

Adult Retrospective Disclosures of Childhood Abuse – Mandatory Reporting Requirements - Court of Appeal Judgment

A Judgment of the Court of Appeal was delivered on the 8th December 2023, concerning the statutory interpretation of s.14(1)(a) of the Children First Act 2015 in the 2019 HSE Child Protection and Welfare Policy (2019 CPW Policy), following an appeal of a High Court Judicial Review Judgement made on the 3rd October 2022.

The Court of Appeal has determined that the mandated reporting requirements of Mandated Persons are only applicable where there is a concern for a child who is under 18 years of age.

A Mandated Person is required to report to Tusla without delay, any knowledge, belief or reasonable suspicion that a child has been harmed, is being harmed, or is at risk of being harmed.

In circumstances with respect to retrospective disclosures of childhood abuse, Mandated Persons are not mandated to make a report to Tusla, unless, on the basis of the information received, the Mandated Person knows, believes or has reasonable grounds to suspect that a child under the age of 18 years from the date the disclosure is made, has been harmed, is being harmed, or a child is at risk of being harmed, or alternatively, if the adult making the disclosure consents or requests that they do so.

The 2019 CPW Policy is currently being evaluated in full. The overall judgement of the Court of Appeal also needs to be considered. As such, it is not intended to issue a fully revised policy at this time. It is however imperative that the policy message to staff accurately reflects the legal interpretation of the Court of Appeal, and therefore this memorandum sets out to add text to section 5.5 and replace text in sections 8.2 and 8.3 of the 2019 CPW Policy document, as set out in Appendix 1.

Amendments have been added to the 2019 CPW Policy document published on the HSE Children First website to reflect this message.

There continues to be a requirement for all services to be in compliance with the HSE's Child Protection and Welfare Policy as amended per Appendix 1 hereunder in line with the recent judgement.



Appendix 1: Amendments to the 2019 HSE Child Protection and Welfare Policy

Section 5.5 Report

Note for Mandated Persons

- Additional Bullet to this section

- A mandated person is not required to make a report of an adult's retrospective disclosure of childhood abuse, unless, based on the information received from the adult disclosing abuse, the Mandated Person knows, believes or has reasonable grounds to suspect a child is being harmed or is at risk of being harmed, or the adult making the disclosure consents or requests that they do so.

Section 8.2 Disclosures of Retrospective Abuse

- Revised Text for the complete section

Some adults may disclose abuse that took place during their childhood. Such disclosures may come to light when an adult is attending counselling, receiving palliative care, or is being treated for psychiatric or other health issues. Service users should be informed at the outset of contact with a service, as appropriate, that if any child protection issues arise, this information may require a report to Tusla so that they can assess any current or potential risk to children (identifiable or not). This includes disclosures of retrospective abuse where there are current reasonable grounds for concern that a child (who is under 18 years on the date of the disclosure) has been or is being harmed, or a child is at risk of being harmed in the future. See Section 8.1 for further information in relation to making a retrospective abuse report to Tusla.

Where a service user does not feel able to support the report to Tusla, Tusla may be seriously constrained in their ability to respond to the retrospective allegation of abuse. Staff need to be sensitive and supportive to the needs of the adult disclosing abuse. In circumstances where the adult may be vulnerable to psychological distress, self-harm or suicide as a result of reporting the concern, the staff member and/or line manager should have an informal consultation with Tusla, with a view to considering how best to support the adult who discloses, whilst ensuring that the welfare of any child who may currently be at risk of abuse remains the paramount consideration.

Where a service user advises that an alleged abuse was previously reported to Tusla or An Garda Síochána, it may still be necessary for the staff member to report the concern to Tusla or An Garda Síochána, in order to ensure that the report has been fully investigated. This will arise in circumstances where the retrospective disclosure has raised a current child protection concern that a child (who is under 18 years on the date of the disclosure) has been or is being harmed, or a child is at risk of being harmed in the future.

If no reasonable grounds for concern regarding current risk to a child are identified, services should, where appropriate, continue to work with the service user to encourage their engagement with Tusla and identification of the person who abused them. This will optimise the opportunity to protect children as it would allow a full assessment by Tusla of potential risk arising from the service users past abuse. In circumstances where this is not appropriate details of appropriate support services should be given to the service user. The HSE National Counselling Service is available to offer support to any adult who has experienced childhood abuse.

It is important that the staff member documents their considerations in relation to the retrospective disclosure of childhood abuse and their rationale for the decision to make a report, or not to make a report to Tusla. Note: Staff should also consider if the information they have received needs to be reported to An Garda Síochána under the Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012 (see Appendix 2.4 for further information on this Act).

8.3 Concerns about an adult who may pose a risk to children

- Revised Text for the complete section

If you work in an adult service or work predominantly with adults, you may find yourself working with people whose behaviour has harmed, or may harm a child (for example, due to addiction, domestic violence, mental health issues, offending behaviour, etc.).

You must consider the welfare and safety of any child in that person's family, and/or children who are in regular contact with the person. All staff should follow the HSE Child Protection and Welfare Reporting Procedure, consult with their line managers/Tusla, and document their considerations, where they have the following concerns:

- An adult discloses that they themselves have engaged in abusive behaviour towards a child in the past and there is a concern that a child (under 18 years on the date of the disclosure) has been or is being harmed, or a child is at risk of being harmed in the future.
- An adult discloses that they are having thoughts in relation to abusing a child (identifiable or not).
- A concern arises from other sources about an adult who may pose a risk to children, even where there is no specific child named in relation to the concern. For example, based on known or suspected past behaviour, a concern could exist about the risk an individual may pose to children with whom they may have contact.
- A concern arises in relation to an unidentified adult who may pose a risk to children, whether or not there is a specific child named in relation to the concern. Tusla may have corroborating information that can help identify the person concerned.

Where a decision has been made to report to Tusla, the adult should be informed about the report, unless a staff member has a concern that to do so could:

- Place the child at further risk of harm,
- Place you or others at risk of harm,
- Impair Tusla's ability to carry out a risk assessment, or
- Impair the prevention, detection or prosecution of a serious crime by An Garda Síochána.

Note: Staff should also consider if the information they have received needs to be reported to An Garda Síochána under the Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012 (see Appendix 2.4 for further information on this Act).