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**Research Brief on Child Homelessness and Relevant Rights under
the European Social Charter**

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Introduction

This brief is primarily focused on the Revised European Social Charter 1996 (ESC), which is interpreted and enforced by the European Committee on Social Rights (ECSR). The Committee delivers decisions both as part of the collective complaints procedure and the reporting procedure involving periodic reports submitted by States Parties. As such, the main source of law examined in this brief consists of the provisions of the ESC and the decisions of the ECSR. However, although the ESC is a separate instrument to the ECHR, the ECSR often cites provisions of the Convention and judgments of the European Court of Human Rights as persuasive authority in its decisions on the merits.¹ It also cites global human rights instruments such as the Convention on the Rights of the Child² and the International Covenant on Economic, Social and Cultural Rights (ICESCR),³ as well as General Comments issued by the Committees charged with interpreting those Conventions. Finally, some decisions reference memoranda by Thomas Hammarberg, Council of Europe Commissioner for Human Rights, following visits to States Parties.⁴ Since these sources can carry at least some weight in proceedings before the Committee, relevant materials will be identified in this brief where appropriate.

The brief addresses in turn a number of relevant rights, including both the right to housing itself and other rights which are adversely affected by homelessness. Each section sets out (a) the relevant provisions of the ESC; (b) relevant decisions of the ECSR; (c) relevant conclusions (reporting procedure) of the ECSR; (d) other relevant international standards; and (e) evidence of harm caused to the right in question as a result of homelessness. The rights that are considered are as follows:

1. The Right to Housing.....	2
2. The Right of the Family to Social, Legal and Economic Protection.....	4
3. The Right to Protection of Health.....	12
4. The Right to Education.....	20
5. The Right to Development.....	25
6. The Right to Protection from Harm.....	29
7. Table of Cases.....	35

¹ See, e.g., *European and Roma Travellers Forum (ERTF) v Czech Republic*, Complaint No. 104/2014, Decision on the Merits, 17 May 2016 at [15] to [16]; *Medicins du Monde-International v France*, Complaint No. 67/2011, Decision on the Merits, 11 September 2012 at [23]; *Bedriftsforbundet v Norway*, Complaint No. 103/2013, Decision on the Merits, 17 May 2016 at [23] to [24]; and *Federation of Catholic Family Associations in Europe (FAFCE) v Ireland*, Complaint No. 89/2013, Decision on the Merits, 12 September 2014 at [17] to [18].

² See, e.g., *Medicins du Monde-International v France*, Complaint No. 67/2011, Decision on the Merits, 11 September 2012 at [141]; *Defence for Children International (DCI) v Belgium*, Complaint No. 69/2011, Decision on the Merits, 23 October 2012 at [31] to [34], and *Federation of Catholic Family Associations in Europe (FAFCE) v Ireland*, Complaint No. 89/2013, Decision on the Merits, 12 September 2014 at [21].

³ See, e.g., *European and Roma Travellers Forum (ERTF) v Czech Republic*, Complaint No. 104/2014, Decision on the Merits, 17 May 2016 at [18] to [20] and *Bedriftsforbundet v Norway*, Complaint No. 103/2013, Decision on the Merits, 17 May 2016 at [25] to [26].

⁴ See, e.g., *Medicins du Monde-International v France*, Complaint No. 67/2011, Decision on the Merits, 11 September 2012 at [22].

1. The Right to Housing

Article 31 of the ESC provides:

With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed:

1. to promote access to housing of an adequate standard;
2. to prevent and reduce homelessness with a view to its gradual elimination;
3. to make the price of housing accessible to those without adequate resources.

Ireland has opted out of Article 31, and so it cannot be relied on directly in any application to the ESCR concerning Ireland. However, in the case law of the ESCR, the right to housing under Article 31 and the right of the family to social, legal and economic protection under Article 11 have been treated as closely related. Case law under Article 31 suggests that principles established therein may also be applicable to Article 16, and therefore may potentially be relied on in applications based on Article 16 alone.

In *European Federation of National Organisations working with the Homeless (FEANTSA) v France*, the Committee found a violation of Article 31 of the ESC without a finding of a violation of Article 16 (The right of the family to social, legal and economic protection) of the Charter.⁵ It is noted however, that *FEANTSA* did not allege a violation of Article 16, so it is not possible to establish definitively whether a lack of a finding of a violation of Article 16 was simply due to the fact that *FEANTSA* did not state this in their complaint or whether the Committee interpret Articles 31 and 16 as interchangeable in many respects. It is argued the evidence supports the latter contention. Where there is held to be a violation of Article 31 of the ESC, the Committee seem to suggest that such a violation will also bring about a violation of Article 16 of the Charter. In a number of cases where there has been a violation of Article 31 alone or in combination with Article E (Non-Discrimination), the committee will consequently make a finding of a violation of Article 16 alone or in combination with Article E without examining Article 16 again in further detail.⁶

In *Medecins du Monde-International v France*, the Committee held:

... that the finding of a violation of Article E taken in conjunction with Article 31 concerning the right to housing of the Roma of Romanian and Bulgarian origin either lawfully residing or working regularly in France brings about also a violation of Article E taken in conjunction with Article 16.⁷

⁵ *Federation Europeene des Associations Nationales Travaillant avec les Sans-abri (FEANTSA) v France*, Complaint No. 39/2006, decision on the merits of 5 December 2007.

⁶ See, e.g., *Medecins du Monde-International v France*, Complaint No. 67/2011, Decision on the Merits, 11 September 2012; *International Movement ATD Fourth World v France*, Complaint No. 33/2006, Decision on the Merits, 5 December 2007; *FEANTSA v Slovenia*, Complaint No. 53/2008, Decision on the Merits, 8 September 2009; and *European Roma Rights Centre (ERRC) v France*, Complaint No 51/2008, Decision on the Merits, 19 October 2009.

⁷ *Medecins du Monde-International v France*, Complaint No. 67/2011, decision on the merits of 11 September 2012 at [100].

In *International Movement ATD Fourth World* the Committee stated that it:

... considers that ATD Fourth World's complaints in respect of Article 16 of the revised Charter, in isolation or taken in conjunction with Article E of the revised Charter, overlap by and large with the complaints in respect of Article 31, that there is therefore no need to examine them again with reference to Article 16.⁸

In *European Roma Rights Centre (ERRC) v France* the Committee held:

The Committee considers that the population concerned by this collective complaint unquestionably includes families. In view of the scope it has constantly attributed to Article 16 as regards housing of the family, the findings of a violation of Article 31 or Article E in conjunction with Article 31, amount to a finding that there has also been a breach of Article 16, and of Article E in conjunction with Article 16.⁹

In *Federation Europeene des Associations Nationales Travaillant avec les Sans-abri (FEANTSA) v Slovenia*, the Committee reiterated the same idea:

The Committee considers that in view of the scope it has constantly attributed to Article 16 as regards housing of the family, the findings of a violation of Article 31, taken alone or in conjunction with Article E, amount to a finding that there has also been a breach of Article 16, and of Article E in conjunction with Article 16.¹⁰

Therefore, it is arguable that although Ireland has opted out of Article 31 of the ESC, Articles 31 and 16 are in many contexts to be interpreted as interchangeable, in which case a substantial body of the case law that falls under the scope of Article 31 of the Convention in these contexts should also be considered applicable to the Irish context. It will be seen immediately below how the two provisions have been invoked together in a past decision concerning Ireland.

2. The Right of the Family to Social, Legal and Economic Protection

a. Relevant Provisions of the ESC

The ESC provides for the right of the family to social, legal and economic protection under Article 16:

With a view to ensuring the necessary conditions for the full development of the family, which is the fundamental unit of society, the Contracting Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal

⁸ *International Movement ATD Fourth World v France*, Complaint No. 33/2006, Decision on the Merits, 5 December 2007 at [158].

⁹ *ERRC v France*, Complaint No 51/2008, decision on the merits of 19 October 2009 at [89].

¹⁰ *Federation Europeene des Associations Nationales Travaillant avec les Sans-Abri (FEANTSA) v Slovenia*, Complaint No. 53/2008, decision on the merits of 8 September 2009 at [75].

arrangements, provision of family housing, benefits for the newly married, and other appropriate means.

b. Past decisions of the ECSR

*In International Federation of Human Rights v Ireland*¹¹ the Committee found Ireland in violation of Article 16 of the Revised Social Charter by failing to provide adequate housing conditions on local authority estates. Ireland was found to be in violation of Articles 11, 16, 17 and 30 taken together in respect of the failure of the State to adopt the Charter rights within the legal, policy and administrative framework of Local Authority Housing in Ireland; to ensure the adequacy, habitability and suitability of some Local Authority Housing which violates the Charter and ESC standards, and to respect Charter rights in State Regeneration programmes. In relation to the violation of Article 16 on the part of Ireland the Committee made the following statements invoking aspects of the scope of Article 31 in its reasoning:

The right of housing is of central importance to the family, and it permits the exercise of many other rights – both civil and political as well as economic, social and cultural. In order to satisfy Article 16, States Parties must promote the provision of an adequate supply of housing for families, take the needs of families into account in housing policies and ensure that existing housing be of an adequate standard and include essential services (such as heating and electricity). Adequate housing refers not only to a dwelling, which must not be sub-standard and must have essential amenities, but also to a dwelling of suitable size considering the composition of the family in residence. Furthermore the obligation to promote and provide housing extends to security from unlawful eviction...

To the extent that it requires States to ensure housing for families of an adequate standard and protection from eviction, Article 16 partially overlaps with Article 31 of the Charter, in the sense that the notion of adequate housing and forced eviction are identical under Articles 16 and 31 ...

The Committee also recalls that the rights recognised in the Social Charter must take a concrete and effective, rather than purely theoretical, form ...

