

# Child Abuse Substantiation Procedure (CASP) (Excluding CASP Review) Data Protection Impact Assessment

Stage 1 FINAL

*[Public]*

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## 1. Introduction

Tusla, as a statutory body, is permitted and required to process personal data of individuals where that processing is necessary and proportionate for the purposes of discharging Tusla's statutory duties.

Put simply, Tusla can and should collect, use, share, amend, transfer, store (all of these activities are called 'processing') information about individuals (natural persons) that is personal data only if this information is required for Tusla to perform its role as prescribed by, for example, section 8 of the Child and Family Agency Act 2013 and section 3 of the Child Care Act 1991 (as amended) or otherwise required or permitted by law.

Every time a statutory body like Tusla processes personal data of an individual there is a risk that the rights and freedoms of those individuals will be interfered with or undermined by that processing.

A Data Protection Impact Assessment (DPIA) is a process designed to describe a data processing operation, assess its necessity and proportionality and help manage the risks to the rights and freedoms of natural persons resulting from the data processing operation by identifying and assessing these risks and determining the measures to address them. DPIAs are important tools for accountability, as they help data controllers (Tusla is a data controller) not only to comply with requirements of the General Data Protection Regulation (GDPR), but also to demonstrate that appropriate measures have been taken to ensure compliance.

You have completed the DPIA Initiation Form and the DPU has determined that a DPIA should be completed so the next step is for you to provide us with information about your processing so that we can identify and assess any risks and advise on what safeguards should be implemented to address those risks.

### Next Step for you:

Complete the [Stage 1 Template](#) below and return it to the DPU - [datacontroller@tusla.ie](mailto:datacontroller@tusla.ie).

*(Note: Once the [Stage 1 Template](#) is completed and submitted to [datacontroller@tusla.ie](mailto:datacontroller@tusla.ie), the DPU will liaise with you on next steps).*

## DPIA Stage 1

Subject / title of DPIA	Child Abuse Substantiation Procedure (CASP) (excluding CASP REVIEW)
Information Owner in Tusla Responsible for Signing Off on this DPIA, that is, responsible for implementation any actions to remediate any risks identified in this DPIA and for confirming the factual accuracy of all content in this DPIA	Eilidh McNab, Regional Chief Officer, Dublin North East

## 1: Role of Tusla and the Purpose of the Processing

What is Tusla's role? Are other parties involved? What is their role?

### **Guidance:**

*Under data protection legislation, data controllers have certain obligations in relation to personal data. A 'controller' refers to a person, company, or other body that decides how and why a data subject's personal data are processed. If two or more persons or entities decide how and why personal data are processed, they may be 'joint controllers', and they would both share responsibility for the data processing obligations. A 'processor' refers to a person, company, or other body which processes personal data on behalf of a controller. They don't decide how or why processing takes place, but instead carry out processing on the orders of a controller. Tusla is usually the controller where Tusla is processing personal data in order to perform its statutory obligations to Service Users or carry out a 'public task' or exercise official authority vested in Tusla such as for example, obligations under the Child and Family Agency Act 2013 or the Child Care Act 1991 (as amended) and for example the following are indicators that either Tusla or another party is a data controller:*

- *The data controller has a direct relationship with individuals and makes decisions to collect personal data from the individuals.*
- *The data controller makes the decision as to what personal data is collected or needed for a particular service.*
- *The data controller makes decisions regarding the purpose for which personal data are to be used.*
- *The data controller makes the "why" decision as to whether to share personal data internally or with a third party.*
- *The data controller makes the decision as to whether data subject rights of access, deletion, portability, rectification, can be applied.*
- *The data controller makes the decision as to how long to retain personal data or whether to make non-routine amendments.*
- *The data controller provides a service that is a public service (e.g. Tusla, HSE), regulated activity such as insurance, pension processing, or a professional service, for example, accountancy, legal, or specialist services which involves specialist risk advice and requires the processing of personal data.*

*It is important that we understand what Tusla's role in relation to this processing is as this will determine Tusla's obligations. It is also important that we understand the roles of any other parties involved in the processing and whether they may be another controller or a processor or whether Tusla is entering a joint controllership arrangement as this will further determine what our responsibilities are and whether we need to enter a data sharing arrangement with another party.*

### **Tusla's Child Protection and Welfare Role**

The Child Care Act 1991 (the 1991 Act) places significant statutory obligations on Tusla to promote the welfare of children who are not receiving adequate care and protection. In performing its functions, Tusla is required to take steps to identify children who are not receiving adequate care and protection and to coordinate information from all relevant sources relating to those children.

Under the Child and Family Agency Act 2013 (the 2013 Act) one of the functions of the Child and Family Agency is to promote the development, welfare and protection of children.

The Children First Act 2015 (the 2015 Act) requires certain specified categories of persons, known as "mandated persons", to report child protection concerns to Tusla using a mandated report form. This applies

where the person knows, believes or has reasonable grounds to suspect that a child is being harmed, has been harmed or is at risk of being harmed, or where the child makes such a disclosure.

Tusla is required under the 1991 Act, the 2013 Act and the 2015 Act to identify and protect children at risk of harm and this role necessarily involves the collection and processing of personal data relating to disclosures of abuse and offences against children.

Tusla currently handles allegations of child abuse and neglect under Tusla's *"Policy and Procedure for Responding to Allegations of Child Abuse and Neglect"* (Sept 2014) ('Section 3 Policy').

It is proposed that the Section 3 Policy will be replaced by the Child Abuse Substantiation Procedure (CASP).

#### **The Child Abuse Substantiation Procedure (CASP)**

CASP at 'Section 3.1 (Scope) of PART A (General Principles and When to Apply CASP)' states:

*"CASP is designed to provide a framework for social workers in assessing allegations of abuse made against an individual which raise concerns that an identified or yet to be identified child or children may be at potential risk of harm. The procedure sets out the principles that CASP social workers are expected to follow to ensure fair procedures are given to PSAAs when the CASP social worker undertakes a substantiation assessment of allegations of child abuse."*

*A CASP assessment will apply to cases where a referral of child abuse meets the following criteria:*

- *The referral of child abuse meets the Children First threshold of reasonable grounds for concern and the definition of child abuse.*
- *The screening social worker is satisfied that the information in the referral is not a hoax or fake.*
- *The referral meets one of the criteria, as set out in Table 1: This table sets out the situations in which CASP will apply to disclosures of child abuse.*

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**Table 1:** This table sets out the situations in which CASP will apply to disclosures of child abuse.

Type of disclosure	Situations where CASP will apply
Where a disclosure of child abuse is made by a child against a PSAA, who is their parent or an adult who lives in the <b>same household as the child PMD</b> .	If the PSAA is engaged or becomes engaged in any activities outside of the home which would allow them to have access to children, and the nature of the allegations gives rise to a concern that it may be required to share information with a relevant third party outside of any Signs of Safety network. For example, activities outside the home might include any employment, self-employment, voluntary work, or other activity which consists of care or supervision of children
Where a disclosure of child abuse is made by a child against a PSAA, who is their parent or other adult (including non-family members) who lives <b>outside of their household</b> .	or
Where a disclosure is made by a child in the care of Tusla against their parent(s).	Where the NAP /SofS cannot be applied and the facts are such that it is reasonable to anticipate that any potential child protection risk will not be dealt with in court childcare proceedings.
Where a disclosure of Retrospective child abuse is made against a PSAA.	or
	If the NAP/SofS cannot be applied because the PSAA does not have contact with identified children,
Where a disclosure of child abuse is made by a child against another child	If the child PSAA has contact with children who are not safeguarded by any current safety planning and the nature of the disclosure gives rise to a concern, then it may be required to share that information with a relevant third party
Where disclosure is made against:  Relative and general Tusla foster carers,  Adult children who live in the foster carers' household  Adults who live in the foster carers' household  Supported lodgings provider	The CASP applies to these categories of people because Tusla has placed children in their care or in their household and Tusla has a duty to assess the disclosure to determine if the allegations are founded or unfounded.

The following terms are defined in the glossary in CASP and are relevant to this DPIA:

**CASP social worker:** A social worker who is responsible for undertaking a substantiation assessment on behalf of Tusla.

**Child(ren):** A person under the age of 18 years.

**Child protection and welfare (CP&W) social worker:** A social worker working with children and families in the community.

**Child abuse categories:** Neglect, emotional abuse, physical abuse, sexual abuse – see Children First: National Guidance for the Protection and Welfare of Children (2017).

**Conclusion:** The result of a substantiation assessment which provides details of the outcome reached (whether the allegations of abuse are founded or unfounded), and the reasons why this outcome was reached. Where the outcome of an assessment is founded, the conclusion will also set out the risk, if any, the CASP social worker determines that the Person Subject to Abuse Allegations poses to a child(ren). In the CASP process there are two types of conclusion, a provisional and a final. Provisional conclusion is provided to the PSAA for their response.

