create an immediate and serious risk to the welfare of the child?
6. Discuss the transfer between the Gardaí, out-of-hours and day teams.
7. Have you ever said no to invoking section 12 powers?
8. Access to a lawyer.
9. Support and debriefing.
10. Gender stereotyping.
11. How do you see the child protection system operating?
12. Any issues members would like to address.

### Focus Group Questions – Management Questions

1. Was an out-of-hours social work service available? If not, would section 12 powers have been invoked if such a service had been available at the time?
2. Were efforts made to contact a responsible / competent relative to care for the child/children to avoid exercising section 12? What general presumptions operate for Gardaí in their use of emergency protective powers for children (e.g. does the Garda generally presume a child is best left in the care of their parents or another family member, or do Gardaí operate under a precautionary logic – i.e. best to remove a child where any doubt about his or her safety exists)?
3. Is section 12 used to bypass delays in obtaining court orders?
4. Do Gardaí consider they have sufficient training in child protection/cultural issues? Do Gardaí consider they receive sufficient feedback from Tusla on the final disposition of a case such as to inform their policy and practice?
5. What is the evidence required to satisfy the threshold criteria? What has changed to suddenly create an immediate and serious risk to the welfare of the child?
6. Discuss the transfer between the Gardaí, out-of-hours and day teams.
7. Have you ever said no to invoking section 12 powers?
8. Access to a lawyer.
9. Support and debriefing.
10. Gender stereotyping.
11. How do you see the child protection system operating?
12. Any issues members would like to address.
13. Cooperation with Tusla at management level.
14. How do you feel the system should change in the interests of children?

**APPENDIX 4**  
**Laminated Card**

**Section 12 of the Child Care Act 1991**

**Introduction**

AGS members, as first responders, have important and unique child protection responsibilities and powers. Under section 12 of the Child Care Act 1991 a Garda can remove a child into the care of AGS in certain emergency scenarios.

Section 12 is a power exercisable by a Garda of any rank, on his or her own judgment. Once the conditions for section 12 removal are met, a Garda can enter any property without warrant – including forcible entry – in order to remove that child.

**When can section 12 be used to lawfully remove a child into the care of An Garda Síochána?**

There are two stages to establish a lawful section 12 removal scenario:

**Stage One**

1. Is there a **serious threat** to the physical, emotional or psychological health and wellbeing of the child? If yes, move on to question 2.

Examples of a *serious threat* include a child without the care of an appropriate adult; a child in the care of an adult that is seriously intoxicated such that he or she cannot care for the child; a child that has been excluded from the family home following a domestic dispute, with no alternative appropriate accommodation; a child in the company of someone who poses a serious risk to his or her health and welfare; a child who poses a serious risk to his or her own health and welfare.

2. Is that threat **immediate**? In other words, do you think the threat will eventuate **imminently** or **soon after**, if you do not remove the child into the care of AGS? If yes, move on to question 3.
3. Are the grounds on which you believe that threat is serious and immediate **reasonable**? In other words, would the average person agree, after assessing the available evidence, that a serious and immediate threat to the child's health and welfare exists?

If you answered yes to each of the above three questions, you have established that stage one circumstances are met, move on to stage two.

### **Stage Two**

Would that threat to the child also be prevented if you waited for Tusla to make an Emergency Care Order application in the District Court? In answering that question, you can have regard to the locally available resources in both AGS and Tusla at that time, and the availability of the nearest District Court for an emergency hearing.

If the answer to this question is no, you can lawfully remove the child into the care of AGS.

### **After Child is Removed**

Once you have removed the child, you, or another Garda member, must maintain custody of that child until custody can be transferred to Tusla. Once a child has been removed under section 12, Tusla is the only agency with lawful authority to make decisions regarding the future care of that child.

### **Care of Child Following Removal**

It is essential to understand that children enjoy strong constitutional rights under Article 42A of the Constitution. Those strong constitutional rights place substantial responsibilities and duties on AGS when it has a child in its care.

When a child is in the care of AGS, serious consideration and effort must be made to minimise the potentially traumatising experience of section 12 removal for the child.

A Garda station is not an appropriate place to care for a child: if the child must be accommodated in the station while in the care of AGS, a quiet and safe location in the station should be provided for him or her, away from the day-to-day work of the station, particularly any prisoner traffic through the building.

Consideration must also be had for the needs of a child when in such unfamiliar surroundings, including appropriate food and clothing, and the need to be dealt with in a sensitive manner by properly trained Gardaí.

## An Garda Síochána

Oifig an Bhleachtaire  
Cheannfort  
An tAonad Imscrúdaithe  
Foréigin Teaghlaigh agus  
Ionsaithe Gnéasacha,  
Cearnóg Fhearchair,  
Sráid Fhearchair,  
Baile Átha Cliath 2.