This means that, for ensuring the satisfactory application of the right to family housing under Article 16 of the Charter – *mutatis mutandis*, the same as for the right to adequate housing under Article 31 – States Parties should:

- a. adopt the necessary legal, financial and operational means of ensuring steady progress towards achieving the goals laid down by the Charter;
- b. maintain meaningful statistics on needs, resources and results;
- c. undertake regular reviews of the impact of the strategies adopted;
- d. establish a timetable and not defer indefinitely the deadline for achieving the objectives of each stage;

¹¹ *Ibid.*

e. pay close attention to the impact of the policies adopted on each of the categories of persons concerned, particularly the most vulnerable.¹²

Therefore, while Ireland has not accepted Article 31 of the Charter which guarantees the right to housing, and the Irish Government argued that the complaint focuses on matters that in substance fall within Article 31 of the Charter, the ECSR decided that some of the issues also fall within the scope of Article 16 of the Charter in so far as they relate to family housing.¹³

*European Roma Rights Centre (ERRC) v Ireland*¹⁴ concerned Ireland's compliance with the ESC regarding the accommodation of Travellers. In 1995, a government appointed Task Force on the Travelling Community reported that there was inadequate accommodation for 1,342 Traveller households in Ireland. The Task Force recommended the provision of 3,100 additional units of Traveller accommodation by the year 2000. This was not complied with. The ERRC claimed that the Government of Ireland had not ensured the satisfactory application of Article 16 and Article 30 of the ESC with respect to accommodation for Travellers in Ireland. In addition, many of the actions and omissions of the Government had violated the rights of child Travellers to social, legal and economic protection (Article 17). The Committee found that Ireland was in violation of Article 16 on the grounds that there was a shortfall in sufficient accommodation for Travellers; inadequate conditions in the existing Traveller accommodation, and in relation to the legislative framework and practice of evictions:

The right to housing permits the exercise of many other rights – both civil and political as well as economic, social and cultural. It is also of central importance to the family. In order satisfy Article 16 states must promote the provision of an adequate supply of housing for families, take the needs of families into account in housing policies and ensure that existing housing be of an adequate standard and include essential services (such as heating and electricity). 56. As in the previous case, the Committee has stated that adequate housing refers not only to a dwelling, which must not be sub-standard and must have essential amenities, but also to a dwelling of suitable size considering the composition of the family in residence. Furthermore the obligation to promote and provide housing extends to security from unlawful eviction ...¹⁵

As in the previous case, the Committee also stated for the situation to be compatible with the Article 31, States Parties must:

- a. adopt the necessary legal, financial and operational means of ensuring steady progress towards achieving the goals laid down by the Charter;
- b. maintain meaningful statistics on needs, resources and results;
- c. undertake regular reviews of the impact of the strategies adopted;
- d. establish a timetable and not defer indefinitely the deadline for achieving the objectives of each stage;

¹² *International Federation for Human Rights (FIDH) v Ireland*, Complaint No. 110/2014, Decision on the Merits, 12 May 2017 at [106] to [109].

¹³ *Ibid* at [24].

¹⁴ *European Roma Rights Centre (ERRC) v Ireland*, Complaint No. 100/2013, Decision on the Merits, 1 December 2015.

¹⁵ *Ibid* at [56].

e. pay close attention to the impact of the policies adopted on each of the categories of persons concerned, particularly the most vulnerable ...¹⁶

In *ERRC v Greece*¹⁷ it was claimed that the Greek Government failed to apply Article 16 in a satisfactory manner, on the grounds that the Roma are denied an effective right to housing. The conclusion of the ECSR was that the insufficiency of permanent dwellings constituted a violation of Article 16 of the European Social Charter. The lack of temporary stopping facilities, the forced eviction and other sanctions of Roma also constituted a violation of Article 16 of the European Social Charter.

In *Medecins du Monde-International v France*¹⁸ it was alleged that the Roma, mostly from countries of the European Union, living in France in extreme poverty, are denied the rights to housing, education for their children, social protection and health care, in breach of articles 11, 13, 16, 17, 30 and 31 of the Revised European Social Charter. The Committee held that there were violations of Article E in conjunction with Articles 31, 16, 30, 19(8), 17, 11 and 13 because of a lack of sufficient measures to provide housing to families of migrant Roma residing lawfully or working regularly in France. The Committee held “that the finding of a violation of Article E taken in conjunction with Article 31 concerning the right of housing of the Roma of Romanian origin and Bulgarian origin either lawfully residing or working regularly in France brings about also a violation of Article E taken in conjunction with Article 16.”¹⁹

In *FEANTSA v Slovenia*²⁰ FEANTSA requested the Committee to find that Slovenia was not in conformity with Article 16 and 31 of the Revised European Social Charter, taken separately and in conjunction with Article E, on the grounds that Slovenia has failed to ensure an effective right to housing for its residents (especially families). Due to the implications of a Slovenian Act of 1991, the number of persons unable to obtain access to adequate housing had greatly increased, as had the number of evictions and the number of homeless people. The Committee found violations of Articles 31 and E taken in conjunction with Article 16. The Committee stated that “it considers that in view of the scope it has constantly attributed to Article 16 as regards housing of the family, the findings of a violation of Article 31 taken alone or in conjunction with Article E amount to a finding that there has also been a breach of Article 16 and of Article E in conjunction with Article 16”.²¹

c. Past Conclusions (Reporting Procedure) of the ECSR

Under its periodic reporting procedure, the ECSR concluded in its consideration of Ireland’s implementation of Article 16 in 2000:

¹⁶ *Ibid* at [59].

¹⁷ *European Roma Rights Centre (ERRC) v Greece*, Complaint No. 15/2003, Decision on the Merits, 8 December 2004.

¹⁸ *Medicins du Monde-International v France*, Complaint No. 67/2011, Decision on the Merits, 11 September 2012 at [100].

¹⁹ *Ibid* at [100].

²⁰ *FEANTSA v Slovenia*, Complaint No. 53/2008, Decision on the Merits, 8 September 2009.

²¹ *Ibid* at [75].

The Committee notes that the main housing programmes (house construction, housing grants and, to a lesser extent, housing loans) have been continued during the reference period. In particular, it notes the emphasis placed on funding social housing, provision of which has risen by 40% since 1992. However, the Committee notes that, according to the assessment of housing needs carried out in 1996 by the local authorities, 27,427 families were on the waiting list for housing. In line with the estimates included in the report, this figure would probably rise to 40,000 in 1998. The Committee asks what measures have been taken or are planned in order to accommodate families which are waiting for housing ...

Conclusion

The Committee concludes that the Irish situation does not comply with Article 16 of the Charter, on the grounds that equality of treatment is not guaranteed with regard to payment of family benefits. In addition, it insists that detailed answers to the questions raised above are to be contained in the next report.²²

In its 2011 conclusions, it was determined that Ireland was in compliance with Article 16.²³ Given the deterioration in the homelessness situation since then, it would be worthwhile comparing the present situation with the situation pertaining in 2000, when Ireland was found not to be in compliance.

d. Other Relevant International Standards

i. *International Covenant on Civil and Political Rights*

The International Covenant on Civil and Political Rights (ICCPR) was adopted by the United General Assembly on the 16 December 1966 and came into force on 23 March 1976. Articles 17 and 23(1) ICCPR refer to the right to family:

Article 17:

1. No one shall be subject to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.

Article 23(1)

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the state.

The Human Rights Committee has noted that the protection of the family and its members is also directly and indirectly guaranteed by other Articles within the Covenant in addition to Articles 17 and 23, such as protection of the child under Article 24.²⁴

²² Conclusions XV-1 - Ireland - Article 16, XV-1/def/IRL/16//EN, 31 October 2000, available at <http://hudoc.esc.coe.int/eng?i=XV-1/def/IRL/16//EN>.

²³ Conclusions 2011 - Ireland - Article 16, 2011/def/IRL/16//EN, 9 December 2011, available at <http://hudoc.esc.coe.int/eng?i=2011/def/IRL/16//EN>.

²⁴ Human Rights Committee, *General Comment No. 19 of 1990: Article 23*, (1994) UN Doc HRI/GEN/1/Rev.1 at [28].

ii. *International Covenant on Economic, Social and Cultural Rights*

The International Covenant on Economic, Social and Cultural Rights (ICESCR) was adopted by the General Assembly on 16 December 1966. Article 10(1) provides for the right to family:

The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children.

It states at Article 11:

The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

The Committee on Economic, Social and Cultural Rights stated in its General Comment No. 4:

The right to housing should not be interpreted in a narrow or restrictive sense which equates with, for example, the shelter provided by merely having a roof over one's head or views shelter exclusively as a commodity, rather it should be seen as the right to live somewhere in security, peace and dignity.²⁵

The Committee went on to state that suitable housing involve availability of services, affordability, habitability and accessibility:

(b) *Availability of services, materials, facilities and infrastructure.* An adequate house must contain certain facilities essential for health, security, comfort and nutrition. All beneficiaries of the right to adequate housing should have sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services;

(c) *Affordability.* Personal or household financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised. Steps should be taken by States parties to ensure that the percentage of housing-related costs is, in general, commensurate with income levels. States parties should establish housing subsidies for those unable to obtain affordable housing, as well as forms and levels of housing finance which adequately reflect housing needs. In accordance with the principle of affordability, tenants should be protected by appropriate means against unreasonable rent levels or rent increases. In societies where natural materials constitute the chief sources of building materials for housing, steps should be taken by States parties to ensure the availability of such materials;

(d) *Habitability.* Adequate housing must be habitable, in terms of providing the inhabitants with adequate space and protecting them from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors. The physical safety of occupants must be

²⁵ Committee on Economic Social and Cultural Rights, *General Comment No. 4: The Right to Adequate Housing* (1991), E/1992/23 at [7].

guaranteed as well. The Committee encourages States parties to comprehensively apply the Health Principles of Housing prepared by WHO which view housing as the environmental factor most frequently associated with conditions for disease in epidemiological analyses; i.e. inadequate and deficient housing and living conditions are invariably associated with higher mortality and morbidity rates;²⁶

(e) *Accessibility*. Adequate housing must be accessible to those entitled to it. Disadvantaged groups must be accorded full and sustainable access to adequate housing resources. Thus, such disadvantaged groups as the elderly, children, the physically disabled, the terminally ill, HIV-positive individuals, persons with persistent medical problems, the mentally ill, victims of natural disasters, people living in disaster-prone areas and other groups should be ensured some degree of priority consideration in the housing sphere. Both housing law and policy should take fully into account the special housing needs of these groups. Within many States parties increasing access to land by landless or impoverished segments of the society should constitute a central policy goal. Discernible governmental obligations need to be developed aiming to substantiate the right of all to a secure place to live in peace and dignity, including access to land as an entitlement ...

iii. *European Convention on Human Rights*

Article 8 of the European Convention on Human Rights (ECHR) states:

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedom of others.

The European Court of Human Rights has held that Article 8 cannot be construed as recognising a right to be provided with a home²⁷ or as conferring a right to live in a particular location.²⁸ However, positive obligations can arise under Article 8 in certain circumstances, particularly where vulnerable individuals or groups are involved. For example, the Court has stated that a refusal by the authorities to provide housing assistance to an individual suffering from a serious disease might in certain circumstances raise an issue under Article 8.²⁹

²⁶ *Ibid* at [8].

