

COMPLAINTS POLICY

Final Version, Ref no: OCDC 3

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1. Purpose of Policy

Complaints mechanisms are a fundamental guarantee of the respect of the rights of children deprived of their liberty. The purpose of this policy is to outline the broad standards staff and young people should expect in respect of complaints made by young people at Oberstown.

2. Policy statement

Young people in Oberstown must have access to an effective, transparent and responsive complaints system. The complaints mechanism in Oberstown must be impartial and fair. It must also be **accessible, safe and child-friendly**.

Young people must:

- have clear, accessible information on how to complain
- have access to internal and external sources of advocacy and information
- understand that there will be no adverse consequences for raising an issue of concern.

When a complaint is made, it should be clear to staff how to record and progress complaints appropriately. Complaints should be recorded and documented formally in a complaints log.

3. Scope of Policy

This policy applies to all staff members on the Oberstown Campus. This policy does not address complaints or grievances that involve child protection issues. Reports that involve suspicions and/or allegations of harm or abuse should be dealt with under the safeguarding policy. This policy should be read in conjunction with Oberstown's complaints procedure and the IYJS standards and criteria for children's detention schools.¹ It is the responsibility of relevant staff to ensure they are following the most recent version of this policy and that they understand all elements of it.

4. Legal framework

It is the principal aim of Oberstown Children Detention Campus under s 158 of the Children Act 2001 to provide appropriate educational and training programmes for children referred to the Campus by a court and to promote their reintegration into society as persons who are capable of making a positive and productive contribution to society. This must be secured by having regard to young people's health, safety, welfare, interests; providing them with proper care, guidance and supervision; preserving and developing young people's relationships with their families; exercising proper moral and disciplinary influences on young people and recognising their personal, cultural and linguistic identity.

According to s 180 of the Act, young people in Oberstown are in the lawful custody of the Director who is 'to do what is reasonable...in all the circumstances for the purpose of safeguarding or promoting the child's... health, development or welfare'.

¹ Irish Youth Justice Service, *Standards and Criteria for Children Detention Schools* (Dublin: Department of Justice Equality and Law Reform, 2008).

These obligations are fulfilled, among other means, through the implementation by staff of Oberstown's policies and procedures.

International and national standards form the basis of Oberstown's complaints policy.

National standards for children in detention set out detailed criteria for complaints regarding Children Detention Schools.² The standards emphasize the importance of staff being aware of the school's policies on complaints and how complaints are dealt with.³

Young people can also access external complaints mechanisms and in particular can make a complaint to the Office of the Ombudsman for Children under the Ombudsman for Children Act, 2002, as amended.⁴

Under s.186 of *the Children Act 2001, as amended*, part of the functions of 'an authorised person' (s. 185) is that they may hear complaints from young people.⁵

Furthermore, it should also be noted that the independent organisation, EPIC, meets with young people in Oberstown to advocate of their behaviour and in this context can assist them with any concerns and complaints. This is in compliance with the Ryan Implementation Plan, recommendation no.82.⁶

4.1 Human rights standards

The United Nations Convention on the Rights of the Child (UNCRC), to which Ireland is a party, sets out the rights to which all children, including children in detention, are entitled. The Convention requires that all children are entitled to enjoy their rights without discrimination, they must have their best interests taken into account in all matters concerning children and have their views taken into account in all matters affecting them in line with their age and maturity. Under Article 40 of the Convention, every young person in conflict with the law has the right to be treated in a manner consistent with the promotion of their sense of dignity and worth, which reinforces the respect for the human rights and fundamental freedoms of others and which takes into account the young person's age and the desirability of promoting reintegration and assuming a constructive role in society. Regard should also be had to the UN Rules for the Protection of Juveniles Deprived of their Liberty (1990) and the European Guidelines on Child-friendly Justice (2010), both of which highlight the importance of ensuring that young people can access effective, independent and child-friendly complaints mechanisms.

According to the Committee on the Rights of the Child, access to effective, independent complaints mechanisms is integral to ensuring that children's rights are protected in detention. Every child should have the right to make requests or complaints to the central administration or an independent authority, and be informed of the response without delay. Children need to know about and have easy access to such mechanisms.⁷

Under the Third Optional Protocol to the CRC on a Communications Procedure⁸ children may bring complaints about violations of their rights to the UN Committee on the Rights of the Child, as long as national remedies have been exhausted. Other international remedies

² Irish Youth Justice Service, *Standards and Criteria for Children Detention Schools* (Dublin: Department of Justice Equality and Law Reform, 2008).

Standard 4.7 requires complaints to be recorded and signed by both a staff member and the young person who is making the complaint; standard 4.8 stipulates that subject to the overriding need to protect the child, complaints against staff members should balance the interests of the staff concerned with the need to protect detained children. Standard 4.9 requires management to monitor all incidents and outcomes of complaints made. Standard 4.13 outlines that young people should be informed that they have access to independent advocacy services and should be provided with the names of at least two people whom they can contact in this regard.

⁴ See information at <http://www.oco.ie/complaints>

⁵ See s.186 (3) of *the Children Act 2001* as amended.

⁶ Ryan Implementation Plan, 2009 (Recommendation 82).

⁷ Committee on the Rights of the Child, *General Comment No. 10: Children's Rights in Juvenile Justice*, 2007.

⁸ Available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPICCRC.aspx>

include applying to the European Court of Human Rights under the European Convention on Human Rights.

Under the European Convention on Human Rights Act 2003, Oberstown is an 'organ of the state' required to act in a manner consistent with obligations under the European Convention on Human Rights.⁹

5. Definitions

A complaint is an expression of dissatisfaction by a young person as to how he or she has been treated in Oberstown.

6. Related Documentation

Other documents that should be considered in conjunction with this policy include:

- United Nations Convention on the Rights of the Child¹⁰
- Committee on the Rights of the Child, General Comment No. 10: Children's Rights in Juvenile Justice, 2007¹¹
- UN Rules for the Protection of Juveniles Deprived of their Liberty (1990)¹²
- European Guidelines on Child-friendly Justice (2010)¹³
- Guidelines for good practice in Children Detention Schools.¹⁴
- Defence for Children International, 'Monitoring places where children are deprived of liberty'¹⁵
- Oberstown's Safeguarding Policy
- Article 42A, Irish Constitution.¹⁶

⁹ European Convention on Human Rights. Available at: http://www.echr.coe.int/Documents/Convention_ENG.pdf.
European Convention on Human Rights Acts, 2003. Available at:

<http://www.irishstatutebook.ie/eli/2003/act/20/enacted/en/print.html>

¹⁰ Available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>.

¹¹ Available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f10&Lang=en

¹² Available at

https://www.unodc.org/pdf/criminal_justice/United_Nations_Rules_for_the_Protection_of_Juveniles_Deprived_of_their_Liberty.

¹³ Available at: <http://www.coe.int/en/web/children/child-friendly-justice>

¹⁴ Available at:

<http://www.iyjs.ie/en/IYJS/Guidelines%20for%20Good%20Practice.pdf/Files/Guidelines%20for%20Good%20Practice.pdf>

¹⁵ Available at: <http://www.defenceforchildren.org/wp-content/uploads/2016/02/DCI-Practical-GuideEN.pdf>

¹⁶ Available at: <http://www.irishstatutebook.ie/eli/cons/en/html>