**Final conclusion** is made following the receipt of the PSAA's response to the provisional conclusion or in the absence of a response.

**Founded:** If the Final or Provisional Conclusion of the substantiation assessment includes a 'founded' outcome, it means it is established on the **balance of probabilities** that child abuse has occurred.

**Hoax or fake referrals of child abuse:** The information available suggests the referral of child abuse received by Tusla is unmistakably false as the events referred to could not possibly have happened.

**Identified child or children:** Children who can be readily identified by virtue of their name or relationship to the PSAA.

**Identifiable children:** Children who are not individually identified but who are identifiable as belonging to a group of children with whom the PSAA has contact. For example: groups of children in a school. (see also 'Yet to be identified children' later in this glossary)

**Outcome:** The decision reached as part of the provisional and final conclusion as to whether an allegation of abuse is founded or unfounded. This decision is reached on the balance of probabilities.

**Parent:** References to parent include a child's legal guardian and in the case of a child in care may include Tusla. Person making a disclosure (PMD): A person – either a child or an adult – who has made a disclosure of child abuse.

**Person making a disclosure (PMD):** A person – either a child or an adult – who has made a **disclosure of child abuse**.

**Person subject of abuse allegations (PSAA):** A person – either a child or an adult – who has had allegations of child abuse made against them.

**Referral (of child abuse):** for the purpose of the CASP, a referral of child abuse is known as a disclosure (of child abuse) up to the end of stage 1. If it passes into stage 2 it is known as an allegation (of child abuse).

**Relevant information and documentation:** Where an assessment moves to stage 2, the PSAA is entitled to receive all relevant information and documentation which the CASP social worker has gathered during the course of the assessment. Information and documentation are relevant if they disclose a fact or facts which, on their own or together with other facts, make the allegation appear more likely than not to have happened than would be without that information.

**Relevant third parties:**

1. Any person who is in a position of responsibility for a child or children's safety and wellbeing. It includes someone who is in a position of direct authority over a PSAA, if the PSAA is employed or if they volunteer in an organisation where they may have contact with children through their work. For example:

- the principal of a school who has authority over a teacher.
- the Chief Executive Officer of a non-governmental organisation who has authority over an employee.
- the leader of a children's sports or activity group with authority over a volunteer, and so on. (See 'relevant organisation' in Section 2 of the National Vetting Bureau (Children and Vulnerable Persons) Act 2012.)

2. Any registration or regulatory body, such as, Health and Social Care Professionals Council (CORU), Medical Council, Teaching Council, and so on.

**Reliability and accuracy check:** The thorough examination and testing of the reliability, plausibility, and consistency of a disclosure a person is making. This may involve exploring the extent to which the person's disclosure is consistent with any available evidence and may involve (at a later date) seeking the person's response to any denials made by, any alternative versions of events provided, or other issues raised by the PSAA.

**Retrospective child abuse:** Child abuse that an adult discloses that happened during their childhood.

**Social worker:** A professionally qualified person registered with the Health and Social Care Professionals Council (CORU) and employed to undertake a range of functions associated with the protection and welfare of children. A social worker is considered 'allocated' when they have child or young person in care assigned to them in the long term. (see also CASP social worker defined earlier)

**Screening social worker/screening team:** For the CASP, the screening team refers to the local area social worker or team assigned to screening referral received by Tusla. In day-to-day practice, this person or team may also

be referred to as the Designated Contact Point (DCP) Team or Duty/Intake Team, depending on the local area structure.

**Substantiation assessment:** The process of examining and evaluating allegations of child abuse that arrives at a conclusion which includes an outcome as to whether the allegation is founded or unfounded on the balance of probabilities. If the allegation is founded, the conclusion will also determine what risk of harm to children, if any, is posed by the PSAA.

**TCMS:** Tusla Case Management System is a digital system which allows users to manage and record their activities with a specific module relating to a CASP substantiation assessment.

**Unfounded:** If the Final or Provisional Conclusion of the substantiation assessment includes an ‘unfounded’ outcome, it means it is not established on the balance of probabilities that child abuse has occurred.

**Yet to be identified child or children:** A child or children who are not individually identifiable but who may be at risk in the future by reason of a specific potential risk of harm to them which Tusla reasonably suspects may come about.

### **The CASP Data Protection Guidance**

The Tusla Data Protection Unit (DPU) has drafted the CASP Data Protection Guidance the purpose of which is to provide staff with information that promotes good practice and compliance with data protection obligations, Tusla’s duty of confidentiality and its obligations in relation to the right of privacy for all individuals whose personal data is processed under CASP. The CASP Data Protection Guidance is to be read together with CASP (and indeed is referred to throughout the CASP document itself) and applies to all employees, regardless of contract type and includes those whole-time, temporary, released and seconded employees who process personal data on instructions from Tusla under an arrangement in which the employee acts under the authority of Tusla.

### **Tusla’s Role as Data Controller**

Tusla is the data controller for the personal data processed as required by CASP because this process is part of Tusla’s statutory obligations to service users (anyone who accesses Tusla services) and is a public task and exercise of official authority vested in Tusla under the 1991 Act, the 2013 Act and the 2015 Act.

Tusla has a direct relationship with the data subjects whose data is processed under this process, makes decisions as to what personal data is collected and needed for the process, makes the ‘why’ decision as to whether to share personal data internally or with a third party, provides a public service as part of CASP, decides on how long to retain the personal data processed as part of CASP and how data subject rights are facilitated in relation to CASP.

Tusla considers that this DPIA is required because the collecting, recording, processing, storing and sharing personal data required by CASP involves the processing of Tusla’s records or document relating to PMDs, family members, PSAAs and other data subjects and involving any of the categories of personal data processed by Tusla including special category data of a highly sensitive nature. These data subjects include children and vulnerable persons to whom Tusla owes a duty of care and in many instances a duty of confidentiality. The personal data processed by Tusla as part of CASP will be collected from these data subjects because it is necessary and proportionate for the purpose of Tusla discharging its statutory responsibilities. The process is inherently high risk and as a result this DPIA is a mandatory requirement under Article 35 of the GDPR. The DPIA is required in order to identify how Tusla collects, stores, uses and deletes personal data required for the process, to identify what type of personal data is used as part of the process and who will have access to that personal data in order to assess the impact and severity of risk to that information so that a level of security and other safeguards appropriate to the level of risk posed to the rights and freedoms of service users and other data subjects by CASP can be implemented.

Furthermore, the breach the subject of Inquiry IN-19-12-8 (‘1 x breach inquiry’) resulted from Tusla’s failure to redact personal data of complainants (referred to under CASP as PMDs) from a safeguarding letter issued to a relevant third party to inform and advise her of safeguarding procedures to ensure the ongoing safety of a child at risk. The letter contained the names of the complainants who made the allegations and details of the allegations made. The relevant third party subsequently shared a photograph of the safeguarding letter on social media. The Data Protection Commission (DPC) found that this personal data breach created a risk to the rights and freedoms of complainants and that unauthorized disclosure of this type of personal data has an inherent capacity to seriously infringe the rights and freedoms of complainants. The likelihood of the damage to the complainants was aggravated by the fact that the letter was subsequently published on a social media



platform. The DPC found that Tusla had infringed Article 32(1) because it failed to implement a level of security appropriate to the risk presented by its safeguarding letter processing operation as required by Article 32(1). The DPC ordered Tusla to bring its safeguarding letter processing operation into compliance with Article 32(1) of the GDPR by implementing appropriate organisational measures to ensure a level of security appropriate to the risk and to perform a risk assessment to inform the measures that it must implement. This DPIA is that risk assessment.

## Purpose

### Guidance:

*It is important for us to understand why you want to collect and use this personal data so that we can determine whether the reason is supported by a legal power or duty (for example, Tusla may be required or permitted to collect personal data of Service Users because it needs this data to provide services to service users) and whether the personal data collected is necessary and proportionate for the reason you need it.*

*In addition to data protection requirements, Art. 8(1) of the European Convention on Human Rights (ECHR) provides that '[e]veryone shall have the right to respect for his private and family life, his home and his correspondence.' However, the right is not absolute, and Art. 8(2) sets out the grounds the State may interfere with an individual's right to privacy:*

*'There shall be no interference by a public authority with the existence of this right except such as is 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 or detection of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.'*

*The European Convention on Human Rights Act 2003 (ECHR Act) gives effect to the ECHR in Irish law and provides at section 3 that every organ of the State shall perform its functions in a manner compatible with the State's obligations under the Convention provisions. Tusla is an organ of the state and must, in relation all of its processing of personal data Tusla must have regard to section 3 of the ECHR Act and Article 8(2) of the ECHR.*