²⁷ *Chapman v United Kingdom*, 27238/95, 18 January 2001 at [99].

²⁸ *Garib v Netherlands*, 43494/09, 6 November 2017 at [141].

²⁹ *Marzari v Italy*, 36448/97, 4 May 1999.

iv. *Convention on the Rights of the Child*

Relevant provisions include:

Article 2(1)

States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

Article 18(2)

For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

Article 27

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.
2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.
3. State Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

In its General Comment No. 7, the Committee on the Rights of the Child – citing Articles 18 and 27 of the Convention – emphasised that States parties are required to render appropriate assistance to parents, legal guardians and extended families in the performance of their child-rearing responsibilities, including assisting parents in providing living conditions necessary for the child's development. The Committee stated that an integrated approach would include interventions that impact indirectly on parents' ability to promote the best interests of children (including, e.g., adequate housing).³⁰

e. Evidence of Harm Caused by Homelessness

A report prepared by Lambert *et al* in 2018³¹ has provided or cited various forms of evidence of the impact of homelessness on the social and economic protection available to families:

³⁰ Committee on the Rights of the Child, *General Comment No. 7: Implementing child rights in early childhood* (2005), CRC/C/GC/7/Rev.1, 20 September 2006 at [20].

³¹ Sharon Lambert, Daniel O'Callaghan and Owen Jump, *Young Families in the Homeless Crisis: Challenges and Solutions* (Dublin: Focus Ireland. December 2018), available at <https://www.focusireland.ie/wp-content/uploads/2018/12/Lambert-et-al-2018-Young-Families-in-the-Homeless-Crisis-Full-Report.pdf>.

In August 2018, 9,527 people were residing in emergency accommodation across the country including 5,834 adults and 3,693 children. These figures illustrate a 15% increase from the previous year.³²

Young parents setting up home for the first time in temporary emergency accommodation face unique and potentially overwhelming obstacles. Preliminary research states that young families are more likely to remain in emergency accommodation than more established families and there is concern about the long-term impact homelessness has on them and their children.³³

For children the housing and health of parents can provide the most vital means of stability.³⁴ Given the tumultuous nature of homeless emergency accommodation, these environments are not conducive to the development of young children and negatively impact on parenting capacity and the ability of a family to function as a family unit.³⁵

The majority of emergency accommodation facilities have rules and regulations that can affect meal times and family life more broadly while also institutionalising families within a controlled environment.³⁶

The common cultural perspective of homelessness associated with individual failure can lead to negative public perceptions about parent's ability to adequately care for their children.³⁷

Homeless families often face challenges in addition to attaining and maintaining housing. Homeless mothers are more likely than housed mothers to experience domestic violence, mental illness and substance abuse. Additional stressors can include exposure to family and community violence.³⁸

In research undertaken by Dr Kathy Walsh and Brian Harvey of families' experience of homelessness, issues complained of included: lack of certainty, poor conditions in some locations, overcrowding, lack of play space for children, boredom and reduced socialisation.³⁹ Without exception those being interviewed were very clear that becoming and being homeless had a very negative impact on their various relationships and in particular between parents and children. For those experiencing relationship difficulties, they reported deeply regretting the fact that their children often witnessed things that they should not have done such as aggressive arguments and disagreements which

³² *Ibid* at p.6.

³³ *Ibid* at p.1, citing Dublin Region Homeless Executive, *Report to Department of Housing, Planning and Local Government* (Dublin: DRHE, 2018), available at https://www.housing.gov.ie/sites/default/files/publications/files/report_of_drhe_to_department_of_housing_planning_local_government.pdf.

³⁴ *Ibid* at p.9, citing Chamberlain, C. and Johnson, G. (2013). Pathways into adult homelessness. *Journal of Sociology*, 49(1), 60–77.

³⁵ *Ibid*, citing Aviles, A. and Helfrich, C. (2004). Life skill service needs: Perspectives of homeless youth. *Journal of Youth and Adolescence*, 33(4), 331–338.

³⁶ *Ibid*, citing Swick, K.J. (2009). Strengthening homeless parents with young children through meaningful parent education and support. *Early Childhood Education Journal*, 36(4), 327–332.

³⁷ *Ibid*, citing Toolis, E. E. and Hammack, P. L. (2015). The lived experience of homeless youth: A narrative approach. *Qualitative Psychology*, 2(1), 50.

³⁸ Institute for Children, Poverty & Homelessness, *American Almanac of Family Homelessness 2015*, available at <https://www.icphusa.org/reports/american-almanac-of-family-homelessness-2015/>.

³⁹ Kathy Walsh and Brian Harvey, *Finding a Home: Families' Journeys out of Homelessness* (Dublin: Focus Ireland, 2017) at p.16, available at <https://www.focusireland.ie/wp-content/uploads/2017/12/Walsh-and-Harvey-2017-Finding-a-Home-Full-Report.pdf>.

naturally impacted on them.⁴⁰ Analysis of the interviews found that living in homeless accommodation had clearly impacted negatively on parent's relationship with their children.⁴¹

Because of the lack of available long-term accommodation for homeless families, many end up living long-term in B&Bs or hotels. Families often have to share a room together and where they have the facilities to do so they also have to do the cooking, washing and cleaning in the room. Some families may even be required to vacate the room during the day.⁴²

3. The Right to Protection of Health

a. Relevant Provisions of the ESC

The right to protection of health is set out in Article 11 of the ESC:

With a view to ensuring the effective exercise of the right to protection of health, the Parties undertake, either directly or in cooperation with public or private organisations, to take appropriate measures designed inter alia:

1. to remove as far as possible the causes of ill-health ...
3. to prevent as far as possible epidemic, endemic and other diseases, as well as accidents.

In addition to this primary provision, a number of other articles are relevant to the broad issue of healthcare. Article 13 recognises the Right to Social and Medical Assistance:

With a view to ensuring the effective exercise of the right to social and medical assistance, the Parties undertake:

1. to ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance, and, in case of sickness, the care necessitated by his condition.

Article 30 recognises the Right to Protection against Poverty and Social Exclusion:

With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, the Parties undertake:

- a) to take measures within the framework of an overall and co-ordinated approach to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to, in particular, employment, housing, training, education, culture and social and medical assistance."

Finally, Article E establishes the principle of non-discrimination in respect of securing rights recognised by the ESC, and can be relied upon in conjunction with any other provision (although not in isolation):

⁴⁰ *Ibid* at p.18.

⁴¹ *Ibid* at p.19.

⁴² Barnardos, *Every Child Matters: Children Living Without* (Dublin: National Children's Resource Centre, 2003) at p.27.

The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status.

For the purpose of the issue of child homelessness, the term 'other status' could be relied upon to argue that children as rights holders are being discriminated against by virtue of the fact their access to economic, social and political rights is curtailed by their status as children. In *International Association Autism-Europe v France*⁴³ the Committee stated that Article E not only prohibits direct discrimination but also all forms of indirect discrimination. It recalled that Article E, similarly to Article 14 ECHR, does not provide for an exhaustive list of prohibited grounds of discrimination. In a similar way, the European Court of Human Rights has recently stressed in interpreting Article 14 (the equivalent non-discrimination guarantee under the ECHR) that "the list is illustrative and not exhaustive, as is shown by the words 'any ground such as' ... and the inclusion in the list of the phrase 'any other status'. The words 'other status' have generally been given a wide meaning ... and their interpretation has not been limited to characteristics which are personal in the sense that they are innate or inherent".⁴⁴ In *International Association Autism-Europe v France*, the ECSR noted that the wording of Article E of the ESC is almost identical to the wording of Article 14 of the ECHR, and cited with approval case law of the European Court of Human Rights interpreting Article 14.⁴⁵

b. Past Decisions of the ECSR

*European and Roma Travellers Forum (ERTF) v Czech Republic*⁴⁶ addressed the housing situation of Roma in the Czech Republic in combination with their right to health, including substandard housing conditions, forced evictions and other systemic violations of the right to adequate housing and the right to health falling disproportionately against Roma in the Czech Republic.

The right to health is guaranteed by a number of international law instruments. In this case the right to health guaranteed by Article 11 of the charter was divided into two distinct but interrelated aspects to Article 11: availability (i.e. functioning health care facilities, services and programmes must be available in sufficient quantity within the country) and accessibility (i.e. goods, and services must be accessible to all, especially the most vulnerable or marginalized sections of the population).

The Committee considered that one of the main questions which the complaint raised related to the operation of the health insurance and medical assistance systems and whom the latter benefit, as well as how the Roma community access health care in practice.⁴⁷ It stated that that the health care system must be accessible to everyone, especially the health care should be available to all who require it, and free of charge to those without the necessary resources. States Parties must ensure the best possible state of health for the population according to existing knowledge.⁴⁸

Of particular note to homeless children and families is the following passage:

⁴³ *International Association Autism-Europe v France*, Complaint No. 13/2002, Decision on the Merits, 4 November 2003 at [52], available at <http://hudoc.esc.coe.int/eng?i=cc-13-2002-dmerits-en>.

⁴⁴ *Biao v Denmark*, 3850/10, 24 May 2016 at [89].

⁴⁵ *International Association Autism-Europe v France*, Complaint No. 13/2002, Decision on the Merits, 4 November 2003 at [52].

⁴⁶ *European and Roma Travellers Forum (ERTF) v Czech Republic*, Complaint No. 104/2014, Decision on the Merits, 17 May 2016, available at <http://hudoc.esc.coe.int/eng?i=cc-104-2014-dmerits-en>.

⁴⁷ *Ibid* at [111].

⁴⁸ *Ibid* at [117].

The Committee recalls that Article 11 of the Charter imposes a range of positive obligations to ensure an effective exercise of the right to health, and the Committee assesses compliance with this provision paying particular attention to the situation of disadvantaged and vulnerable groups ...⁴⁹

In light of this, the Committee found that the State had failed to meet its positive obligations to ensure that Roma families enjoy adequate access to health care, in particular by failing to take reasonable steps to address the specific problems faced by Roma communities stemming from their often unhealthy living conditions and difficult access to health services.⁵⁰ A violation of Article 11 was found on the grounds of exclusion in the field of health and inadequate access to health care services.

In *Medecins du Monde Internationale v France*, it was alleged that the Roma are denied the rights to housing, education for their children, social protection and health care, in breach of articles 11, 13, 16, 17, 19(8), 30 and 31 of the Revised European Social Charter in conjunction with Article E.

