

EMN Ireland conference

Looking to the future for unaccompanied minors in Ireland and Europe

4 December 2018 | Dublin

Keynote address by Dr Bryan McMahon

At the outset we must note that the number of unaccompanied minors entering the country is small in the overall context. In 2017, the number of asylum seekers entering the country was 3,300, of which 175 were unaccompanied minors. This had risen from 97 in 2014. The 2017 figure includes unaccompanied minors arriving spontaneously and those arriving through the government-led programmes from Calais and Greece.

Because the numbers are small, however, is not to say that the problem of unaccompanied minors is not important. We must never forget that each of these very young people will have endured the hardship of dislocation, separation and frequently the trauma of war. Some may have been the subject of human trafficking. When they wash up on our shores they require support and care.

Administratively, however, because of the small numbers, one would think that we should be able to manage and assist them in a caring and proper fashion without too much difficulty. And, by and large, it is safe to say that the State, through its agencies, has responded well to its international commitments in this regard. The obligations we have to such people to provide shelter, medical assistance, education and long-term security, of course, are mandated by international commitments, but in truth, the responses we must make are no more than the charity which we, as a country, in the tradition of Western Christianity, espouse.

Before I comment further on the model of assistance we have in Ireland, there are a few more general points that I would like to make which help to define the difficulties and the nature of the task facing the State in dealing with such unaccompanied minors.

First, although all of this group by definition are under 18 years of age, most presenting for assistance, are in the 16-17 year category. Moreover, the vast majority of these are boys. The cohort does not, for obvious reasons, normally include children of more tender years. And this makes the task of the State somewhat easier in that it is now dealing with a homogeneous age group of mostly male mid-to-late teenagers; a group that stands on the cusp of adulthood. Of course, these children will come from different countries and different cultures; they certainly will have had different personal experiences and will have to be individually assessed to identify their health, educational and accommodation needs. Given their geographical origins however, despite their relative youth, it is safe to assume that many will have spent many years in traumatic conditions involving dislocation, separation, war, and, in some cases at least, exploitation and trafficking. Many will have been damaged physically and mentally and all can safely be regarded as vulnerable persons in one way or another.

Second, from the State's point of view, it must be noted that its obligation to such young persons, is a relatively short one: a period of two - three years for the most part. Its main obligations extend to

them by virtue of the fact that they are minors. Once they turn 18 they are treated as adults and the specific supports appropriate for children are no longer mandated. The State may, of course, continue to have responsibilities in respect of these aged-out minors, but these duties are no longer to unaccompanied minors, but to adults whose different considerations and less exacting demands are made.

Third, catering for unaccompanied minors who recently arrived in the State through government-led programmes (Calais and Greece) may be easier since these subgroups may come from similar backgrounds which provide cultural and social supports not available to unaccompanied minors arriving individually. Furthermore, many in this group will have their status already sorted out on arrival.

It is not surprising that the State in assessing its obligations to unaccompanied minors, concluded that the Direct Provision regime set up in Ireland for adult asylum seekers (and frequently criticised), was not deemed suitable and decided instead that it would be more appropriate to equate their needs with the needs of Irish children in care. Accordingly, it was decided to refer responsibility for unaccompanied minors to Tusla, the same agency which carries responsibility for minors in Ireland. Since 2010, unaccompanied minors receive “equity of care”, that is, are treated equally with Irish children in care, and accordingly are placed in foster care, supported lodgings or residential units. They are assigned a social worker who is responsible for the development and implementation of an individualised statutory care plan for the child. Overall, one must say that the system is a good one, is infinitely better than Direct Provision and compares well with systems of care in other jurisdictions. I have no doubt that speakers later today will deal with the conditions that prevail for these children in this model and may, no doubt, point to where improvements can be made. No system is perfect and experience should continuously inform us. We should not be afraid to admit this. Because we are wiser today does not mean that we were fools yesterday.

All of this changes, however, when the unaccompanied minor reaches 18. If the separated child does not have status at that point they then move to Direct Provision. They lose the comfort, the security and the support they enjoyed as minors and are faced without much training and with reduced supports into the adult environment and the reality that is Direct Provision. There, they may have to share accommodation with up to three adult strangers, they may be living far from their previous foster home, their school, and the community they had become familiar with. Their education may abruptly end. The shock induced by this sudden change may resurrect insecurities, undermine confidence and cause them to lose faith in State programmes. In short, it is hard to see this abrupt alteration of circumstances as anything other than a regressive step, where hard-won progress on many fronts can be lost overnight. Such a wrench may undermine what integration has already taken place. Limited access to further education and training, together with no employment opportunities, can lead to depression and a sense of futility.