*As Tusla is a public sector body, contemplating data processing measures that limit the EU fundamental right to data protection under Article 8 of the EU Charter of Fundamental Rights, a detailed analysis of the 'necessity' of the measure must be undertaken. It is particularly important to precisely identify what the proposed measure entails in terms of personal data processing and what the objective(s) and the concrete purpose(s) of the measure is. Depending on the nature of the data and how it is used, the proposed measure may also limit the right to respect for private life (also called right to privacy). It should be noted here that the storing by a public authority of data relating to the private life of an individual amounts to a limitation on the right to respect for his private life irrespective of the use made of the data. Other rights and freedoms may be affected by the proposed measure, which triggers subsequent analysis. For instance, the right to effective judicial redress may be affected, the right to non-discrimination, or the right to freedom of expression.*

*Please provide a detailed factual description of the measure proposed and its purpose and include detailed answers to the following questions in your response:*

- *What are you doing or going to do and why?*  
*e.g. we are collecting name, address, DOB of Service Users in order to provide them XX Service which we are required to provide under XXX statute or statutory instrument and which is reflected in XX Policy, Procedure, Practice Guidance etc., Memorandum of Understanding with XXX,*
- *What outcome to you want to achieve by processing this data for the 'why'?*  
*e.g. we provide the XX Service to Service Users in order to support/enhance/promote/develop better outcomes for children and families in XX areas*
- *What is the intended effect on individuals whose data is processed?*
- *What are the benefits for society?*
- *Is what you're proposing to do the most appropriate way to achieve your purpose?*
- *Does the processing actually achieve your purpose?*
- *Is there another way to achieve the same outcome?*

The **"Report of the investigation into the management of allegations of child sexual abuse against adults of concern by the Child and Family Agency (Tusla) upon the direction of the Minister for Children and Youth Affairs"** (hereafter the HIQA report), as published by the Health Information and Quality Authority (HIQA) in June 2018 contained four substantive recommendations:

- recommendation 1 sought significant reforms from Tusla as an organisation on the basis of the findings in the HIQA report;



- recommendation 2 specifically addressed the need for Tusla to have a workforce plan to address, in particular, the shortfall in the number of social workers;
- recommendation 3 requested that an international review of best practice in the regulation of children's social services be completed by the Department, with the assistance of HIQA; and
- recommendation 4 called for the establishment of the EAG.

Recommendation 1 stated that Tusla should:

- review all of the findings of this investigation, including the identified non-compliances with the National Standards for the Protection and Welfare of Children as set out in this investigation report
- review these findings as they relate to all other child protection and welfare referrals, which follow the same referral pathway as all child sexual abuse referrals
- review all of the recommendations made by the Investigation Team throughout this report
- publish an action plan on its website outlining in clear language and with clear timelines the measures it proposes to take to implement the actions identified in the recommendations A to C above. This action plan should include a named person or persons with responsibility and accountability in Tusla for implementing these recommendations and actions.
- ensure it continually reviews and updates this action plan and that updates on progress being made against these recommendations and actions are included in its annual report.

To address Recommendation 1(D) Tusla published an action plan on its website ***"Tusla Strategic Action Plan arising from the HIQA Investigation into the management of allegations of child sexual abuse against adults of concern by the Child and Family Agency July 2019"***.

The output of Tusla's analysis of the HIQA Report was the identification by Tusla of nine 'strategic improvement themes' with a set of 'strategic actions' aligned to each theme.

The following strategic actions were aligned to Improvement Theme 3: Management of retrospective cases of abuse:

- 3.1 Publish the National Child Abuse Substantiation Procedures (inclusive of retrospective abuse) to provide specific guidance on the creation of files and sharing of information. These procedures will be implemented nationally when approved.
- 3.2 A Substantiation Governance Group will be established to oversee the implementation of the policy and to drive a nationally consistent approach to the management of retrospective and extra-familial referrals.
- 3.3 Tusla will develop and implement a standard business process for managing retrospective cases of abuse and develop a module on NCCIS to support case management.
- 3.4 A new system for the prioritisation of retrospective cases awaiting allocation based on risk will be developed and implemented.
- 3.5 Each region will establish a multidisciplinary team to ensure the management of retrospective cases of abuse are consistently managed and to build expertise.

The Expert Assurance Group, in its final report to the Minister for Children and Youth Affairs<sup>1</sup> of September 2019 welcomed the development of CASP as part of Tusla's strategic action plan referred to above.

While acknowledging the need for statutory reform, Tusla supports the replacement of the Section 3 policy with CASP together with its associated case management system.

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<sup>1</sup> "Final Report to the Minister for Children and Youth Affairs of the Expert Assurance Group established to oversee and advise on the implementation of the recommendations of the Health Information and Quality Authority's "Report of the investigation into the management of allegations of child sexual abuse against adults of concern by the Child and Family Agency (Tusla) upon the direction of the Minister for Children and Youth Affairs"

One of Tusla's key goals as an agency is to have a consistent, national approach in cases where substantiation is required and in circumstances where there is a requirement to share information with third parties to safeguard children from potential risk.

### **Legislative Background**

Court judgments have established that Tusla should carry out substantiation investigations under section 3 of the 1991 Act and in doing so, ensure that fair procedures are afforded to the Person Subject of Abuse Allegations (PSAA) while carrying out child protection duties. The court judgments establish the following:

- Tusla may disclose to a third party information about a PSAA if this is required to protect children.
- Tusla should not disclose information to a third party without first conducting a substantiation investigation, except where a child is at immediate serious risk.
- Tusla must conduct an investigation based on natural justice and afford fair procedures to the PSAA.
- Such fair procedures include the right to be informed of the allegations and the right to respond to them.
- Tusla must provide all relevant materials which were assembled in substantiating an allegation to the PSAA.
- The investigating social worker must remain impartial throughout the process and be mindful that a "client type" relationship does not develop
- The investigating social worker must remember that their role is to investigate the complaint and not to vindicate the Complainant or sanction the PSAA.
- The Complainant's account is required to be stress tested and conflicts of fact addressed.
- The PSAA is entitled to be heard in his/her own defence and to have the testimony of such persons who can give testimony on his/her behalf, relevant to the allegations in issue, heard and considered by the investigator;
- The existence of a pending criminal prosecution against the PSAA does not alleviate Tusla's duty to investigate the allegations.
- In order to establish that a complaint is "founded" the allegations must be established on the balance of probabilities, the civil standard of proof.<sup>2</sup>

Upon implementation, CASP will be the procedure that will replace the Section 3 Policy and will be supported by the Tusla Case Management System (TCMS) which links with the National Childcare Information System (NCCIS) supported by a data management plan designed to implement data governance requirements.

### **How critical is the data processing activity?**

Critical, necessary for Tusla to fulfil its legal obligations.

### **How will data subjects benefit from the processing of their data?**

#### *Person Making Disclosure of abuse (PMD)*

CASP sets out the procedures for substantiation assessments. This is the process of assessing disclosures of child abuse made by a PMD that arrives at a final conclusion which includes an outcome of founded or unfounded on the balance of probabilities; and if founded a determination of risk, if any, posed by the PSAA. The PMD receives the benefit of having the disclosure thoroughly assessed by a statutory authority and a determination made in relation to the allegation.

#### *Person Subject of Abuse Allegations (PSAA)*

When carrying out its statutory duty to support and promote the protection and welfare of children, and assessing disclosures of abuse, Tusla must ensure that the fundamental rights of the PSAA under natural justice and constitutional law are protected and that fair procedures are adhered to in order to protect these rights. CASP sets out the procedures for substantiation assessment. This is the process of assessing allegations of child abuse made by a PMD that arrives at a final conclusion which includes an outcome of founded or unfounded on the balance of probabilities; and if founded a determination of risk, if any, posed by the PSAA. If a PSAA considers that his or her rights to fair procedure have been compromised or if he or she is unhappy with the social worker's professional decision making leading to a final conclusion, he or she can seek a review in accordance with CASP 'Part C: Procedure for conducting a review in accordance with CASP'.

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<sup>2</sup> Extract from 'Why CASP?' document published on [www.tusla.ie/casp-consultation](http://www.tusla.ie/casp-consultation)

**How will society benefit from the processing of the data?**

CASP supports practitioners in fulfilling Tusla's statutory duties and functions under section 3 of the 1991 Act and provides guidance and support to practitioners to protect identifiable and yet to be identified children from future potential risk of harm. The implementation of CASP will provide confidence to the public in Tusla's application of fair procedures and provide assurance that professional standards are adhered to in the exercise of its authority as a public body.

**How will Tusla benefit from the processing of this data?**

CASP demonstrates that Tusla, as an organisation when fulfilling its statutory duty and functions, is committed to thoroughly assessing disclosures of abuse in a fair and transparent manner whilst maintaining, as a priority, the safety and protection needs of children.

**How will other organisations benefit from the processing of this data?***Schools and Voluntary Organisations*

Through the substantiation of allegations, practitioners can safely and proportionately notify relevant third parties of any identified risk or future potential risk to children that may be a part of an organisation/school etc. Such notification will protect children from potential risk of harm and enable caregivers and relevant third parties to manage the identified risk and act protectively for the children for whom they are responsible.