The Committee recalled that the healthcare system must be accessible to everyone, and in particular to disadvantaged groups which should not be victims of discrimination.⁵¹ It stated that when ruling on situations where the interpretation of the Charter concerns the rights of a child, it considers itself bound by the internationally recognised principle of the best interests of the child, and referred to Article 24 of the Convention on the Rights of the Child,⁵² which states that:

1. States parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.
2. States parties shall pursue full implementation of this right and, in particular, shall take appropriate measures ...

(b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care ...”

A memorandum from the Commissioner for Human Rights following a visit to France was cited, in which it was noted that the Roma in France have little access to medical care in practice.⁵³ The Committee concluded that France had failed to meet its positive obligation to ensure that migrant Roma, whatever their residence status, including children, enjoy an adequate access to health care, in particular by failing to take reasonable steps to address the specific problems faced by Roma communities stemming from their often unhealthy living conditions and difficult access to health services. This amounted to a violation of Article E taken in conjunction with Article 11(1).⁵⁴

⁴⁹ *Ibid* at [121].

⁵⁰ *Ibid* at [127].

⁵¹ *Ibid* at [139].

⁵² *Ibid* at [141].

⁵³ *Ibid* at [143].

⁵⁴ *Ibid* at [144] to [145].

*Defence for Children International (DCI) v Belgium*⁵⁵ concerned unaccompanied foreign minors who it was argued were denied social, health, legal and economic protection, social and medical assistance, in breach of articles 7§10, 11, 13, 16, 17 and 30 of the ESC. The ECSR cited General Comment No. 5 of the Committee on the Rights of the Child, in which it was stated that “[e]very legislative, administrative and judicial body or institution is required to apply the best interests principle by systematically considering how children’s rights and interests are or will be affected by their decisions and actions – by, for example, a proposed or existing law or policy or administrative action or court decision, including those which are not directly concerned with children, but indirectly affect children”.⁵⁶

The Committee underlined that “where the implementation of the rights proves highly complex and costly, the States Parties must endeavour to achieve the aims of the Charter according to a reasonable timetable, securing measurable progress and making optimum use of such resources as can be mustered.”⁵⁷ The Committee stated that Article 11 requires States Parties to take appropriate measures to remove the causes of ill health and that this means, *inter alia*, that States must ensure that all individuals have the right of access to health care and that the health system must be accessible to the entire population:⁵⁸

In this connection, the Committee has already underlined and now confirms that health care is a prerequisite for the preservation of human dignity and that human dignity is the fundamental value and indeed the core of positive European human rights law – whether under the European Social Charter or the European Convention on Human Rights ...⁵⁹

Applying these principles to unaccompanied foreign minors in Belgium, the Committee found that:

... the lasting incapacity of the reception facilities and the fact that, consequently, a number of the minors in question (particularly those accompanied by their families) have been consistently forced into life on the streets exposes these minors to increased threats to their health and their physical integrity, which are the result in particular of a lack of housing or foster homes. In this connection, the Committee considers that providing foreign minors with housing and foster homes is a minimum prerequisite for attempting to remove the causes of ill health among these minors (including epidemic, endemic or other diseases) and that the State therefore has felt to meet its obligations as far as the adoption of this minimum prerequisite is concerned. For these reasons, the Committee holds that there is a violation of Article 11 §§ 1 and 3 of the Charter.⁶⁰

c. Past Conclusions (Reporting Procedure) of the ECSR

In 2017, the European Committee of Social Rights concluded that the current situation in Ireland in regard to access to healthcare is not in conformity with Article 11(1) of the European Social Charter on the ground that it has not been established that the right of access to healthcare is guaranteed in

⁵⁵ *Defence for Children International (DCI) v Belgium*, Complaint No. 69/2011, Decision on the Merits, 23 October 2012, available at <http://hudoc.esc.coe.int/eng/?i=cc-69-2011-dmerits-en>.

⁵⁶ *Ibid* at [32], citing Committee on the Rights of the Child, *General Comment No. 5 (2003): General measures of implementation of the Convention on the Rights of the Child*, CRC/GC/2003/5, 27 November 2003 at [12].

⁵⁷ *Ibid* at [71].

⁵⁸ *Ibid* at [100].

⁵⁹ *Ibid* at [101].

⁶⁰ *Ibid* at [117] to [118].

practice, and expressed concern, *inter alia*, about significant differences in mortality and illness between different socio-economic groups.⁶¹

d. Other Relevant International Standards

i. *Universal Declaration of Human Rights*

Article 25 states that “everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services.”

ii. *Convention on the Rights of the Child*

Article 24 asserts that “State Parties recognise the right of the child to the enjoyment of the highest attainable standard of health”.

The Committee on the Rights of the Child (CRC) have issued a general comment on a child’s right to health. The Committee states that Article 24 on the right to health encompasses the child’s biological, social, cultural and economic preconditions. It interprets the right to health as an inclusive right, which extends to the right of a child to live in conditions that enable them to attain the highest standard of health.⁶²

iii. *International Covenant on Economic, Social and Cultural Rights*

Article 12 recognises “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”

This right was further explored by the Committee on Economic, Social and Cultural Rights. In its General Comment No. 4, the Committee commented upon the relation between the right to health under Article 12 and the right to housing under Article 11(1) of the Covenant. It stated that housing must be habitable, in terms of providing the inhabitants with adequate space and protecting them from cold, damp, heat, rain, wind or other threats to health. The Committee encourages State Parties to apply the *Health Principles of Housing* by the World Health Organisation, which views housing as the environmental factor most frequently associated with conditions for disease. For instance, it reports that inadequate and deficient housing and living conditions are invariably associated with higher mortality and morbidity rates.⁶³

⁶¹ Conclusions 2017 - Ireland - Article 11-1, 2017/def/IRL/11/1/EN, 8 December 2017, available at <http://hudoc.esc.coe.int/eng?i=2017/def/IRL/11/1/EN>.

⁶² Committee on the Rights of the Child, *General Comment No. 15 on the right of the child to the enjoyment of the highest attainable standard of health* (2013), CRC/C/GC/15 at [2].

⁶³ Committee on Economic Social and Cultural Rights, *General Comment No. 4: The right to Adequate Housing* (1991), E/1992/23 at [8].

e. Evidence of Harm Caused by Homelessness

The difficulties faced by homeless children in accessing healthcare in Ireland have been highlighted by a number of reports. For instance, without a permanent address, children cannot access a medical card if they are in need of one and therefore encounter barriers in accessing medical services.⁶⁴ O'Carroll states that 52% of homeless people had no access to a medical card meaning that they had no way to access the free primary care of which they are entitled to.⁶⁵ Children who are homeless also face difficulty in accessing mental health services. For a child who wishes to avail of the Children and Adolescent Mental Health Service (CAMH), the referral must be completed by a GP or a senior social worker or senior psychologist who is known to the young person.⁶⁶ It is evident that the absence of a permanent address results in a barrier to accessing a medical card, meaning that homeless children face significant difficulty in accessing healthcare services.

There have been a number of different reports compiled by organisations in Ireland as well as other jurisdictions which look at the impact that homelessness can have on both a child's physical and mental health. Their findings are outlined below:

i. *Impact of Homelessness on Physical Health*

In 2006, Shelter, a housing and homelessness charity in the UK, released a pamphlet on the impact of bad housing on children's lives. One aspect of the report researched how homelessness and bad housing can negatively affect children's physical health. The report states that the impact of homelessness on children's health begins at birth. Children born to mothers who have been in bed and breakfast accommodation for some time are more likely to be of low birth weight. They are also more likely to miss out on their immunisations, which can have serious implications on their future health. Children who are homeless have a 25 per cent higher risk of severe ill-health and disability during childhood and early adulthood.⁶⁷

Living in bed and breakfast accommodation puts children at greater risk of infection, especially gastroenteritis, skin disorders and chest infections, and accidents. Almost half of all childhood accidents are associated with physical conditions in the home. Families living in properties that are in poor physical condition are more likely to experience a domestic fire. Children in overcrowded housing are up to 10 times more likely to contract meningitis than children in general. There is a direct link between tuberculosis and overcrowding. Children in emergency housing are more likely to experience respiratory problems such as coughing and asthmatic wheezing. Overcrowded conditions have also been linked to slow growth in childhood, which is associated with an increased risk of coronary heart disease in later life.⁶⁸

⁶⁴ Rebecca Murphy et al, *Homelessness and Mental Health: Voices of Experience* (June 2017) at p.23, available at <https://www.mentalhealthreform.ie/wp-content/uploads/2017/06/Homelessness-and-mental-health-report.pdf>.

⁶⁵ O'Carroll et al, "A Review of a GP Registrar-Run Mobile Health Clinic for Homeless People" (2017) 186(3) *Irish Journal of Medical Science* 545.

⁶⁶ <https://www.hse.ie/eng/services/list/4/mental-health-services/camhs/communitycamhs/referrals/>.

⁶⁷ Shelter, *Chance of a Lifetime: the impact of bad housing on children's lives* (2006) at p.8, available at https://england.shelter.org.uk/_data/assets/pdf_file/0016/39202/Chance_of_a_Lifetime.pdf.

⁶⁸ *Ibid.*

In 2017, Focus Ireland issued a report on the impact of homelessness and emergency accommodation on the health and well-being of parents and children. Participants reported diet-related physical health issues, including constipation and weight gain. This was due to the lack of cooking facilities within emergency accommodation therefore resulting in poor nutrition. These poor-quality food choices impacted the physical health and the diet of children.⁶⁹

In January 2019, the Irish Times reported an increase of 29% of homeless children attending accident and emergency in the last year. The majority of the 842 children (85 per cent) presented with medical complaints including abdominal pain, high temperatures, chest infections, asthma, seizures and vomiting. Some 23 per cent presented with trauma, including head and arm injuries, head lacerations, burns and self-harm. Homeless children with cystic fibrosis, neurological disorders, severe autism and significant developmental delays.⁷⁰ (We have contacted Anne Marie Jones, head social worker at Temple Street Children's Hospital for verification).

ii. *Impact of Homelessness on Mental Health*

The Shelter Report also focused on how homelessness and bad housing can negatively affect children's mental health. It found that homeless children are three to four times more likely to have mental health problems than other children, even one year after being rehoused. Children who have been in temporary accommodation for more than a year are over three times more likely to demonstrate mental health problems such as anxiety and depression than non-homeless children.⁷¹ Focus Ireland also reported that living with uncertainty about housing impacted a child's mental health. All participants reported stress and anxiety from living in cramped one-room accommodation.⁷²

A study was conducted in Wales among 121 children under the age of 21 who were legally defined as being homeless. She found that 70% of the sample met the criteria for two or more current psychiatric conditions. Mood disorders and psychosis were the main disorders identified, closely followed by suicide risk.⁷³ This indicates that there is a prevalence of mental illness among homelessness children.