Detective Superintendents Office  
Domestic Violence Sexual Assault  
Investigation Unit,  
Harcourt Square,  
Harcourt Street,  
Dublin 2.

Laithreán Gréasáin / Web Site:

[www.garda.ie](http://www.garda.ie)

Teileafón / Telephone: (01) 666 3369  
Facs / Fax: (01) 666 3439

Bí linn/Join us

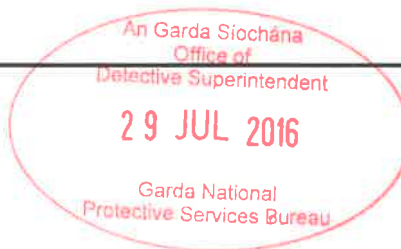


Ríomhphost / E-mail:  
[declan.daly@Garda.ie](mailto:declan.daly@Garda.ie)

Dáta / Date:

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**DR. GEOFFREY SHANNON**  
**INCORPORATED LAW SOCIETY**  
**DUBLIN**



**RE: SECTION 12 CHILD CARE ACT 1991 – AUDIT**

Dear Dr. Shannon,

I refer to the above and to the audit which is currently being conducted by you into the exercise of powers by An Garda Síochána pursuant to Section 12 Child Care Act 1991. I am to confirm that the data which has been provided to you by An Garda Síochána represents a full extract from PULSE of any and all incidents relating to children subject section 12 related incidents in 2014.

For the avoidance of a doubt, all data relative to Section 12 incidents for 2014 recorded on PULSE has been supplied.

I trust the above meets your requirements.

Yours Sincerely

**DECLAN DALY**

**DETECTIVE SUPERINTENDENT**

## APPENDIX 6

### Mandatory fields to be completed on PULSE for all Section 12 Incidents

Heading	Fields to be completed	Response
<p><b>General Incident Details</b></p>	<ol style="list-style-type: none"> <li>1. PULSE Incident Number</li> <li>2. Category</li> <li>3. Type</li> <li>4. Reporting Garda</li> <li>5. Reporting Station</li> <li>6. Date of Incident</li> <li>7. Time of Incident</li> <li>8. Date Reported</li> <li>9. Time Reported</li> <li>10. Garda Region</li> <li>11. Garda Division</li> <li>12. Garda District</li> <li>13. Garda Station</li> </ol>	
<p><b>Details relating to child</b></p>	<ol style="list-style-type: none"> <li>1. Name of child</li> <li>2. PULSE Identification Number</li> <li>3. Date of birth</li> <li>4. Gender</li> <li>5. Nationality</li> <li>6. Ethnicity</li> <li>7. Any disability, mental or physical</li> <li>8. Religion</li> <li>9. Appearance, to include any identifying features</li> <li>10. Home circumstances and/or</li> </ol>	

	<p>living arrangements</p> <p>11. Alien Flag</p> <p>12. Any other relevant information</p>	
<p><b>Details relating to incident</b></p>	<p>1. Location of incident</p> <p>2. Particulars of other relevant persons, to include witnesses</p> <p>3. Contributing factor(s), to include consumption of alcohol or other substances</p> <p>4. Ground(s) for invoking section 12</p> <p>5. Who initiated the involvement of Gardaí?</p> <p>6. Person(s) from whom the child(ren) was/were removed</p> <p>7. Person(s) present at removal, including social workers or other third parties</p> <p>8. Resistance at the time of removal?</p> <p>9. Any other relevant information</p>	<p>Consider a drop-down function to select certain defined grounds</p>
<p><b>Actions taken by Gardaí prior to invoking section 12</b></p>	<p>1. Consultation with social worker or other person(s) prior to invoking section 12</p> <p>2. Consideration of availability of</p>	<p><b>Y/N</b></p> <p>Name of person(s) consulted to be added and the nature of the consultation, if any</p> <p><b>Y/N</b></p>



	<p>alternative(s) to invocation of section 12, to include contact with relatives and/or others</p> <p>3. Availability or otherwise of out-of-hours service</p> <p>4. Any other relevant information</p>	Provide details, where appropriate
<p><b>Actions taken by Gardaí subsequent to invoking section 12</b></p>	<p>1. Place of safety where child was initially brought</p> <p>2. Any subsequent place(s) where child was placed</p> <p>3. Consultation with social worker or other person(s) subsequent to invoking section 12</p> <p>4. Joint Notification Sheet or relevant liaison with Tusla</p> <p>5. Any other relevant information</p>	<b>Confirm when submitted</b>
<p><b>Compliance with legislation</b></p>	<p>Member of the Garda Síochána had reasonable grounds for believing that</p> <p>(a) there is an immediate and serious risk to the health or welfare of a child, and</p> <p>(b) it would not be sufficient for the protection of the child to await the making of an application for an Emergency</p>	<p><b>Confirm</b></p> <p><b>Confirm</b></p>

	Care Order by Tusla	
--	---------------------	--