*Relevant Third Parties*

Organisations that are considered 'relevant third parties' under CASP who, in a particular case, receive a notification from Tusla that that a PSAA is a potential risk to children, can have confidence in that notification and in the efficacy of any actions based upon such a notification.

## 2: Description of the Processing

### Who will you collect data from and how will you collect the data

#### **Guidance:**

*It's important that you list all of the sources of the personal data so that we understand where it comes from and in particular whether you are collecting personal data directly from Service Users, Employees, Family Members of Service Users etcetera or if you collect the personal data indirectly from another source. This will determine our data protection obligations and how we communicate what we do with the data to the individuals whose data we process (data subjects) so it is important to provide as much detail as possible.*

*It is really important for us to understand how the data is collected, i.e. how it comes into Tusla, so that we can ensure the correct controls are in place in relation to the data. Please provide a detailed response here about how the data is collected and include in your response whether it is collected:*

- In person
- Over the Phone
- Through a website
- By an individual filling out a form (please provide the forms)
- Through a referral process (please provide details)
- By any other means

#### **Receiving a Referral**

A notification/referral/disclosure of child abuse may come from outside of Tusla via the Tusla Portal, by email to the Tusla general mailbox, a posted or hand-delivered letter, a phone call, a walk-in to a Tusla site from the following parties which initiates the process:

- A referral from a mandated person
- A referral from a non-mandated person
- A notification from An Garda Síochána
- A disclosure from a PMD (child)
- A disclosure made on behalf of a PMD by a parent/guardian or other party (child)
- A retrospective disclosure from a PMD (adult)
- A disclosure made on behalf of a PMD by another individual (adult)
- An internal referral may arise from a child protection and welfare case being processed in NCCIS.

#### **Subsequent Data Collection**

After the initial referral is received, personal data is collected further through each stage of CASP (screening, CASP preliminary enquiries, stage 1 of the substantiation assessment, stage 2 of the substantiation assessment) using the standard forms and templates designed for CASP and built into the Tusla Case Management System (TCMS) being used for CASP. In summary, personal data is collected as follows:

- In communicating with an individual or organisation to request personal data using standard data collection templates;
- The PMD or person representing the PMD may provide further data on request or of their own initiative;
- Tusla may request information from An Garda Síochána, HSE, clinical practitioners;
- Tusla may collect limited data from NCCIS and other Tusla Child Protection and Welfare sources;
- Tusla may request information from witnesses or other parties who may have information of relevance to the substantiation assessment;
- Tusla will request information from the PSAA who may provide data him or herself or also provide data from other parties which may help him or her to respond to the allegations.

## Who will you collect data about?

### **Guidance:**

*This is one of the most important questions because who we collect information about will determine our data protection obligations. We need to know this to understand whether the processing is permitted by law, whether it is necessary and proportionate, what data protection rights we must facilitate for these individuals and what information we need to provide to them about what we do with their data. Please provide details here on all of the categories of individuals whose data we will collect as part of this processing e.g. Service Users, Employees, Relatives and Family Members of Service Users etc., Professionals etc. and please state here why we need to collect personal data from these different categories of individuals.*

- A child/children at risk of harm;
- A child/children at potential risk of harm;
- An individual who refers a disclosure of abuse to Tusla whether or not a mandated person and including individuals who may consider that harm might result if his or her identity as a referrer of an allegation was made known
- A mandated person
- A registered professional
- A PMD (including both adults and children)
- Other potential PMDs
- A witness or witnesses (whether for the PSAA or for the PMD)
- Third parties (including both adults and children) informed by the PMD about the alleged abuse
- Other adults in addition to the PSAA alleged to be engaging in the alleged abuse
- Other adults in the PSAA's network who may pose a risk to children
- Parents of a child in foster care
- Persons having completed other investigations/reports in respect of the PSAA relating to current allegations
- Previous partners of or persons in a relationship with the PSAA
- Third parties identified by the PSAA believed to be in a position to assist with the substantiation assessment.

## Types of Personal Data

### Guidance:

Personal data basically means any information about a living person, where that person either is identified or could be identified. Personal data can cover various types of information, such as name, date of birth, email address, phone number, address, physical characteristics, or location data – once it is clear to whom that information relates, or it is reasonably possible to find out. Personal data doesn't have to be in written form, it can also be information about what a data subject looks or sounds like, for example photos or audio or video recordings, but data protection law only applies where that information is processed by 'automated means' (such as electronically) or as part of some other sort of filing system. Personal data can be information where the data subject is identified – "John's favourite colour is blue" – or where they are 'identifiable' – "John's sister's favourite colour is blue" (where you don't know his sister's identity, but could find out using context and/or additional information). Even where personal information is partially anonymised, or 'pseudonymised', but this could be reversed and the data subject could possibly be identified using additional information, it should still be considered personal data. However, if information is truly anonymised, irreversibly, and could not be traced back to an identified person, it is not considered personal data. Personal data only includes information relating to natural persons who: can be identified or who are identifiable, directly from the information in question; or who can be indirectly identified from that information in combination with other information. Personal data may also include special categories of personal data or criminal conviction and offences data. These are considered to be more sensitive and Tusla can only process them in more limited circumstances. Special categories of data are defined in the General Data Protection Regulation (GDPR) and require a higher level of protection and these include, for example, health data and data relating to current or previous allegations of abuse.

It is really important that we understand all of the types of personal data we need to collect as part of this process and about whom and that we can justify why we need each type of personal data. Please tick below the types of personal data that will be collected as part of this process.

### Identify the Type of Personal Data Collected (tick the box)

CATEGORY:	EXAMPLES:	TICK:
Education and Professional Experience and Affiliations	Education and Training History, Qualifications, Languages, Previous Employer Information, References, Previous Work History	<input type="checkbox"/>
Travel and Expenses Information	Travel Booking Details, Details of Expense Claims, Travel, References and Voucher Requirements, Passport and Visa Details	<input type="checkbox"/>
Family, Lifestyle and Social Circumstances	Marital Status, Dependents / Spouse / Partner / Family Details, Next of Kin / Emergency Contact Details	<input checked="" type="checkbox"/>
Basic HR Details	Pay Number, Job Title / Role, Job Status - Full Time / Part Time, Details / Description of Role, Grade, Company / Entity, Business Unit / Division, Start Date, Hours of Work, Contract Type - Fixed Term / Temporary / Permanent etc.	<input type="checkbox"/>
Health, Welfare and Absence Related	Record of Absence / Annual Leave, Grievances and Complaints, Bullying and Harassment Details, Ill Health Retirement Flag	<input type="checkbox"/>
Performance Related	Disciplinary Action, Exit Interview and Comments, Personal Development Reviews - Date of Review, Details and Comments of Appraiser, Performance Rating, Other Performance Related Feedback, Comments and Analysis	<input type="checkbox"/>
Pay, Benefits and Pension Details	Bank Account Information, Credit Card Information, National Insurance Number, Salary / Wage, Salary / Wage Expectations, Tax Code, Bonus Payments, Compensation Data, Benefits and Entitlements Data, Share Scheme Membership Details, Housing and Relocation Allowance	<input type="checkbox"/>
Photographic, Video and Location Information	Photographic and Video Imaging including CCTV Images, Location / Tracking Data, Email / Internet use, Call recording	<input checked="" type="checkbox"/>
Identification Checks and Background Vetting	Credit Check Related References and Referee Details, Passport Details, Driving Licence Details, Proof of Eligibility to Work e.g. Visa details, British Passport, National Identity Card Details, Signature, Bank Statements, Utility Bills, Birth Certificates	<input checked="" type="checkbox"/>

Online Profiles	Profiles based on web user's behaviour, searches, site visits, spending patterns, etc.	<input type="checkbox"/>
Criminal	Criminal Convictions or Offences, Results of Criminal Record Checks	<input checked="" type="checkbox"/>
Other	Any personal data type not referenced in the above categories	<input type="checkbox"/>
Special Category Data	The GDPR defines "sensitive" personal data as data consisting of <b>racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, genetic data, biometric data</b> , data concerning <b>health</b> or data concerning a natural person's <b>sex life or sexual orientation</b> .	<input checked="" type="checkbox"/>
If Other, please detail here:		



## How the Data is Used

### **Guidance:**

*Please provide detail here in how the data is used when it comes into Tusla, from the moment it comes into Tusla and for the entire time Tusla has the data – what services and functions use the data and why.*

The scope of personal data to be processed and what it is used for are determined by CASP and using standard forms and templates which are built into TCMS. In summary the processing operations are as follows:

#### **1. Receiving a Referral**

Tusla will receive a referral of a disclosure of child abuse made against a PSAA and process it in accordance with section 10 of CASP.

#### **2. Screening and CASP Preliminary Enquiries**

##### **(a) Screening**

All referrals of child abuse received by Tusla will be subject to a screening and CASP preliminary enquiry process to determine if there is a basis for a substantiation assessment and safety planning for an identified and/or yet to be identified child(ren).