In 2012, Emily Logan, who was the Ombudsman for Children and Young People, looked at children's own experiences of homelessness in Ireland. Demonstrating the effects that homelessness can have on mental health, one child spoke of their experience:

"I ended up staying there much longer than anybody had planned... When you're in that situation you don't know what to think anymore... It can kind of mess up with your head. I could have been a person who was very fragile, you know? I could have been depressed, you know, I could have committed suicide if I was somebody else... Really, I don't know what to do anymore".⁷⁴

⁶⁹ Focus Ireland, *Food Access and Nutritional Health Among Families in Emergency Homeless Accommodation* (2017), 14-5.

⁷⁰ Elaine Edwards and Pat Leahy, "Homeless children in hospital emergency department up 29%", *Irish Times*, 22 January 2019, available at <https://www.irishtimes.com/news/social-affairs/homeless-children-in-hospital-emergency-department-up-29-1.3765951>.

⁷¹ Shelter, *Chance of a Lifetime: the impact of bad housing on children's lives* (2006) 13-4.

⁷² Focus Ireland, *Food Access and Nutritional Health Among Families in Emergency Homeless Accommodation* (2017), 15.

⁷³ Kate J Hodgson et al, "Mental Health Problems in Young People with Experiences of Homelessness and the Relationship with Health Service Use: a Follow-Up Study" (2014) *Evidence-Based Mental Health* 76-80.

⁷⁴ Ombudsman for Children and Young People, *Homeless Truths: Children's Experience of Homelessness in Ireland* (2012) at p.14, available at <https://www.oco.ie/app/uploads/2017/09/HomelessTruthsWEB.pdf>.

In research undertaken by Dr Kathy Walsh and Brian Harvey of families' experience of homelessness, issues complained of included: lack of certainty, poor conditions in some locations, overcrowding, lack of play space for children, boredom and reduced socialisation.⁷⁵ A large number of interviewees reported suffering mental health issues as a result of their experience of homelessness. Some stated that they suffered suicidal tendencies.⁷⁶

4. The Right to Education

a. Relevant Provisions of the ESC

Article 17 of the ESC protects the right of children and young persons to social, legal and economic protection, and makes particular reference to education:

With a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the Parties undertake, either directly or in co-operation with public and private organisations, to take all appropriate and necessary measures designed:

1 (a) to ensure that children and young persons, taking account of the rights and duties of their parents, have the care, the assistance, the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose ...

2 to provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at schools.

The ESC separately protects the rights of children with disabilities to access education under Article 15.

b. Past Decisions of the ECSR

In the case of *European Roma and Travellers Forum v France*,⁷⁷ the ECSR noted that education is a fundamental right enshrined in Article 17(2) of the Charter and "in order to implement it as an actual, effective right, a general environment must be created in which it can be enjoyed, namely through the stable accommodation of relatives and families in housing of a reasonable standard, ease of access to establishments (transport and proximity), a protective legal framework and security. Frequent evictions of families do not provide this secure environment."⁷⁸ In this case there were low number of children attending school from such backgrounds. Yet, French authorities have set up a system of

⁷⁵ Kathy Walsh and Brian Harvey, *Finding a Home: Families' Journeys out of Homelessness* (Dublin: Focus Ireland, 2017) at p.16, available at <https://www.focusireland.ie/wp-content/uploads/2017/12/Walsh-and-Harvey-2017-Finding-a-Home-Full-Report.pdf>.

⁷⁶ *Ibid* at p.17.

⁷⁷ *European Roma and Travellers Forum (ERTF) v France*, Complaint No. 119/2015 [https://hudoc.esc.coe.int/eng/#{tabview%22:\[document%22\],%22ESCDclidentifier%22:\[reschs-2018-4-en%22\]}](https://hudoc.esc.coe.int/eng/#{tabview%22:[document%22],%22ESCDclidentifier%22:[reschs-2018-4-en%22]})

⁷⁸ *Ibid*.

mobile classrooms, which play a temporary role in affording schooling and contacts with schools for pupils and families whose links with the school system are unstable.⁷⁹ Accordingly by 14 votes to 1 there was a violation of Article 17(2).

c. Past Conclusions (Reporting Procedure) of the ECSR

The Committee noted in its conclusions on Ireland in 2011 that under Article 17(2) of the ESC, States must take measures to encourage school attendance and to actively reduce the number of children dropping out or not completing compulsory education and the rate of absenteeism.⁸⁰ Particularly high dropout rates exist among children belonging to the Traveller community and children with disabilities.⁸¹

In its conclusions on the Netherlands in 2015, the Committee noted that access to education is crucial for every child's life and development. The denial of access to education will exacerbate their vulnerability. Therefore, children, whatever their residence status, come within the personal scope of Article 17(2).⁸²

d. Other Relevant International Standards

i. *Convention on the Rights of the Child*

The right of the child to education is protected by Articles 28 and 29 of the CRC. Article 28 provides, *inter alia*:

1 States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular ...

(e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

Furthermore, the basic rights of non-discrimination of a child are also found under Article 2(1) of the UNCRC:

States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

⁷⁹ *Ibid.*

⁸⁰ Conclusions 2011 - Ireland - Article 17-2, 2011/def/IRL/17/2/EN, 9 December 2011, available at <http://hudoc.esc.coe.int/eng/?i=2011/def/IRL/17/2/EN>.

⁸¹ *Ibid.*

⁸² Conclusions 2015 - Netherlands - Article 17-2, 2015/def/NLD/17/2/EN, 4 December 2015, available at <http://hudoc.esc.coe.int/eng/?i=2015/def/NLD/17/2/EN>.

ii. *Universal Declaration of Human Rights 1948*

Article 26

- (1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory.

iii. *International Covenant on Economic, Social and Cultural Rights, 1966*

Article 13

1. The States Parties to the present Covenant recognise the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms.
2. The States Parties to the present Covenant recognise that, with a view to achieving the full realisation of this right:
 - (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;

The Committee on Economic, Social and Cultural Rights in its General Comment No. 13 stresses that the accessibility of education should be without discrimination: "education must be accessible to all, especially the most vulnerable groups, in law and fact, without discrimination on any of the prohibited grounds."⁸³

e. Evidence of Harm Caused by Homelessness

Below are some of the key facts established by Dr Geraldine Scanlon and Grainne McKenna in the *Home Works* report,⁸⁴ which was commissioned by the Children's Rights Alliance and assessed the negative impacts of homelessness on children's education:

The Irish National Teachers Organisation (INTO) reported in October 2017 that children who are experiencing homelessness struggle in school and that teachers are given no guidance or support when dealing with the increasing number of children in these circumstances.⁸⁵

In 2016 the Department of Children and Youth Affairs announced a funding of €8.25 million to support early childhood provision for children experiencing homelessness through the Community Childcare Subvention (Transitional) Scheme in addition to current childcare funding available under the Affordable Childcare Scheme.⁸⁶

⁸³ Committee on Economic, Social and Cultural Rights, *General Comment No. 13: The right to education (article 13 of the Covenant)*, E/C.12/1999/10 at [6].

⁸⁴ Scanlon G and McKenna G, *Home Works: A Study on the Educational Needs of Children Experiencing Homelessness and Living in Emergency Accommodation* (Dublin: Children's Rights Alliance, 2018), available at https://childrensrightrights.ie/sites/default/files/submissions_reports/files/Home%20Works%20Study%20on%20the%20Educational%20Needs%20of%20Children%20Experiencing%20Homelessness%20-%20Full%20Report.pdf.

⁸⁵ *Ibid*, p.8.

⁸⁶ *Ibid*.

Residing in long term bed and breakfast accommodation has been noted to particularly impact on the academic performance of pupils.⁸⁷

Experiencing homelessness can be correlated with other mitigating life factors including food poverty, access to adequate health services and participation in education. Both national and international findings have identified more specific challenges for children experiencing homelessness pertaining to educational participation and outcomes. These challenges include but are not limited to, their lack of access to schools, poor attendance rates, inability to complete homework, experiencing difficulties in their continuity in learning, sustaining relationships with teachers and peers; experiencing high levels of anxiety and poor mental health while being placed long distances from their school on becoming homeless.⁸⁸

A meta-analysis of studies on homeless children and children in low-income households conducted by Buckner (2008) found that both groups of children shared an overall poverty effect but that homeless children performed worse on measures of academic achievement and school attendance in comparison to low-income housed children.⁸⁹

However, where schools provide a safe and stable environment it can help play an important role in helping children overcome adversity in their lives.⁹⁰ In Ireland, children who are experiencing homelessness see school as a place of safety, routine and predictability. However, due to poor attendance and placement in accommodation some distance from school was found to impact on children's academic achievements.⁹¹ The importance of school was expressed by parents who reported that school was important to their children not only because of the friendships they made through school but also because of the stability it offered to them in the uncertainty that accompanied their experience of homelessness.⁹²

Research conducted over the past twenty years has consistently illustrated how residential and educational mobility resulting from homelessness places children at risk of academic problems, poor school attendance, acute medical conditions, negative social stigma and isolation as well as physical, social and cognitive setbacks.⁹³ For example, an Australian study found that children's attendance and

⁸⁷ *Ibid* at p.16, citing Power, S., Whitty, G., and Youdell, D. (1999). Doubly disadvantaged: Education and the homeless child. In P. Vostanis and S. Cumella (Eds.), *Homeless children: Problems and needs* (pp. 130-141). London: Jessica Kingsley Publishers. Retrieved from <https://bit.ly/2sR5fHw>.

⁸⁸ *Ibid* at p.17, citing, *inter alia*, Keogh, A. F., Halpenny, A. M., and Gilligan, R. (2006). Educational issues for children and young people in families living in emergency accommodation. An Irish perspective. *Children Society*, 20(5), 360-375. doi :10.1111/j.1099-0860.2006.00015. Masten, A. S., Sesma, A., Si-Asar, R., Lawrence, C., Miliotis, D., and Dionne, J. A. (1997). Educational risks for children experiencing homelessness. *Journal of School Psychology*, 35(1), 27-46.

doi:10.1016/S0022-4405(96)00032-5

⁸⁹ *Ibid*, citing Buckner, J. C. (2008). Understanding the impact of homelessness on children: Challenges and future research directions. *American Behavioral Scientist*, 51(6), 721-736. doi:10.1177/0002764207311984.

