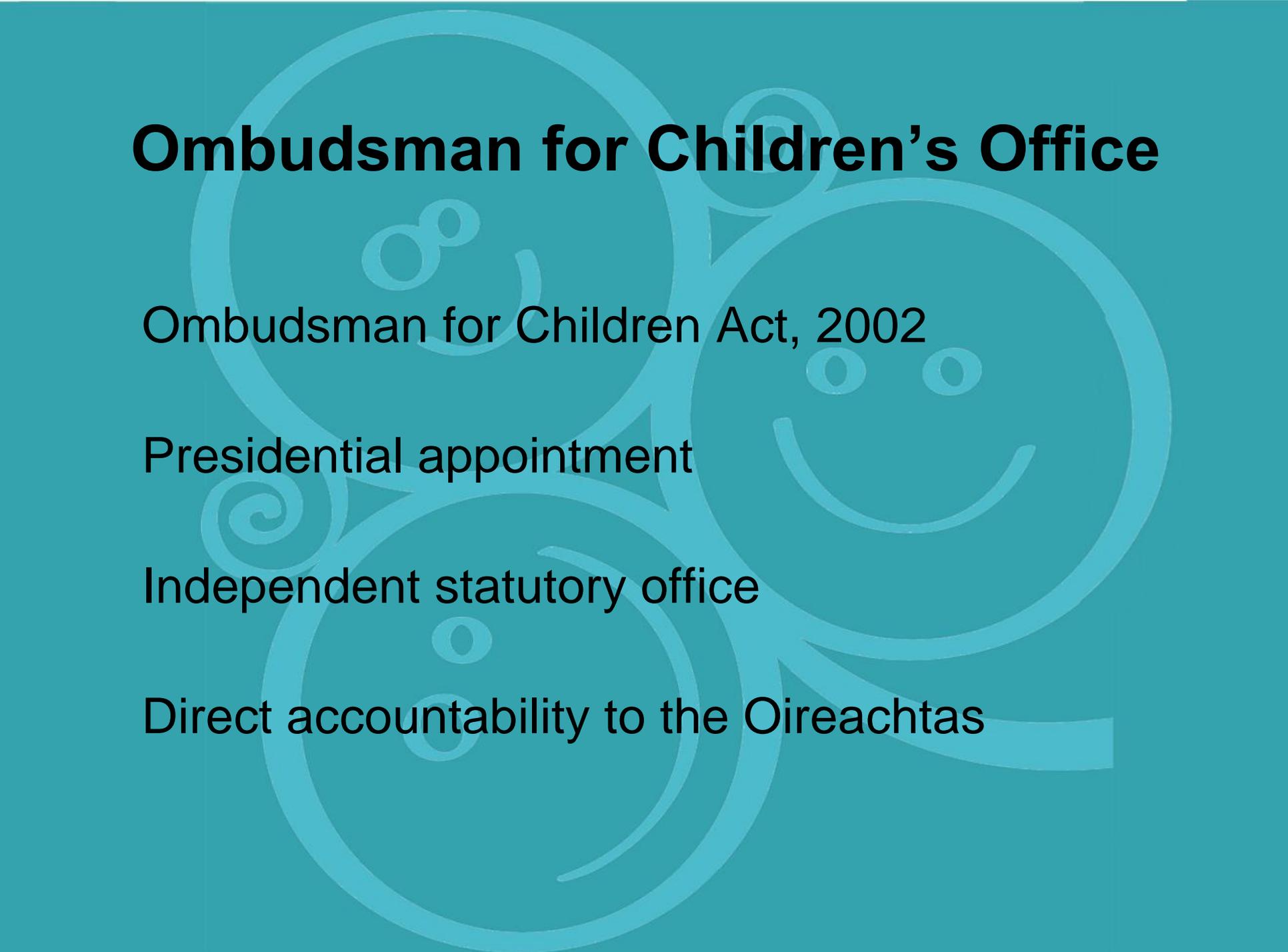


Legal Aid Board: Family Law Conference 2011

**Hearing Children's Views,
Securing Children's Best Interests**

Emily Logan, Ombudsman for Children

Ombudsman for Children's Office



Ombudsman for Children Act, 2002

Presidential appointment

Independent statutory office

Direct accountability to the Oireachtas

OCO Functions

1. Independent complaints handling
2. Promotion of children's rights
3. Research and legislative advice

Unique legislative provisions

1. The promotion of the rights and welfare of children
2. The provision of advice to any Minister of Government
3. Monitoring the operation of legislation relating to children
4. Ensuring the participation of children in public life