When screening a referral, the Screening Social Worker must consider the following:

- a) does the information in the referral meet the Children First threshold of reasonable grounds for concern and definition of child abuse? and
- b) are they satisfied that the referral information is not a fake or a hoax? and
- c) does the information in the referral fall within the category of cases as outlined in Section 3.2 Criteria for applying the CASP to allegations of child abuse?

The screening stage is also used to make decisions on any immediate protective action that may be required in relation to identified and/or yet to be identified children.

##### **(b) CASP Preliminary Enquiries**

The CASP Social Worker will contact the PMD, outlining the process and informing him or her of his or her rights, liaise with AGS as appropriate and identify prospective witnesses and will determine before progressing to Stage 1 whether:

- (i) There are continuing reasonable grounds for concern; and
- (ii) The disclosure warrants further assessment

#### **3. Stage 1 of the Substantiation Assessment**

The CASP Social Worker will engage in the interview process with the PMD and identified witnesses, carry out checks for reliability and accuracy of the assembled information and will determine before progressing to Stage 2 whether:

- (i) There are continuing reasonable grounds for concern; and
- (ii) The disclosure warrants further assessment

#### **4. Stage 2 of the Substantiation Assessment**

The CASP Social Worker will engage in the interview process with the PSAA and identified witnesses, carry out checks for reliability and accuracy of the assembled information including facilitating questions from the PSAA to the PMD and will:

- (i) Issue a provisional conclusion to the PSAA with a Founded or Unfounded Outcome
- (ii) Issue a final conclusion to the PSAA with a Founded or Unfounded Outcome

#### **5. Provisional Conclusion**

The CASP social worker can reach either of the following outcomes as part of the provisional conclusion:

- Founded Outcome: The outcome of a substantiation assessment where it is established on the balance of probabilities that child abuse has occurred.
- Unfounded Outcome: The outcome of a substantiation assessment where it is not established on the balance of probabilities that child abuse has occurred.

The CASP Social Worker will inform the PSAA (and/or their parents if the PSAA is a child) of the provisional conclusion and advise them that they may respond by a specified date. The PSAA should be informed that if

they put forward any representations or additional information these will be considered, and that if there is none forthcoming, the provisional conclusion will be deemed to be the final conclusion by a specified date.

## **6. Final Conclusion**

The final conclusion is reached once any representation or additional information provided by the PSAA in response to the Provisional Conclusion, has been considered and assessed. If no representations or additional information is received from the PSAA by the specified date, a final conclusion will be reached.

The CASP Social Worker will inform the PSAA (and/or their parents if the PSAA is a child) of the final conclusion and inform the PSAA that if he or she wants a review, he or she must ask for the review within 14 days of receipt of the final conclusion and that if the PSAA does not ask for a review, the final conclusion of founded will stand.

## **7. Notifications and Information Sharing**

The processing necessarily involves notification and information sharing as follows:

- In requesting information required for a substantiation assessment, Tusla will need to disclose a certain amount of data in order to provide the context for the request.
- When a social worker suspects that a child has been or is being physically or sexually abused or wilfully neglected, An Garda Síochána must be formally notified without delay.
- Tusla will make a specified information notification the Garda National Vetting Bureau (GNVB) at any stage of the process if the social worker determines that there is a *'bona fide concern'* under the National Vetting Bureau (Children and Vulnerable Persons) Act 2012 and in accordance with the *"Tusla Policy and Procedure for submission of Specified Information notifications to the National Vetting Bureau – PPPG29/2017"*.

Tusla will take immediate protection action which may include notifying relevant third parties during the course of the substantiation assessment if an immediate serious risk is identified and it has been determined that the PSAA poses a risk to children.

- Tusla will also notify relevant third parties in the case of an unfounded outcome if they have already been informed of the allegations, for example where they were informed due to a concern that a child may be at immediate and serious risk of harm. 'Relevant third parties' are defined in CASP as
  - o *Any person who is in a position of responsibility for a child or children's safety and wellbeing. It includes someone who is in a position of direct authority over a PSAA, if the PSAA is employed or if they volunteer in an organisation where they may have contact with children through their work. For example, the principal of a school who has authority over a teacher, the Chief Executive Officer of a non-governmental organisation who has authority over an employee, the leader of a children's sports or activity group with authority over a volunteer, and so on. (See 'relevant organisation' in Section 2 of the National Vetting Bureau (Children and Vulnerable Persons) Act 2012.)*
  - o *Any registration or regulatory body, such as, Health and Social Care Professionals Council (CORU), Medical Council, Teaching Council, and so on.*
- Tusla will notify the PSAA if an allegation advances to stage 2 of a substantiation assessment. The PSAA will receive 'all relevant information and documentation' which was gathered in the substantiation process.

## **8. Broader Child Protection and Welfare Purposes and Service Evaluation and Reporting**

The personal data collected under CASP may further be processed for the purposes of child protection and welfare through notifications internally to Child Protection and Welfare teams, to AGS, GNVB and relevant third parties.

The personal data may further be processed for the administration of CASP in service evaluation and reporting (e.g. through statistical analysis) with controls to protect identities and sensitive data and for accountability by being retained for an extended period as defined in the Tusla Records Management Policy, under the 1991 Act and certain court judgments.

Personal data is transferred, disclosed or shared as defined in CASP and in compliance with the Tusla Information Security Policy set.

## How the Data is Stored

### **Guidance:**

*It is really important for us to understand how the data is stored when it is in Tusla so that we can ensure that the proper security measures are applied to the data and that it is protected at all times. It is also important for us to understand how the data is stored and where it is at all times to ensure that we can retrieve it when requested by the individual whose data is processed (the data subject) or by a regulatory authority. Please provide details here on how and where the data is stored and include all media and storage means including whether copies are made of the data e.g., on paper, on a network folder/drive, on a website, on a dedicated system, DVD, audio, etc.,*

Section 9.0 of CASP: *'The recording and management of information as part of CASP'* states the following in relation to record keeping:

#### **"9.1 Introduction**

*The CASP Data Protection Guidance provides detailed information on Tusla's data protection obligations to, and the data protection rights of service users to whom CASP may apply. The CASP Data Protection Guidance should always be referred to for help in applying data protection obligations in the context of CASP.*

#### **9.2 Sharing information with a PSAA**

*Where the assessment moves to stage 2, fair procedures require that the PSAA is informed of allegations made against them and provided with all relevant information and documentation gathered by the CASP social worker. This information must be provided in accordance with the procedure, even if the PSAA does not request it. If there is information contained within the relevant documentation gathered by the CASP social worker which is not relevant and relates to people other than the PMD or the PSAA, that information should be redacted on the grounds of data protection.*

#### **9.3 Information, documentation, and reports from other professionals**

*Before seeking reports from other professionals, the CASP social worker should advise the reports' authors of Tusla's requirement to share all relevant information and documentation with the PSAA (and their parents if the PSAA is a child). It is important that the authors are aware of this before providing a report to Tusla. This is because, once they receive the documentation, the CASP social worker is obliged to disclose relevant information and documentation to the PSAA should the assessment move to stage 2.*

*If reports or documents have been given to the CASP social worker that were not requested by them, these reports will have to be disclosed to the PSAA (and their parents if the PSAA is a child) if they are relevant to the assessment. Therefore, it is important that the authors of such reports are informed of the requirements and given the opportunity to raise any objections or request any data restrictions in advance of providing the reports.*

#### **9.4 Record Keeping**

*A record in the PMD's name and the PSAA's name is to be opened when the referral is received. These records are used to hold the details of:*

- *disclosures and allegations,*
- *names and circumstances of the PMD and the PSAA,*
- *decisions made during the first stage of the substantiation assessment.*

*A case record should also be created in the name of each identified child who is believed to be at risk of harm, including any child who is in the direct care of the PSAA.*

*Whether the PMD takes part in the substantiation assessment or not, details of an allegation and the actions taken must be carefully recorded in all circumstances. This includes where a disclosure does not reach the threshold to move to stage 1 of a substantiation assessment.*

*If action has been taken to inform a relevant third party of child protection concerns, the details and reasons for the action must be clearly recorded on any identified child's record and the record of the PSAA.*

*Details of any agreements and decisions regarding the substantiation assessment should be carefully recorded in records of the PMD and the PSAA.*

*Documents and handwritten notes must be scanned and saved onto Tusla Case Management System (TCMS), and the originals securely shredded.*

*When the case is closed, the PMD and the PSAA (if the assessment has moved to stage 2), will be informed in writing of the case closure and their rights under data protection, which should be recorded on the case record. Details of a Review, the people involved, the correspondence and reports produced must be recorded and kept on the case record on TCMS."*

Personal data is stored in TCMS (Case Records) and NCCIS (Person Records) and can take the following formats:

- Hard copy record (which will be destroyed once scanned to a database record)
- Electronic record (scan of hard copy attached to a database record or original database record)
- Photograph

Personal data may also be stored in audio and video (DVD) formats.