⁹⁰ *Ibid* at p.18, citing Gilligan, R. (1998). The importance of schools and teachers in child welfare. *Child and Family Social Work*. 3 (1), 13-25. doi/10.1046/j.1365-2206.1998.00068.x/pdf.

⁹¹ *Ibid* at p.48.

⁹² *Ibid* at p.22-24.

⁹³ Scanlon G and McKenna G, *Home Works: A Study on the Educational Needs of Children Experiencing Homelessness and Living in Emergency Accommodation* (Dublin: Children's Rights Alliance, 2018), Executive Summary, p.10 available at https://www.childrensrightrights.ie/sites/default/files/submissions_reports/files/Home%20Works%20-%20Executive%20Summary_0.pdf, citing, *inter alia*, Julianelle, P., and Foscarinis, M. (2003). Responding to the school mobility of children and youth experiencing homelessness: The McKinney-Vento Act and beyond. The

achievement in the education system was found to be restricted due to high levels of mobility and the uncertainty attached to unstable homes.⁹⁴

Focus Ireland also examined the addition of back to school costs in the effects of homelessness on education. In the summer of 2018 the Department of Employment Affairs and Social Protection received over 36,000 applications for the Back to School Clothing and Footwear Allowance which highlights the pressure that exists on parents to provide adequate footwear and clothing for their children who are returning to school. A survey conducted by Barnardos in 2018 found that the average cost of sending a child to senior infants is €360 while the average cost of sending a child to first year is €765. This expense is a huge financial pressure on parents, especially to families who are living in temporary accommodation. They also established a further issue associated to access to education when children do not have a place to conduct their homework in the evenings. This has been facilitated by Focus Ireland who now offer a service for families in these circumstances and offer a meal, a place for children to do their homework, play areas and a place of safety for these families.⁹⁵

DEIS is the Department of Education and Skills policy instrument to address educational disadvantage. Schools which are participating in DEIS can receive a number of additional supports, including: additional staff, access to home school community liaison services, access to the school meals programme, access to the school completion programme, access to literacy and numeracy supports, additional funding under the school books grant scheme, and further grant opportunities. These supports are targeted at improving educational outcomes for those at risk, and are not designed to tackle poverty.⁹⁶ Research carried out by Focus Ireland has indicated that almost half the children residing in emergency accommodation are attending schools which are not in receipt of additional support services from the Department of Education to assist them in tackling economic and social disadvantage. This finding has policy implications particularly in relation to how the non-DEIS schools with a significant number of children from homeless families can be supported to respond to this challenge.

While Tusla's broader Educational Welfare Service provides integrated services to all schools, the DEIS programme does offer more targeted educational supports. The key measures implemented under the DEIS Action Plan include measures to increase student attendance, educational progression, attainment and retention, exactly the sort of supports required by the 45% of pupils that are homeless and attending non-DEIS schools. To extend this form of support to the 45% of children who are currently outside the DEIS system will either require that criteria for DEIS designation be broadened to include the prevalence of homelessness, or the establishment of an additional policy instrument specifically targeted at the needs of children in families that are homeless.

The Focus Ireland Family Homeless Action Team (HAT) carried out a study to obtain a picture of the age profile and other relevant features of the children in homeless families. They found that the

Journal of Negro Education, 72(1), 39-54. doi:10.2307/3211289 and Masten, A. S., Sesma, A., Si-Asar, R., Lawrence, C., Miliotis, D., and Dionne, J. A. (1997). Educational risks for children experiencing homelessness. *Journal of School Psychology*, 35(1), 27-46.

doi:10.1016/S0022-4405(96)00032-5

⁹⁴ Tim Moore and Morag McArthur, "'Good for kids': Children who have been Homeless Talk about School" (2011) 55(2) *Australian Journal of Education*, <https://doi.org/10.1177%2F000494411105500205>.

⁹⁵ F White, *Homelessness Costs Children Their Education* (Dublin: Focus Ireland, 2018), available at <https://www.focusireland.ie/homelessness-costs-children-education/>.

⁹⁶ DEIS Plan 2017, Delivery Equality of Opportunity in Schools, available at <https://www.education.ie/en/Schools-Colleges/Services/DEIS-Delivering-Equality-of-Opportunity-in-Schools-/DEIS.html>.

majority of children stay enrolled in the school they were attending when they became homeless. The assessment used Google Maps to analyse the distance in km which the children are travelling to school. Although not directly specified within this report Focus Ireland have previously spoken about how the majority of families whom they work with do not have access to a car and rely predominantly on public transport. The report analysed the distance travelled for 63 children, representing 10% of the total cohort. On average, we found that children travelled 8.75km to school. One child was residing in emergency accommodation which was 34.1km from their school. However, even lesser distances may prove more difficult if suitable public transport links do not exist. For example, one child was residing 14.1km from their school. However, because of a lack of direct public transport links, if that child needed to reach their school using buses, they would be travelling for over two and a half hours.⁹⁷

Homeless children experience twice the incidence of learning disabilities, such as speech delays and dyslexia, as other children.⁹⁸ A report from the Children's Rights Alliance,⁹⁹ 'Home Works: A Study on the Educational Needs of Children Experiencing Homelessness and Living in Emergency Accommodation,' illustrated the needs of children and how the lack of basic rights impacted upon them. In the report, parents and teachers were surveyed and repeatedly identified a lack of access to a healthy diet as a factor impacting on children's school attendance and learning. Parents described challenges in providing school lunches while living in emergency accommodation, due to inadequate facilities, with many opting to choose between the price of getting their child to school and having food for them to eat. A study carried out by Buckner shows that homeless children and children in low-income houses share the effects of poverty; however, homeless children did not perform well in academic achievements or school attendance compared to the latter.¹⁰⁰

5. The Right to Development

a. Relevant Provision of the ESC

Article 17 – The right of children and young persons to social, legal and economic protection

With a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the Parties undertake, either directly or in co-operation with public and private organisations, to take all appropriate and necessary measures designed:

⁹⁷ A Connolly, *Insights into family homelessness No.1 – Children's and Families living in Dublin's Emergency Accommodation* (Focus Ireland, 2016) available at <https://www.focusireland.ie/wp-content/uploads/2018/01/Connolly-2016-Insights-into-Family-Homlessness-No-1-Snapshot-Profile-of-Children-residing-in-Emergency-Accommodation-in-Dublin-Region.pdf> accessed on 14th February 2019.

⁹⁸ Hart-Shegos E, *Homelessness and its Effects on Children* (A Report Prepared for the Family Housing Fund December, 1999) http://www.fhfund.org/wp-content/uploads/2014/10/Homlessness_Effects_Children.pdf accessed 12th February 2019, p. 9.

⁹⁹ Scanlon G and McKenna G, 'Home Works: A Study on the Educational Needs of Children Experiencing Homelessness and Living in Emergency Accommodation,' (Children's Rights Alliance 2018).

¹⁰⁰ Buckner, J.C, *Understanding the impact of homelessness on children: Challenges and future research directions*, (*American Behavioural Scientist*, 2008) 51(6), 721- 736.

1. a) to ensure that children and young persons, taking account of the rights and duties of their parents, have the care, the assistance ... they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose;

b. Other Relevant International Standards

i. *Convention on the Rights of the Child*

The right of children to development is recognised in Article 6(2):

States Parties shall ensure to the maximum extent possible the survival and development of the child.

In General Comment No. 5, the Committee on the Rights of the Child identified Article 6 as one of the four general principles of the Convention, and stated that it “expects States to interpret ‘development’ in its broadest sense as a holistic concept, embracing the child’s physical, mental, spiritual, moral, psychological and social development. Implementation measures should be aimed at achieving the optimal development for all children.”¹⁰¹

Thus far, limited attention has been given in theory or in practice to the ways in which this protection should be realised. Peleg comments that rarely was the right to development described as an independent right of the child, as most of the discussions about Article 6 tends to focus on the right to life and to a limited extent on the right to survival.¹⁰² In his work Peleg analyses all of the Committee’s jurisprudence until 2017 and argues that the Committee conceptualises the right to development in one of two ways.¹⁰³ The first is interpreting the right to development as a collateral right, meaning that when another right of the child is being violated, for example the right to education, it also constitutes a violation of the right to development. The second interpretation is drawing causality between two rights, stating that a violation of a right of the child undermines the ability of the child to develop fully. Taking the right to education as an example once more, this interpretation suggests that a violation of the right to education leads to a lesser ability of the child to develop fully in the future.¹⁰⁴

In the few occasions where the Committee did refer to the right to development, it was usually in the context of other rights, for example the child’s rights to health or education (again, similarly to the connection made at the first draft of the Convention). These references did not address the interpretation or implementation of the right to development as an independent obligation. For example, the Committee noted that inadequate access to post-natal health care services undermines the child’s right to health as well as having a negative impact on their right to development. Similar connections were made with respect to some other events in the child’s life including: poverty and

¹⁰¹ Committee on the Rights of the Child, *General Comment No. 5 (2003): General measures of implementation of the Convention on the Rights of the Child*, CRC/GC/2003/5, 27 November 2003 at [12].

¹⁰² Noam Peleg, “Developing the Right to Development” (2017) *International Journal of Children's Rights* at p.384.