Principle motivations

An investigation mechanism that is more accessible to vulnerable citizens

It is speedier than the courts

Much less expensive (to the complainant and the State) than the legal process*

Added advantage of an investigation mechanism that is capable of delivering systemic change

Complaint functions & powers

Children can make a direct approach to the Office

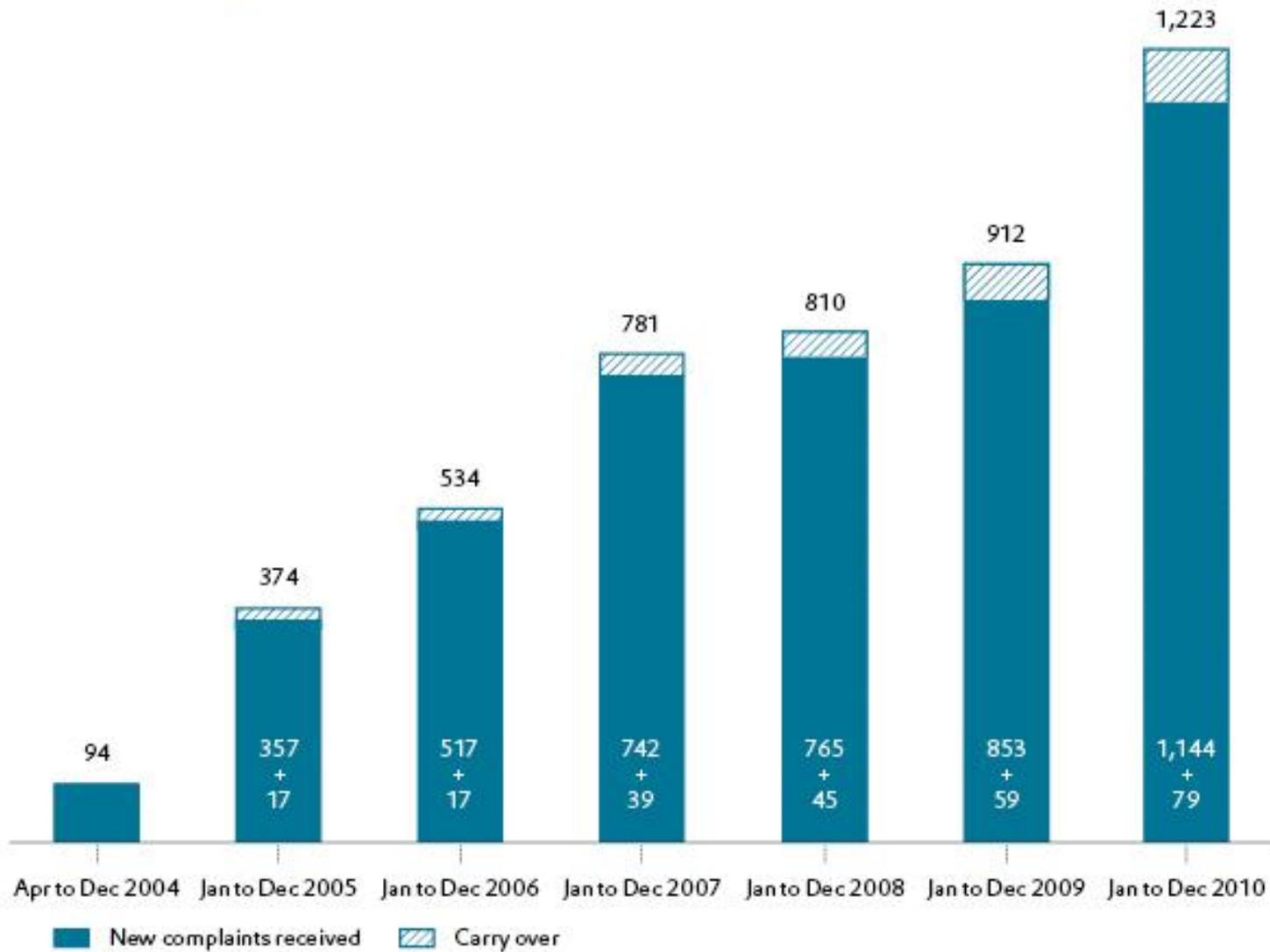
Obligation to have regard to the best interests of the child

Obligation to give due consideration, having regard to the age and understanding of the child, to his or her wishes