The CASP Standard Forms and Templates have been developed to collect, store and transmit personal data relating to CASP, have been reviewed by the Tusla DPU and are built into TCMS.

## How Long the Data is Retained for and Why

### **Guidance:**

*We must ensure that personal data are kept in a form which permits identification of data subjects for no longer than is necessary for the purpose(s) of the processing. In deciding how long you need to keep this data (your retention criteria) you must take into account fulfilling any legal/statutory retention requirements and Identifying business or service needs for retention from experience. It is not sufficient in your response to refer to the Records Management Policy or any retention period therein – you need to state here why you need to keep the data for the period you need to keep it for. You also need to set out here what happens to the personal data after the retention period has expired and Tusla is no longer allowed to keep the data and how it will be deleted as necessary (securely) and how you will ensure you put “deleted” personal data “beyond use”.*

The Tusla Records Management Policy 2017 (the Policy) sets out in section 9.1 the minimum retention periods across a range of data types. This retention schedule currently applies and either it or an updated version will be followed in respect of the record processed as part of CASP. The Policy requires that data obtained and accrued as part of an investigation into allegations of child abuse is held in perpetuity. Section 9 of the Policy refers to the following classes of records necessary:

- to carry out the functions of The Child and Family Agency Act, 2013;
- to perform functions under the Child Care Act 1991 or the Adoption Act, 2010;
- to carry out functions under the Education (Welfare) Act 2000.

Section 9.1.1 of the Policy mandates the records to be held in perpetuity:

- records created under the 1991 Act;
- case records and registers for fostering (Child Care (Placement of Children in Foster Care) Regulations, 1995) (SI 260/1995);
- case records and registers for placement of children with relatives (Child Care (Placement of Children with Relatives) Regulations, 1995) (SI 261/1995);
- case records and registers for children in residential care (Child Care (Placement of Children in Residential Care) Regulations, 1995) (SI 259/1995);
- case records for children in respect of whom family welfare conferences have been convened and records of the conference (Children (Family Welfare Conference) Regulations 2004) (SI 249/2004);
- case records and registers for children in special care units (Child Care (Special Care) Regulations 2004) (SI 550/2004).

The CASP Data Protection Guidance contains the following section:

#### *“10. Storage Limitation (Retention)*

*Tusla must ensure that personal data are kept in a form which permits identification of data subjects for no longer than is necessary for the purpose(s) of the processing.*

*In deciding how long we need to keep this data (our retention criteria) we must take into account fulfilling any legal/statutory retention requirements and identifying business or service needs for retention from experience. Tusla is also required to keep retention periods to a strict minimum by establishing and periodically reviewing time limits<sup>3</sup>, which must be included in records of processing where possible<sup>4</sup>.*

#### **Storage Limitation Rules for CASP**

- ✓ *Delete temporary and local copies of files without delay so that files are always held in their dedicated location (e.g. files for CASP should be held in TCMS)*
- ✓ *Destroy hard copy files once the file has been scanned and uploaded to TCMS*
- ✓ *Limit making copies of files by accessing information in its dedicated location and referring others to the dedicated location (e.g. TCMS). For example, if communicating with a colleague who also has access to the dedicated systems (TCMS or NCCIS), prefer referring the colleague to the system to source information instead of downloading and sending a file by email*

<sup>3</sup> GDPR, Rec 39

<sup>4</sup> GDPR, Art 30(1)(f)

- ✓ *Ensure that you delete local copies of CASP files from your computer desktop or from the network drive.*
- ✓ *If it is necessary to print a copy of a file, dispose of the copy promptly and securely after use through shredding.*
- ✓ *If you see files unattended in your work area, return them to a secure location or shred paper files which are evidently copies of electronic master copies. Report a potential data breach if appropriate, such as if files are unattended in a public area or an area where there may be unauthorised access to the files.*
- ✓ *Follow Tusla's Information Security Policy Framework and Records Management Policy*

**Attention**

- ✓ *Tusla is not permitted to apply indefinite retention periods to personal data without exception or limitation or without any objective criteria linking the retention period with the objective pursued, i.e. the purpose of the processing.*
- ✓ *Ensuring that we erase or anonymise personal data when we no longer need it will reduce the risk that it becomes irrelevant, excessive, inaccurate or out of date. Apart from helping Tusla to comply with the data minimisation and accuracy principles, this also reduces the risk that we will use such data in error.*
- ✓ *Personal data held for too long will, by definition, be unnecessary and Tusla is unlikely to have a lawful basis for retention.*
- ✓ *Tusla must also respond to subject access requests for any personal data we hold which becomes more difficult if we are holding old data for longer than we need.*
- ✓ *Good practice around storage limitation, with clear policies on retention periods and erasure, is also likely to reduce the burden of dealing with queries about retention and individual requests for erasure.*

***Play your part by complying with Tusla's Records Management Policy***

## How the Data is Secured

### Guidance:

*We must ensure that the data is processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures ('integrity and confidentiality'). The higher the risk the higher the level of security that needs to be applied to the personal data.*

*In considering the appropriate level of security, regard must be had to the nature, scope, context and purposes of Tusla's processing of personal data. The nature of Tusla's processing of personal data is inherently sensitive. Its scope is extensive as it has state wide responsibility for child protection and welfare. Its context is particularly relevant because the purpose of Tusla's processing is to discharge its statutory functions in relation to child protection and welfare, education and family and support services. As an organ of the state any processing of personal data by Tusla is an interference with the right of privacy of the individuals to whom that data relates and must be done strictly in accordance with the law and only as necessary and proportionate for the purpose of the processing. A general duty of confidentiality also applies to much of the data. Thus the nature scope context and purpose of the processing in Tusla generally requires a high level of security.*

*Under the Data Protection Guidance Practice Matter if you transmit sensitive personal data by email you must ensure that this data is put into a password protected document and attached to the email with the password disclosed separately and if you are transmitting sensitive personal data by post you must ensure that this post is registered or couriered.*

*Please include detail in your response as to how you ensure that access to this personal data is restricted on a strict need to know basis and how the requirements of the Data Protection Guidance Practice Matter will be complied with.*

*Please also provide details here on how physical access to the personal data is managed if in hard copy and logical access is managed if in soft copy or stored on computers or other devices.*

### **Tusla Case Management Systems (TCMS)**

All CASP personal data, documents and records will be stored in a single national system providing a single master record for each case file, the Tusla Case Management System (TCMS).

A standalone data security questionnaire has been issued to ICT regarding TCMS and the responses confirm that adequate security controls are in place (the responses have been omitted from this published version of the DPIA due to security concerns with the disclosure of this information).

### **Dedicated data management system, which reduces local copies of unmanaged data**

All letter templates and forms will be built into TCMS, unlike other systems where you have to create a document elsewhere and then copy or attach it into the case management systems, this means there can only be one copy of the document and that document is always contained in TCMS. Note: email templates can also be built into TCMS such that emails are sent from TCMS and automatically recorded on the case file as opposed to emails being sent from individual work email accounts.

### **Authorisation embedded in data management system**

All outgoing correspondence can have a forced four-eye review, meaning a piece of correspondence cannot be printed or sent until a second person reviews and approves it as correct.

### **Reduced risks to accuracy through automation**

Address information on letters is automatically mailed merge from the address on TCMS which prevents copy and paste errors or other mistakes when entering addresses on letters. There is an outstanding risk on TCMS standard forms and templates that this mail merge does not pull into the TCMS templates all required personal identifiers from NCCIS but pulls into TCMS instead only the name and address of the recipient and the name of the sender. All dynamic text in the body of each of the TCMS letters which constitutes either personal data in the form of the name of the PMD, PSAA or other and the corresponding NCCIS identifier (e.g. PMD NCCIS Identifier and PSAA NCCIS Identifier) is not pulled or automatically populated from NCCIS on any standard form and template on TCMS and must instead be manually entered by the user each time and for each instance of such dynamic text. This significantly increases the risk of a personal data breach arising as a result of the incorrect name or identifier being manually entered by a user in correspondence.

### **Access control measure for exceptional authorised access**



TCMS will incorporate an Access Rationale feature that can be set to prompt users to record why they are accessing a record.

### **Managed retention**

TCMS will be able to enforce retention dates to archive or purge certain categories of data or documents when retention periods expire. This will be done through a controlled management system that will alert when data retention periods are due and ready for action.

Administrative controls include compliance with Tusla's ISO27001 Policy Set.