¹⁰³ *Ibid.*

¹⁰⁴ *Ibid.*

the right to adequate standard of living (Article 27); inadequate parental care (Article 18); and the living conditions of street children.¹⁰⁵

c. Evidence of Harm Caused by Homelessness

International research has consistently indicated that children who are homeless experience poor health and wellbeing, a lack of security, loss of friendships and isolation.¹⁰⁶

Halpenny *et al* have commented:

The crisis of eviction or homelessness may have a traumatising effect on children to an even greater extent than on adults. The child's world may be turned upside down and positive ties to schools, friends, teachers, extended family, pets, and neighbourhood may be broken. Vulnerable children, particularly, may need special help. Otherwise, they may never fully recover from the negative impact of homelessness on their educational progress and social development.¹⁰⁷

In 2007 the World Health Organisation released an evidence report called 'Total Environment assessment model for Early Childhood Development'¹⁰⁸. This report highlighted that early childhood is considered to be the most important developmental phase throughout the lifespan. Early Childhood experiences shape the way for the developmental trajectory and life course of the child as he or she progresses into adulthood. Healthy early childhood development which includes the physical, social emotional and language cognitive domains of development, each equally important strongly influence well-being, obesity, mental health, heart disease, competence in literacy and numeracy, criminality and economic participation throughout life.¹⁰⁹ Within the report the WHO acknowledges that the nurturant qualities of the environments where children grow up, live and learn matter the most for their development, yet parents cannot provide strong nurturant environments without help from local, regional, national and international agencies.¹¹⁰

The report outlines several universal principles which characterise Early Childhood Development (ECD); these principles are consistently upheld irrespective of society, and a child and family's place within that society.¹¹¹ It can be drawn from these principles that the socio-economic environment is a fundamental determinant of ECD and, in turn, ECD is a determinant of health and well-being across the balance of the life course. This is particularly relevant to our research as those who are living within emergency accommodation are predominantly from low socioeconomic backgrounds. Figures released in January 2019, indicated that there are 3,624 children in Emergency Accommodation in

¹⁰⁵ Noam Peleg, "Time to grow Up: The United Nations Committee on the Rights of the Child's Jurisprudence on the Right to Development" in M. Freeman (ed.) *Law & Childhood Studies* (Oxford: Oxford University Press, 2012).

¹⁰⁶ Lorelle, S., and Grothaus, T. (2015). Homeless children and their families' perspectives of agency services. *Community Mental Health Journal*, 51(7), 800-808. doi:10.1007/s10597-015-9827-y.

¹⁰⁷ Halpenny, Keogh and Gilligan, "A Place for Children? Children in Families Living in Emergency Accommodation: The Perspectives of Children, Parents and Professionals" (2002) at p.72, available at <https://arrow.dit.ie/cgi/viewcontent.cgi?article=1017&context=aaschsslrep>.

¹⁰⁸ World Health Organisation (WHO) Total Environment Assessment Model for Early Child Development Evidence Report (2007), available at https://www.who.int/social_determinants/resources/ecd_kn_evidence_report_2007.pdf?ua=1.

¹⁰⁹ *Ibid* at p.9.

¹¹⁰ *Ibid* at p.9.

¹¹¹ *Ibid* at p.20.

Ireland.¹¹² Focus Ireland have spoken out repeatedly about how thousands of families across Ireland are struggling to survive on low incomes and social welfare, many of whom fall into difficulty as a result of serious housing difficulties arising from increasing rents and insufficient supports such as HAT.¹¹³ Focus Ireland have highlighted that the largest cause of homelessness in Ireland for families at present is Property being taken off the rental market for reasons such as sale, personal use and so forth.¹¹⁴ Families then find it difficult to find further accommodation and as such are at increased risk of requiring emergency accommodation. Despite the clear risks imposed for children and the long term negative effects associated the Government has failed to provide better access to affordable housing for families in need. Figures released in September 2018 indicated that there were 71,858 households who qualified for social housing. Over twenty five per cent of these households have been on the list seven years or longer.¹¹⁵

Socio-economic inequities in developmental outcomes result from inequities in the degree to which the experiences and environmental conditions for children are nurturant. The 2007 WHO report¹¹⁶ highlights that a broad array of experiences and environmental conditions matter and impact on ECD. These include those that are intimately connected to the child, and therefore readily identifiable (e.g., the quality of time and care provided by parents, and the physical conditions of the child's surroundings), but also more distal factors that in various ways influence the child's access to nurturant conditions (e.g., whether government policies provide families and communities with sufficient income and employment, health care resources, early childhood education, safe neighbourhoods, decent housing, etc.). The report acknowledges that genetic predispositions and biophysical characteristics partially explain how environment and experience shape ECD, it then goes on to highlight how evidence leads us to consider the child as a social actor who shapes and is in turn shaped by his or her environment.¹¹⁷ This is known as the "transactional model," which emphasizes that the principal driving force of child development is relationships.¹¹⁸

The report emphasises that strong nurturant relationships can make for healthy ECD, furthermore it highlights that socioeconomic circumstances, despite their importance, are not fate. Despite this however, reports from organisations such as Barnardos speak of how life in emergency accommodation and the stress associated with such environments often has a negative impact on relationships and the care provided as such. Relationships with siblings and crucially parents can suffer¹¹⁹. For some parents the stress of trying to raise children in overcrowded, temporary accommodation under someone else's roof is frequently too much to bear and leads to mental health

¹¹² Department of Housing, Planning & Local Government Homelessness Report January 2019, available at: https://www.housing.gov.ie/sites/default/files/publications/files/homeless_report_-_january_2019.pdf.

¹¹³ Focus Ireland Resource Hub: available at: <https://www.focusireland.ie/resource-hub/about-homelessness/>.

¹¹⁴ Focus Ireland: Insights into Family Homelessness NO. 16 – Causes of Family Homelessness in the Dublin Region – 2016-2017, available at: <https://www.focusireland.ie/wp-content/uploads/2018/12/Gambi-Sheridan-and-Hoey-2018-Insights-into-Family-Homelessness-No-16-Causes-of-family-homelessness-in-the-Dublin-region-during-2016-and-2017-Final-2.pdf>.

¹¹⁵ Summary of Social Housing Assessments 2018, available at: https://www.housing.gov.ie/sites/default/files/publications/files/summary_of_social_housing_assessments_2018_-_key_findings.pdf.

¹¹⁶ World Health Organisation (WHO) Total Environment Assessment Model for Early Child Development Evidence Report (2007) at p.11, available at https://www.who.int/social_determinants/resources/ecd_kn_evidence_report_2007.pdf?ua=1.

¹¹⁷ *Ibid.*

¹¹⁸ *Ibid.*

¹¹⁹ Barnardos, "Hidden Homelessness - What's The Problem?" (Barnardos, 2018), available at <https://www.barnardos.ie/media/1179/hidden-homelessness.pdf>.

or substance abuse problems. As a result parents can find it hard to manage their emotions (losing their temper easily for example) or become emotionally unavailable to their children. A Barnardos Project reporter commented that:

There are emotional effects, not having their own space, falling asleep with parents and in front of the TV, there is an impact on development, many children with inadequate space to play and explore and to do homework. Social development is impacted as these children cannot have friends over to the house and afterschool activities are limited. Parents are stressed trying to manage and parental mental health is impacted which in turn impacts their ability to parent.¹²⁰

Furthermore, Barnardos reports have highlighted that challenges often arise from having too many adults under the one roof, each giving their own opinion on how a child is parented or disciplined, this often causes tensions. This can undermine the parent-child relationship and make it even more difficult for parents to establish consistency and routines for their child. Children's peer relationships are also affected by life in Emergency Accommodation. Reports carried out by Barnardos have highlighted that children living in emergency accommodation and experiencing homelessness feel isolated and different to their peers. They have trouble socialising and often cut themselves off from friends due to shame and embarrassment about not having their own space or owning many belongings. They may also be physically cut off if they have to move far from their social circle to share someone else's home. Lack of privacy and personal space is a common problem for children and young people experiencing hidden homelessness. The children and young people often have no space to play, hang out or relax. Lack of stimulation can lead to boredom and frustration. For older children lack of space can result in being forced out during the day as there simply isn't room for them. A Barnardos Project Worker commented in one particular report that "[s]ocially – they do not feel comfortable bringing friends to their home. It is very stressful for parents who in turn may struggle to meet the needs of their children. For teen parents it can affect their baby meeting the developmental milestones due to lack of appropriate and safe floor space or space for a cot etc."¹²¹

6. Right to Protection from Harm

a. Relevant Provisions of the ESC

To comply with Article 17, domestic law must prohibit and penalise all forms of violence against children that is acts or behaviour likely to affect the physical integrity, dignity, development or psychological wellbeing of children.¹²² The relevant provisions must be sufficiently clear, binding and precise, so as to preclude the courts from refusing to apply them to violence against children.¹²³ Moreover, states must act with due diligence to ensure that such violence is eliminated in practice. Although violence is not directly linked to life in emergency accommodation it could be argued that

¹²⁰ *Ibid* at p.4.

¹²¹ *Ibid* at p.5.

¹²² Council of Europe, *Children's Rights under the European Social Charter*, available at <https://rm.coe.int/1680474a4b> at p.6.

¹²³ *Ibid*.

life in such accommodation does negatively impact on the development and psychological well-being of children.¹²⁴

b. Other Relevant International Standards

i. *European Convention on Human Rights*

Article 3 of the ECHR imposes a positive obligation on States to protect children from ill-treatment at the hands of private actors. This obligation includes both responding to known cases of abuse or neglect,¹²⁵ and taking pro-active, preventive measures to mitigate risks to children of which the State is or ought to be aware.¹²⁶ Therefore, where children in emergency accommodation are being abused, or where placement in emergency accommodation places children at risk of being abused, the ECHR obliges States to take measures to respond to or mitigate the risk of that abuse.

ii. *United Nations Convention on the Rights of the Child*

Article 19:

States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

The Committee on the Rights of the Child in General Comment No. 13 defines violence to mean “all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse”. Neglect means “the failure to meet children’s physical and psychological needs, protect them from danger or obtain medical or other services when those responsible for the children’s care have the means, knowledge and access to services to do so”.¹²⁷

State bodies responsible for the protection of children from all forms of violence may directly and indirectly cause harm by lacking effective means of implementation of obligations under the Convention.¹²⁸

¹²⁴ *Ibid.*

¹²⁵ *Z v United Kingdom*, 29392/95, May 10, 2001 and *Eremia v Moldova*, 3564/11, May 28, 2013.

¹²⁶ *O’Keeffe v Ireland*, 35810/09, January 28, 2014.

¹²⁷ Committee on the Rights of the Child, *General Comment No.13 (2011): The right of the child to freedom from all forms of violence*, CRC/C/GC/13 at [20].