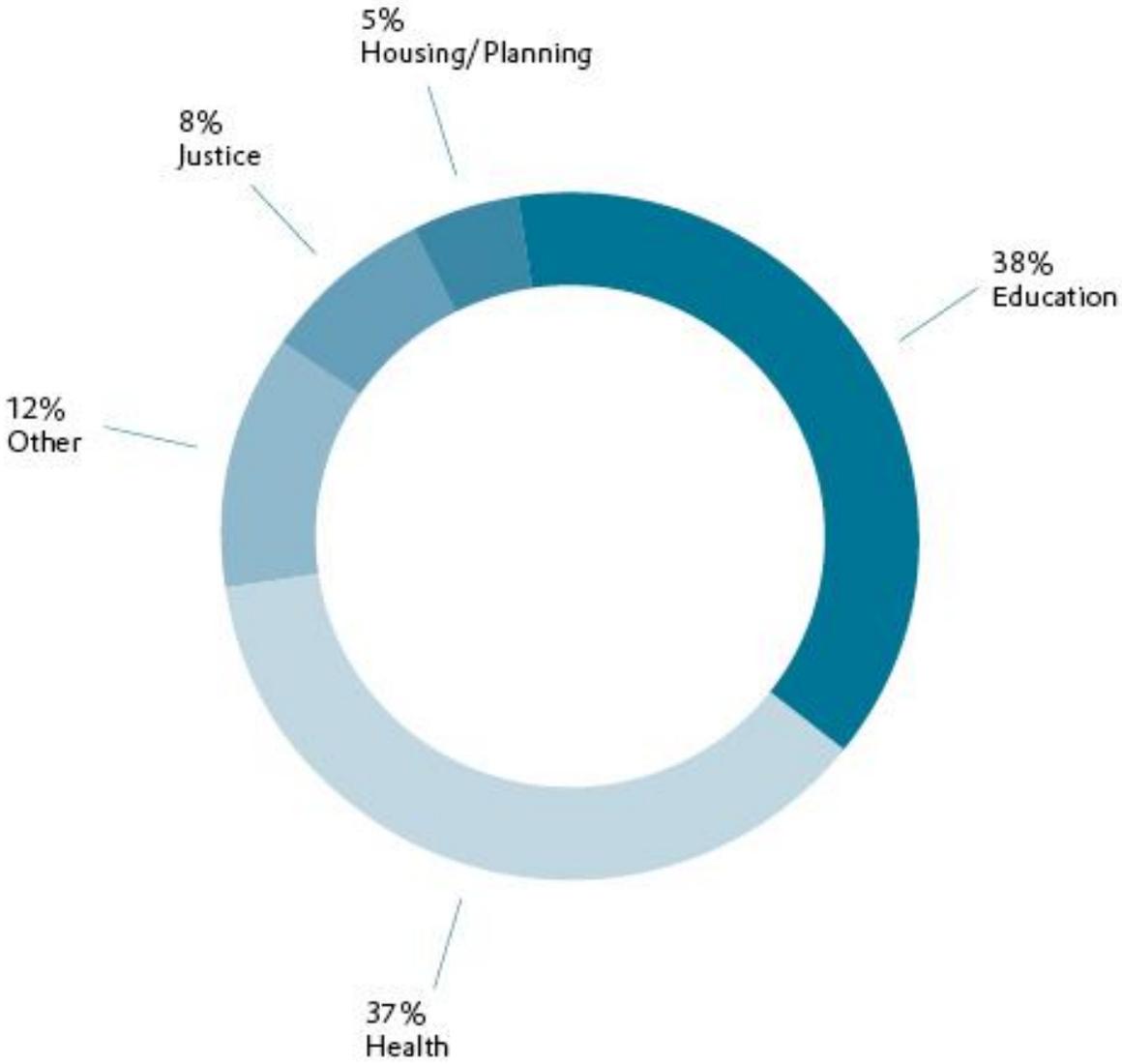
Investigative powers*

Special Reports to the Oireachtas

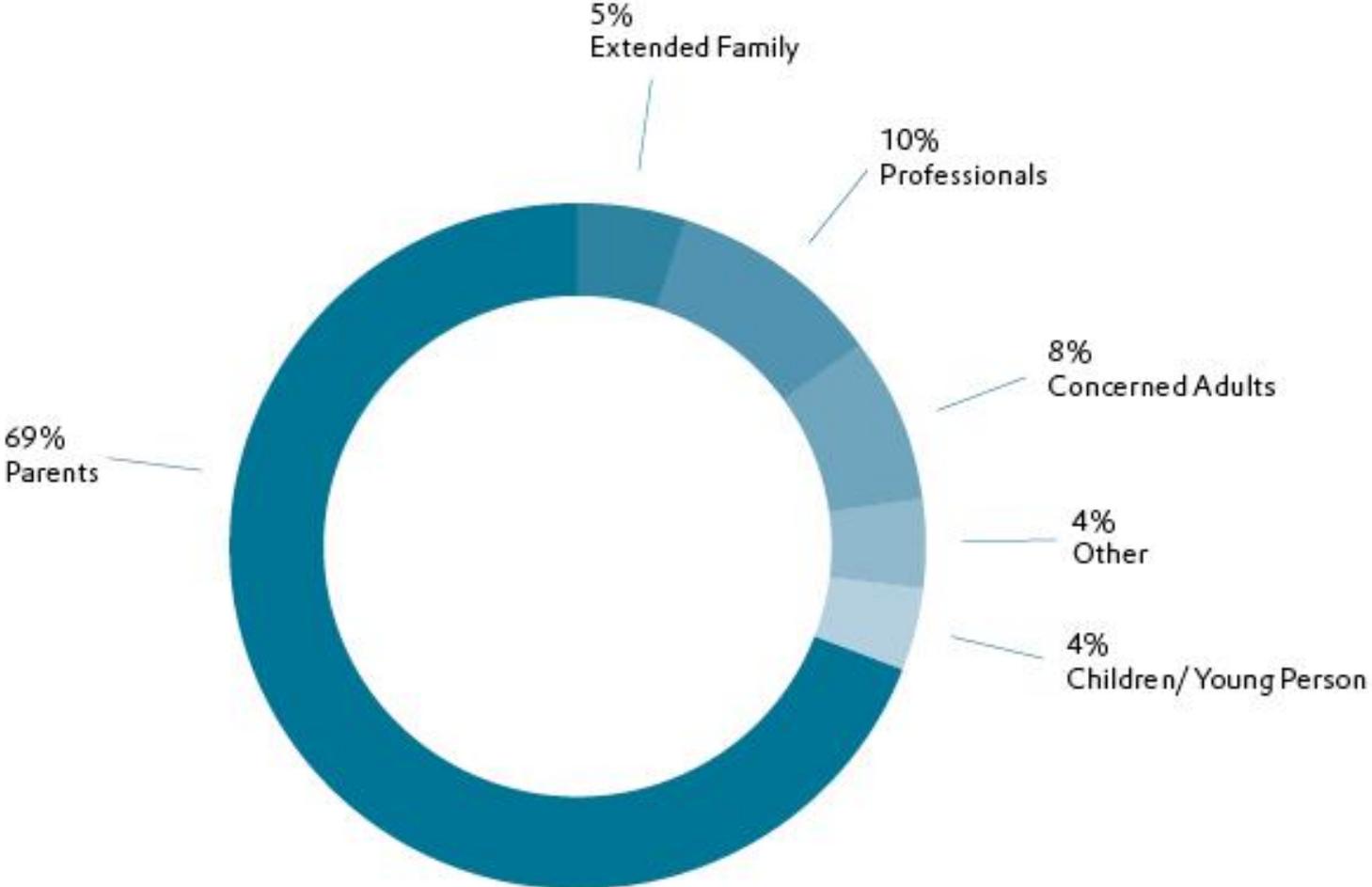
Number of Complaints Dealt With



Complaint Category (January – December 2010)



Complainants (January – December 2010)



OCO Monitoring

- Excessive bureaucracy
- Lack of awareness of impact of decision-making and how quickly harm can be done to children
- Lack of interaction with the public
- Lack of awareness of children's rights as recognised by international instruments
- Absence of child impact analyses
- Failure to implement national law and policy
- **Failure to rigorously apply the best interests principle**
- **Failure to ensure children's voices are heard and their views appropriately considered**

International Standards: UNCRC

Article 3: Best interests of the child

- Best interests of the child a primary consideration in *all* actions concerning children
- General principle of the UNCRC
- Best interests set out in other UNCRC articles and as a necessary requirement or as the paramount consideration, e.g.:
 - Article 9.1: a child shall not be removed from its family unless it is necessary for the best interests of the child
- Best interests principle: a procedural rule that aims to facilitate an examination of the interests of a vulnerable group