The CASP Data Protection Guidance includes the following section on Integrity and Confidentiality:

### **Attention**

*The collecting, recording, processing, storing and sharing personal data required by CASP involves the processing of Tusla's records or document relating to PMDs s, family members, PSAAs and other data subjects and involving any of the categories of personal data processed by Tusla including special category data of a highly sensitive nature. These data subjects include children and vulnerable persons to whom Tusla owes a duty of care and in many instances a duty of confidentiality.*

*The breach the subject of Inquiry IN-19-12-8 ('1 x breach inquiry') under the Section 3 Policy process resulted from Tusla's failure to redact personal data of complainants from a safeguarding letter issued to a relevant third party to inform and advise her of safeguarding procedures to ensure the ongoing safety of a child at risk. The letter contained the names of the complainants who made the allegations and details of the allegations made. The relevant third party subsequently shared a photograph of the safeguarding letter on social media. The Data Protection Commission (DPC) found that this personal data breach created a risk to the rights and freedoms of the complainants and that unauthorized disclosure of this type of personal data has an inherent capacity to seriously infringe the rights and freedoms of the complainants. The likelihood of psychological damage or harm to the complainants was aggravated by the fact that the letter was subsequently published on a social media platform.*

*The impact of a personal data breach on any individual involved in the CASP process can be very severe. CASP processes the most sensitive personal data of individuals in the State and particularly private and confidential personal data of PMDs and PSAAs.*

*PMDs are particularly vulnerable and it is really important that all staff understand the potential impact of a personal data breach on a PMD who is subject to the CASP process and is by virtue of his or her status as a service user 'vulnerable' from a data protection perspective and who, therefore, must be afforded special protections in addition to those afforded to an ordinary data subject. In addition to his or her status as a 'vulnerable' data subject, it has to be acknowledged that PMDs must also considered 'vulnerable' in the ordinary sense of the word given the nature of the disclosures being made and the fact that he or she will most likely revisit certain traumas during the course of making a disclosure and engaging with Tusla in the CASP process. In addition to the harm that might result to a PMD, a personal data breach may cause significant harm to a PSAA who also has data protection and privacy rights in addition to the right to vindicate his or her good name and the right to fair procedures.*

*The potential for harm to such individuals (and indeed other individuals who are involved in the CASP process including mandated persons) arising from a personal data breach or any inappropriate or unlawful processing of his or her personal data must be uppermost in the minds of all Tusla staff who operate the CASP process.*

*Articles 33(5) and 5(2) of the GDPR require Tusla to document and notify personal data breaches.*

*The GDPR defines a personal data breach as "a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to personal data". If a personal data breach is likely to present risk to affected persons' rights and freedoms, Tusla is obliged by Article 33(1) GDPR to notify the DPC no later than 72 hours after becoming aware of it. Security incidents that typically meet the GDPR's definition of a personal data breach include:*

- *issuing emails or letters containing personal data to unintended recipients.*
- *sharing of personal data or third-party information with unauthorised recipients;*
- *loss of personal data or a device containing personal data (e.g. work phones or laptops);*
- *unauthorised or inappropriate access to electronic files/portals holding personal data;*
- *temporary or permanent loss of control over personal data, and;*
- *unauthorised alteration of personal data.*

***What to do when a personal data breach happens.***

*As soon as you become aware of it, you must immediately report any incident that you suspect or know to be a personal data breach Tusla's Data Protection Unit (DPU).*

*Even if you are unsure, or if you don't have the full details, you must report the incident to the DPU. Failure to immediately report can result in:*

- *Inquiries, fines, or sanctions by the Data Protection Commission; and*
- *Loss of confidence and reputational damage among Tusla Service Users and the public.*

*Reports should be made to the DPU by emailing [datacontroller@tusla.ie](mailto:datacontroller@tusla.ie)*

*Guidance on sharing personal data safely is available at <https://tusla.sharepoint.com/:u:/r/sites/home/SitePages/Sharing-personal-data-safely.aspx>*

## How the Data Will be Shared

### **Guidance:**

*Will any information be sent off site (i.e. a building or network not under the direct control of Tusla) If so, how will it be transferred? e.g. standard email, secure email such as .net, website, courier, hand delivery, post, telephone*

*Will any information be passed to contractors or third parties? If so, for what purpose? If information is passed to contractors, we need to establish if they are a data controller or processor and put contractual measures in place*

CASP allows for the sharing of personal data and special categories of personal data with several categories of recipients only where this sharing is necessary and proportionate for the purposes of CASP and all sharing is done securely. These recipients are as follows:

**A legal representative or support person brought by the PSAA to the interviews.** *(subject to signing a confidentiality agreement)* will by virtue of his or her attendance at interviews have access to the following personal data:

- (a) The name, age and geographical area of the PMD and the PSAA and depending on the facts of a particular case if fair procedures require it, address, date of birth, profession
- (b) The special categories or other sensitive personal data in respect of the PMD and the PSAA which may be discussed at interview are health, criminal convictions, gender, age, allegations of abuse, disabilities issues (relevant in relation to interaction with the PMD), literacy issues (relevant in relation to interaction with the PMD), history of any abuse they suffered, relationship history, mental health, addictions, event details (which may include hobbies, religion, culturally sensitive issues), current and future risks identified in respect of them, person's sexual orientation, sexual activity, sexual history, sexual preference.

The DPU has reviewed the confidentiality agreement which forms part of the suite of CASP Standard Forms and Templates and included the following warning paragraph so that in the unlikely event that the support person does not sign the confidentiality agreement he or she is notified of his or her obligations to keep the personal data confidential and the possible consequences of any breaches of confidentiality:

*"Information in relation to these allegations is being shared with you on a strictly confidential basis. You are required to keep this information confidential and not to use or disclose it other than as permitted by and in accordance with the law. If you unlawfully use or disclose the third party information that has been provided to you, you will potentially infringe third party privacy and data protection rights. If this happens, redress action may be taken against you, up to and including legal proceedings."*

### **An Garda Síochána (AGS) and the Garda National Vetting Bureau (GNVB)**

Tusla is legally required to notify AGS if there is a suspicion that a crime has taken place. AGS may also request access to personal data relating to PMDs or witnesses for the purposes of criminal investigation pursuant to section 41(b) of the Data Protection Act 2018 and in accordance with the Tusla and AGS Data Sharing Agreement and will require a court order to access personal data relating to a PSAA. Personal data may also be shared with the GNVB if a bona fide concern has been established in relation to a PSAA. The following information may be shared with AGS and/or the GNVB:

- (a) The name and contact details, of the PMD, the PSAA, any witness, whether for the PMD or the PSAA, any other children who have been identified as having been at risk and any other alleged victims.
- (b) The special categories or other sensitive personal data of the PMD, the PSAA, any other children who have been identified as having been at risk and any other alleged victims, health, criminal convictions, gender, age, allegations of abuse, history of any abuse they suffered, relationship history, mental health, addictions, current and future risks identified in respect of them, a person's sexual orientation, sexual activity, sexual history, sexual preferences.

### **PSAA**

In affording fair procedures, personal data and special categories of personal data relating to the PMD will be shared with the PSAA in a suite of documents, that the social worker has assembled and relied on in their assessment of allegations (see 'Lawful Processing – Requirement to Disclose Relevant Information and Documentation'). Only relevant information and documentation assembled in the substantiation assessment will be shared and CASP contains detailed guidance on how relevancy is determined. The PMD will be notified in advance of any materials to be shared with PSAA and provided with the opportunity to raise any objections

to this sharing. CASP also contains guidance on exceptional circumstances where relevant information and documentation will not be shared with PSAA where, for example, sharing such data would place the PMD at serious risk.

#### **Witnesses**

As part of the substantiation process, witnesses may be interviewed following a PMD interview, if those witnesses have been identified by a PMD. They may also be interviewed following an interview with a PSAA. The template for the initial letter to the witness requires that a pseudonymised version of the name of the PSAA and PMD be contained in the correspondence and information relative to the fact that an allegation has been made is being investigated is provided to a witness.

#### **Relevant Third Parties**

Personal data of the PSAA will be shared by Tusla with any individual who holds responsibility for the care and protection of a child who is considered to be at immediate serious risk from a PSAA in order to safeguard that child.

Other than in circumstances of immediate, serious risk, relevant third parties will only be notified of potential future risk to children after a founded conclusion has been reached and a determination on risk has been made. Tusla will take immediate protection action which may include notifying 'relevant third parties' during the course of the substantiation assessment if an immediate serious risk is identified and it has been determined that the PSAA poses a risk to children. Tusla will also notify relevant third parties in the case of an unfounded outcome if they have already been informed of the allegations, for example where they were informed due to a concern that a child may be at immediate and serious risk of harm.

#### **Internal and External auditors**

For the purpose of inspection, monitoring and review of services will have access to the information on request.

#### **Service Providers**

Specialist third party service providers may have access to the information for the purpose of supporting the completion of a substantiation assessment.. Any proposed sharing of personal data with a third party service provider will be risk assessed and shared only in compliance with Tusla's Third Party Data Protection and Privacy Risk Management Policy and Standard Operating Procedures.