¹²⁸ *Ibid* at [32].

c. Evidence of Harm Caused by Homelessness

The lack of medium and long-stay housing for homeless children leaves children vulnerable and at risk of abuse, harm and exploitation. A study¹²⁹ carried out has found that in Dublin most children must access hostel accommodation in the city centre following contact with the HSE Out of Hours Service, placing them at additional risk of exposure to potential harm. Those who have had to use this service repeatedly were particularly vulnerable to exposure to alcohol and drug use, criminal activity and intimidation and violence.¹³⁰

As some families have to stay in B&B's or hotels, there are often more homeless people staying there, some of whom are adults who may be using drugs or alcohol. Children living in these situations are extremely vulnerable to any of these potential harms, so it is important that they are protected and kept away from such harm. In some cases where parents are concerned about their children being exposed to such distressing behaviour, they are often walking the streets in the evening time in order to keep the children away from there until it was time for them to go to sleep.¹³¹

With regards to the standard of care required for children in homeless services, if we compare it with the standards required for children in residential care in Ireland, it is clear that the same standards are not applied in both situations despite the fact that the children in both of these situations are extremely vulnerable and are in need of special and equal protection. In a HIQA report¹³² the standards are in place in order to ensure that children receive the best possible care and support while they live in care. The standards set out what the residential centre should do in order to provide a good-quality and safe-service. The standards also apply to the staff working with the children to ensure they meet the level of care and support required.¹³³ One of the rights mentioned in the report is the child's right to be safe and free from all types of harm or abuse, which includes physical or emotional violence, injury, abuse or neglect, including bullying and discrimination.¹³⁴ The staff working in the residential care centres are all Garda vetted prior to their employment and there is also written policies in place in order to ensure the children's safety in the centres. The staff in these centres are responsible to report any potential risks to the child's safety.¹³⁵

When compared to the emergency accommodation services provided to children in homeless situations the same standards of care do not seem to apply. In a report by Halpenny et al¹³⁶ three staff members working in two B&Bs and one hostel in Dublin were interviewed on a range of issues. There was some difficulties for these workers in emergency accommodation, some of which was the challenging behaviour of some of the families whose lives are in chaos due to addictions and or violent relationships. All workers highlighted the need for training and support for those working in

¹²⁹ Mayock and Vekic, *Understanding Youth Homelessness in Dublin City Key Findings from the first phase of a longitudinal cohort study* (Dublin: OMC, 2006)

¹³⁰ Mayock and Vekic, *Understanding Youth Homelessness in Dublin City Key Findings from the first phase of a longitudinal cohort study* (Dublin: OMC, 2006), p 24

¹³¹ Halpenny, Keogh and Gilligan, "A Place for Children? Children in Families Living in Emergency Accommodation: The Perspectives of Children, Parents and Professionals" (2002) at p.65, available at <https://arrow.dit.ie/cgi/viewcontent.cgi?article=1017&context=aaschsslrep>.

¹³² Health Information and Quality Authority, 'Your Guide to Children's Residential Care' (2018)

¹³³ Health Information and Quality Authority, 'Your Guide to Children's Residential Care' (2018) p. 3

¹³⁴ Health Information and Quality Authority, 'Your Guide to Children's Residential Care' (2018) p.6

¹³⁵ Health Information and Quality Authority, 'Your Guide to Children's Residential Care' (2018) p.15

¹³⁶ Halpenny, Keogh and Gilligan, "A Place for Children? Children in Families Living in Emergency Accommodation: The Perspectives of Children, Parents and Professionals" (2002) at p.72, available at <https://arrow.dit.ie/cgi/viewcontent.cgi?article=1017&context=aaschsslrep>.

emergency accommodation settings in order to make the process easier for all involved, especially children. A manager of the B&B even disclosed that more violent incidents occurred such as stabbings or attempted suicide and how the staff and the families involved needed more information and support to cope with these distressing situations. One problem which was mentioned by a number of the workers, and some parents, was the difficulty for people living in emergency accommodation in accessing a social worker, as they are referred back to social workers in the last area where they had permanent accommodation. This can be very difficult if they are now living at some distance from the area in which the relevant social worker is working. At present there is only one social worker providing a service dedicated to homeless families and this post is attached to Haven House hostel.¹³⁷

Child protection issues arise frequently in these contexts. This social worker emphasised the need to develop a team of social workers dedicated to homeless families so that problems can be identified and addressed as soon as they begin to manifest themselves and help and support can be provided to families at an early stage. Staff members working in the B&B accommodation also felt that it was important to have dedicated social workers working with a number of neighbouring B&Bs, to facilitate access for families living in emergency accommodation. Otherwise, the staff members were being expected to take on this responsibility and were not adequately trained to deal with it. There should be a lot more after-care for the families being dealt with in these situations. It's going to have a huge impact on the children so when they do put families into B&B's or hotels they should call and find out how these families are getting on. To find out how are the children coping with having moved so many times and if they can provide further supports. The workers and management believe there should be more involvement from their end of but majority of the time it's left to the managers to do something about it.

Training and support for staff members

Most of the professionals and many of the parents interviewed felt that it was of vital importance that staff working within emergency accommodation should receive substantial training and support in order to help them cope with the many pressures involved in their work. Many of the staff working in these B&B's have never worked previously in the area of provision for homeless families and have no specialist knowledge of the problems which they come up against in these settings. This type of accommodation was originally set up to provide accommodation on an emergency basis and the staff were not expected to have any of the skills required but, as the numbers in need of emergency accommodation has grown, it has become clear that the staff have the skills and knowledge to work with people who are coming from crisis situations in many cases.¹³⁸

Some staff members were very supportive of the families living in emergency accommodation and seemed to have an innate understanding of the difficulties and stresses which occupants had to deal with on a daily basis. However, others might be less well able to understand and might have no idea of how to proceed. In some B&Bs the managers are more tuned in to the needs of the families living there and they would be firm but flexible as well and supportive and in some of the others the reality is that the managers are just not like that. Some managers would have a clearer idea of what's expected of them as well and are more secure within that.¹³⁹

¹³⁷ *Ibid* at p.67.

¹³⁸ *Ibid* at p.68.

¹³⁹ *Ibid* at p.69.

Human Trafficking

The definition of human trafficking is set out in both the Council of Europe Convention on Action against Trafficking in Human Beings¹⁴⁰ and the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children¹⁴¹.

Being homeless has been identified as being a risk factor for being vulnerable to being trafficked. Kevin Hyland¹⁴² has pointed out that “Although the anti-slavery sector has known of the prevalence of homelessness among victims, and the homelessness sector has been aware of slavery among clients, the two sectors have previously had little coordination”¹⁴³.

Following a visit to Ireland in 2007, the Council of Europe Commissioner for Human Rights, Thomas Hammarberg, commented: “Accommodation centres should be staffed by vetted and professional personnel. Children should also be given information adapted to their age regarding the dangers of human trafficking.”¹⁴⁴

The Department of Justice and Equality’s Anti-Human Trafficking Unit (AHTU)¹⁴⁵ co-ordinates policy on human trafficking in Ireland and works in collaboration with other Irish government agencies, and non-government organisations (NGOs). The Department of Justice points out that “[t]he clandestine nature of human trafficking makes it difficult to measure accurately”.¹⁴⁶

In *the Trafficking in Human Beings in Ireland Annual Report 2016*,¹⁴⁷ 143 children were identified as victims of human trafficking, with 52% trafficked for the purpose of sexual abuse.¹⁴⁸

¹⁴⁰ Council of Europe Convention on Action Against Trafficking. Treaty No 197 (2005) Available at:

<https://rm.coe.int/168008371d>.

¹⁴¹ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2000). Available at: https://www.unodc.org/documents/treaties/Special/2000_Protocol_to_Prevent_2C_Suppress_and_Pu. Ireland ratified the Council of Europe Convention against Trafficking in Human Beings in July 2010 and it entered into force in 2010.

¹⁴² Kevin Hyland represents Ireland on the Council of Europe’s Group of Experts on Action against Trafficking in Human Beings (GRETA). For information on the work of GRETA see <https://www.coe.int/en/web/anti-human-trafficking>. (Accessed 3/3/19)

¹⁴³ *Understanding and Responding to Modern Slavery within the Homelessness Sector: A Report* commissioned by the Independent Anti-Slavery Commissioner. (2017) P4. Report available at: <https://www.antislaverycommissioner.co.uk/media/1115/understanding-and-responding-to-modern-slavery-within-the-homelessness-sector.pdf>.

¹⁴⁴ Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe following visit to Ireland on November 26 to 30 2007 at p.17, available at <https://lib.ohchr.org/HRBodies/UPR/Documents/session12/IE/CoE-Commissioner-eng.pdf>.

¹⁴⁵ Department of Justice and Equality Anti Trafficking Unit. For further information on work see http://www.blueblindfold.gov.ie/en/bbf/pages/extent_in_ireland

¹⁴⁶ *Ibid*.

¹⁴⁷ Department of Justice and Equality (AHTU). *Trafficking in Human Beings in Ireland Annual Report* : Available at:

http://www.justice.ie/en/JELR/Trafficking_in_Human_Beings_in_Ireland_Annual_Report_2016.pdf/Files/Trafficking_in_Human_Beings_in_Ireland_Annual_Report_2016.p22

¹⁴⁸ *Ibid* at p.22.

Key characteristics which make children particularly vulnerable to being abused or trafficked are poverty, homelessness and cyclical abuse within family of origin.¹⁴⁹

Mecpaths¹⁵⁰ has been working with the hospitality sector in order to raise awareness of the possibility of child abuse and exploitation in hotel settings, and believe that hotels in Ireland are being used for the recruitment and sexual exploitation of children.¹⁵¹

At the APT Conference¹⁵² on March 1st, it was noted that Tusla is currently working with the Irish Federation of Hotels¹⁵³ in developing a child protection policy for Irish Hotels.

However, considering:

- (1) That there is a growing concern worldwide as to the increase in the trafficking of children and use of hotels for trafficking and sexual abuse of children;
- (2) The difficulties in identifying the abuse of children in settings such as hotels;
- (3) The vulnerability of some homeless children;
- (4) The fact that there is no screening, regulation or training of staff on child protection measures in the hotel sector in Ireland,

there may be a concern that homeless children may be placed at risk of abuse by being placed in hotel accommodation in Ireland.

¹⁴⁹ Barnardos Report (2017): *Tackling Child Sexual Exploitation*. (UK) Available at: https://www.barnardos.org.uk/tackling_child_sexual_exploitation.pdf.

¹⁵⁰ Mecpaths was founded in 2013 by the Mercy Order in 2013 and works with the Hospitality Sector to raise awareness of child trafficking in hotels. For further information see: <https://mecpaths.ie/>. (accessed 3/3/19)

¹⁵¹ O'Sullivan JP, *Child Trafficking: Hospitality Sector voices respond to an International Challenge* (2018) at p.22.

¹⁵² Human Trafficking Conference "Human Trafficking: Hidden in Plain Sight. Department of Justice and Equality Dublin March 1st 2019.

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