Article 3: Best interests of the child

- How should we make a best interests determination?
- Welfare approach: children invisible, their rights not fully considered
- Rights-based approach to implementing the best interests principle:
 - children are rights-holders and have inherent value
 - children are entitled to be active participants in the realisation of their rights
- Rights-based approach to best interests: can do away with a blind spot and redress an imbalance

**Respect
for the views
of the child**



1. Youth Advisory Panel
2. Human rights education
3. Big Ballot*
4. Separated children
5. St. Patrick's Institution

International Standards: UNCRC

Article 12: Children's right to be heard

- Children who are capable of forming their own views have the right to express those views freely in all matters affecting them and to have due weight given to their views in accordance with their age and maturity.

Article 12: Children's right to be heard

- A general principle of the UNCRC
- A procedural right: respecting children's right to be heard central to protecting their best interests and upholding their other rights
- Children as active participants, in accordance with their age and maturity, in identifying their best interests and progressing the realisation of their rights
- 'Due weight' to be determined on the basis of the child's age and maturity (i.e. level of understanding of the issues involved) - no minimum age for children's participation

“Due weight”: Some Propositions

- Respecting children’s right to be heard and affording due weight to children’s views is about the **process** of participation as well as the outcome(s) :
 - managing children’s expectations of their participation from the outset, ensuring they have the information they need and understand what is happening
 - creating conditions that are consistent with children’s best interests and support children to express their views freely and to the best of their ability (safe, child-friendly environment, appropriate support, suitable methods, etc.)
 - developing criteria to support decision-making about the weight due to the child’s views **after** it has been expressed.

“Due weight”: What Children Say

- Young people on OCO’s former Youth Advisory Panel said that adults can demonstrate to children that they are committed to listening and taking children’s views seriously by:
 - giving children enough time to share their views
 - conducting a dialogue with children
 - being open to critical comments children may have
 - giving children direct access to decision-makers
 - seeking to understand what children think and, crucially, why they hold a particular view
 - taking views seriously & believing what they say
- Clearest indication to children that you have given due weight to their views is that the decision made reflects their views.
- However, also crucial to explain to children what decisions have been made and why: children understand that there can be very good reasons why their views may not be acted on.

“Due weight”: Possible Considerations

- To what extent are the child’s views consistent with his/her best interests?
- To what extent does the child understand the implications of his/her wishes and the process within which these wishes are being expressed?
- Have the child’s wishes been expressed freely, i.e. without influence having been exerted on him/her by any party?
- To what extent, if any, do the child’s wishes imposed obligations on others and what is the nature of any such obligations imposed?

Article 3 and Article 12

- Status of Articles 3 and 12 as general principles of the CRC forges a procedural link between providing for a child's best interests and participation and progressing or securing other rights of the child set out in the CRC
- Understanding this procedural link:
 - participation in decision-making should be consistent with a child's best interests;
 - children can and should play an active role in identifying and/or securing their best interests.

Child-Friendly Justice: What Children said is important

- respecting children
- arranging for children to have someone to talk to
- giving children information about their rights
- ensuring children can communicate in ways that suit them
- having buildings that make children feel safe and comfortable
- encouraging children to complain or try to change decisions they disagree with
- being present
- working with specialised (trained) staff and people whose job it is to help children to get across their views
- listening to children
- supporting children to participate in decisions being made about them
- explaining decisions in ways children understand

Council of Europe: Guidelines on Child-Friendly Justice

- Adopted by the Committee of Ministers of the Council of Europe in 2010
- Fundamental principles include participation and best interests of the child
- Useful guidance on child-friendly practice before, during *and* after proceedings
- Over, 3,700 children in over 25 Council of Europe member states participated in a consultation during the development of these guidelines.

Legislative advice

- Constitutional Amendment on children's rights
- Spent Convictions Bill 2007
- Immigration, Residence and Protection Bill 2008
- Adoption Bill 2009
- Child Care Amendment Bill 2009

Public Sector Reform

- Improved interaction with children and parents
- Better interagency cooperation
- Recruitment/redeployment: only those who want to work with children should
- Introduction of child impact analysis to legislation and policy
- Human rights training, in particular for people working with children without parental care
- Independent monitoring for vulnerable children

**Emily Logan
Ombudsman for Children**

**Ombudsman for Children's Office
Millennium House
52-56 Great Strand Street
Dublin 1**

**Tel: (01) 8656800
Email: oco@oco.ie
www.oco.ie**