Social interaction, available when in foster care, is difficult to maintain in the absence of the general youth services and when the new accommodation is far removed from their former foster parents and from the community that first embraced them.

This is something that must be constantly borne in mind when unaccompanied minors are transitioning out of Tusla’s care. I know that various efforts are in place and are being made in education and other area to soften this transition by Tusla and I am interested in hearing further from the experts here today on progress in this area.

It is my strongly held view that new transition arrangements should be made when unaccompanied minors reach the age of 18 so that the gains and the progress made by the unaccompanied minor should not be lost or thrown away in such a brutal transition out. Of course those programmes which are established to cater for young persons in the State may no longer be available to them, but it seems arbitrary that after great initial effort in the first 2 to 3 years of the minors' arrival that all these gains should be jeopardised by a harsh sudden transition out from Tusla's care. An aftercare plan is vital and some intermediate stage should be established for such minors before they are thrown in with the adults who find themselves in direct provision.

The working group's recommendations in this matter are:

“(1) Tusla should ensure that its Equity of Care principle is applied equally to separated children in aftercare planning and supports, irrespective of the child's status. All separated children over the age of 16 should have an aftercare plan.

(2) The aftercare plan for a separated child who is awaiting a decision regarding their status should, as far as is practicable and subject to their wishes, accommodate them in a Direct Provision centre located near their foster care or residential placement to facilitate on-going support.” (at IP 5.134)

It has been suggested that the worst aspects of this transitioning out could be resolved if the unaccompanied minors had their immigration status determined before they reach 18. This raises the question as to when unaccompanied minors should make an application for status. It is clear that the child cannot make the application him or herself. It is for the assigned social worker together with the child to make the decision. The child of course, may not fully appreciate what is at stake and what is in his/her best interest. It may also be understandable that the social worker may hesitate in making such an application. There may be clinical issues. There may be other priorities to be attended to. The social worker, especially if outside of Dublin, may lack legal expertise and may not have ready access to legal advice. (I am aware also of the problems that exist in recruiting and retaining social workers in this area. In passing I would like to emphasise that without such supports full and proper care cannot be given to the unaccompanied minor when he/she is in the State's care. In 2017, 7% of unaccompanied minors did not have a social worker assigned to them). Even if the application is made before the minor reaches his/her 18th birthday, there is no guarantee that his/her status will be determined before their 18th birthday when the supports available to minors are ended. The new adult, without status, may then be tempted to go underground with all the problems and risks attendant thereto.

Beside the State's obligations in relation to accommodation, health, education and care generally, issues relating to the minor's status also arise. Should the minor apply for international protection? When should he/she apply? What are the consequences of delaying such an application? Should he/she apply to secure a status decision before they reach 18? Are they entitled to legal advice? What are Tusla's duties in this regard? What input does a social worker have in making this decision? Does the social worker have the necessary legal expertise to advise the minor? Or access to legal advice? What advantages follow from having status at the age of 18? Does the decision impact on family reunification rights? What supports are available to an aged out minor if he/she has status when he/she turns 18? What supports are not available if he/she does not have status? Should the minor seek a residential permit instead? It would seem to me that all these questions are relevant when the aftercare plan is being devised for the minor in question.

I am aware that there are various academic views as to when is best to make an application for status by the unaccompanied minor. Clearly, if the application is made in a timely manner and status is confirmed before the age of 18, it is to the advantage of the separated child. They may be able to proceed with their peers to education, training or employment. They may avoid direct provision. Furthermore, if they receive refugee status before their 18th birthday they will be entitled to the rights of family reunification under section 56 of the International Protection Act 2015.

But what if such an application fails? Where does that leave the unaccompanied minor then? In practice, I am aware that the State is reluctant to deport such persons, but the unaccompanied minor may now feel rejected and insecure and integration may become more difficult. He/she may voluntarily leave the country or disappear into the dark underworld for the undocumented.

The Working Group on Direct Provision in 2015 did not come to a firm conclusion on the matter but recommended at IP3.199 of the report that further work should be undertaken to clarify the position with regard to access to protection process by separated children.

Again I look forward to hearing from the participants on the progress made on these matters since 2015.

I have tried to highlight some issues that seem important to me in this area and which must be attended to if the rights of the unaccompanied minor are to be realised and I look forward to hearing from those that are working in the field - at the coalface, as it were - to enlighten me further.

Thank you.