## High Risk Processing

### **Guidance:**

*In general terms, processing of personal data in Tusla may involve the processing of any of Tusla's records or document types, relating to any of its data subjects and involving any of the categories of personal data processed by Tusla including special category data of a highly sensitive nature. Tusla's data subjects include vulnerable persons to whom Tusla owes a duty of care. This data by its nature relates to individuals who are often extremely vulnerable (this is indicated by the nature of the services provided to and accessed by Service Users) and in many instances to children. The processing involves the personal data of children and adults all of whom by the nature of their status as Service Users and their relationship with Tusla would be considered 'vulnerable' for the purposes of data protection. Both categories of data subjects require additional protections and safeguards because the severity of impact of risks to the rights and fundamental freedoms of these cohorts of data subjects is higher than that of an ordinary data subject.*

*The personal data processed by Tusla is collected from data subjects because it is necessary and proportionate for the purpose of Tusla discharging its statutory responsibilities in the area of child protection and welfare, education and ancillary family and support services. The processing of personal data by Tusla as an organ of the state is an interference with the right of privacy of Service Users and as such must be done in accordance with the law and must be necessary and proportionate to the purpose of Tusla's statutory functions and duties. Further, much of the data processed by Tusla is subject to a common law duty of confidentiality, that is, the personal data was provided to Tusla with the expectation that it would be treated confidentially and while this duty is subject to limitations and exceptions as required in the public interest and to allow Tusla to discharge its statutory functions, it is a duty that applies nonetheless.*

*In considering the appropriate level of security, regard must be had to the nature, scope, context and purposes of Tusla's processing of personal data. The nature of Tusla's processing of personal data is inherently sensitive. Its scope is extensive as it has state wide responsibility for child protection and welfare. Its context is particularly relevant because the purpose of Tusla's processing is to discharge its statutory functions in relation to child protection and welfare, education and family and support services. A general duty of confidentiality also applies to much of the data. The processing of personal data in Tusla is generally, therefore, considered to be inherently high risk.*

*Taking the above into account state whether you think this processing is inherently high risk.*

Processing of personal data under CASP is inherently high risk. The risk of harm to a data subject is high due to the sensitivity of the data and the vulnerability of the data subjects together with the vast quantities of personal data processed and the geographic reach (all locations in the state and on occasion, outside the state).

Further factors that contribute to high risk processing is that the context is inquisitorial and Tusla must balance competing fundamental rights, including competing data protection rights. For example, while managing immediate serious risk, child protection shall take priority over the right to fair procedures or the right to privacy, however, careful balancing of rights must take place in order to protect the data protection rights and the right to privacy of the PMD as well as the PSAA's right to fair procedures.

There is a significant risk of unlawful access arising from Tusla's processing, that is an inherent high risk of unlawful access to, or unauthorized disclosure of, personal data in the absence of appropriate technical and organisational measures to safeguard the data because the likelihood of a risk event occurring is high due to the quantity of data processed and the number of individuals to whom that data relates.

The processing of personal data by Tusla as an organ of the state is an interference with the right of privacy of service users and as such must be done in accordance with the law and must be necessary and proportionate to the purpose of Tusla's statutory functions and duties. Further, much of the data processed by Tusla is subject to a common law duty of confidentiality, that is, the personal data was provided to Tusla with the expectation that it would be treated confidentially and while this duty is subject to limitations and exceptions as required in the public interest and to allow Tusla to discharge its statutory functions, it is a duty that applies nonetheless.

In considering the appropriate level of security, regard must be had to the nature, scope, context and purposes of Tusla's processing of personal data. The nature of Tusla's processing of personal data relating to CASP is inherently sensitive. Its scope is extensive as it has statewide responsibility for child protection and welfare and for the provision of services relating to CASP where required. Its context is particularly relevant because the purpose of Tusla's processing is to discharge its statutory functions in relation to child protection and welfare and in particular the investigation of allegations of child abuse which necessarily involves the collection and sharing of extensive personal and sensitive personal data. As an organ of the state any processing of personal data by Tusla is an interference with the right of privacy of the individuals to whom that data relates

and must be done strictly in accordance with the law and only as necessary and proportionate for the purpose of the processing. A general duty of confidentiality also applies to much of this personal data. Thus the nature scope context and purpose of the processing is high risk and requires a high level of security.

## How Many Individuals Are Affected

### **Guidance:**

*Generally, Tusla processes a vast quantity of personal data of data subjects. Service Users in particular are based in all geographic locations across the state as services are provided or available to all citizens and residents in the state, regardless of location.*

*There is a significant risk of unlawful access arising from Tusla's processing, that is an inherent high risk of unlawful access to, or unauthorized disclosure of, personal data in the absence of appropriate technical and organisational measures to safeguard the data because the likelihood of a risk event occurring is high due to the quantity of data processed and the number of individuals to whom that data relates.*

*The more individuals that are affected by this processing and whose personal data will be processed the higher the risk this processing poses and the higher the level of protection and safeguards that must be applied to this processing.*

*Give an approximate figure.*

In excess of approximately 1,000 disclosures per annum. This is a national service with nationwide coverage.

## What Geographical Area is Covered

### **Guidance:**

*Generally, Tusla processes a vast quantity of personal data of data subjects. Service Users in particular are based in all geographic locations across the state as services are provided or available to all citizens and residents in the state, regardless of location.*

*There is a significant risk of unlawful access arising from Tusla's processing, that is an inherent high risk of unlawful access to, or unauthorized disclosure of, personal data in the absence of appropriate technical and organisational measures to safeguard the data because the likelihood of a risk event occurring is high due to the quantity of data processed and the number of individuals to whom that data relates.*

*The more individuals that are affected by this processing and whose personal data will be processed the higher the risk this processing poses and the higher the level of protection and safeguards that must be applied to this processing.*

*Give an approximate figure.*

All geographic locations in the state as services provided to all citizens and residents in the state, regardless of location. In addition, there are instances where processing of personal data may occur outside the state. Information relevant to child protection concerns will be shared with services in other jurisdictions who hold a stake in child protection and welfare where it has been determined that there may be a potential or immediate serious risk.

Section 8 of CASP sets out the requirements where a PSAA resides outside of the jurisdiction.

*"8.0 Geographical considerations*

*8.1 Introduction*

*The PMD disclosing abuse and the PSAA can often live in different areas of the country or even in different countries. If the PSAA lives outside of the Republic of Ireland, a CASP substantiation assessment will be carried out if it is indicated that they may have, or are likely to have, contact with children in the Republic of Ireland."*



## Nature of Relationship with Data Subjects

### **Guidance:**

*As set out above, generally, personal data processed by Tusla relates to individuals who are often extremely vulnerable (this is indicated by the nature of the services provided to and accessed by Service Users) and in many instances to children. The processing involves the personal data of children and adults all of whom by the nature of their status as Service Users and their relationship with Tusla would be considered 'vulnerable' for the purposes of data protection. Both categories of data subjects require additional protections and safeguards because the severity of impact of risks to the rights and fundamental freedoms of these cohorts of data subjects is higher than that of an ordinary data subject. Tusla generally owes a duty of care to these individuals and a duty of confidentiality in relation to the personal data provided by these individuals.*

*Please provide details here on the nature of the relationship between Tusla and the individuals whose data is processed as part of this process as this will determine what Tusla's obligations to these individuals are. In your response please state what control these individuals will have over their personal data.*

CASP sets out the procedures to be followed where a disclosure of child abuse has been received and the substantiation of the disclosure is required to share information with a relevant third party to protect children.

The parties to the CASP process, PMDs (whether adult or child) and PSAAs (whether adult or child) their parents or guardians are service users of Tusla and are in many cases extremely vulnerable (this is indicated by the nature of the services in scope of CASP).

Both PMD and PSAA data subjects require additional protections and safeguards because the severity of impact of risks to the rights and fundamental freedoms of these cohorts of data subjects is higher than that of an ordinary data subject.

Tusla generally owes a duty of care to these individuals and a duty of confidentiality in relation to the personal data provided by these individuals.

## Would they expect Tusla to use their data in this way? Is it novel in any way?

### **Guidance:**

*If we are using personal data in any way that is not expected by an individual and they don't know about it, this is processing that is unfair and not transparent and will be a breach of data protection legislation. We are only permitted to use personal data fairly and transparently and with no surprises for the individual. Tusla has a standard overarching privacy notice which explains how we use information. If this doesn't cover new uses of information, we may need to give data subjects a new privacy notice.*

While Tusla has longstanding obligations under section 3 to protect children and to identify children at risk of harm in order to provide protection, and has historically assessed disclosures under the section 3 process, CASP represents a departure from the existing process in key and important areas particularly as they relate to the requirement to ensure PMDs and PSAs are provided with full information about the procedure and supports, the right to fair procedures of the PSAA and the balancing of rights between the PMD and the PSAA so it is imperative that detailed information is provided to all parties to the CASP process. In this regard we note that a number of information leaflets have been drafted in addition to which the DPU has drafted purpose specific Data Protection Notices for the PMD, the PSAA and a more general notice for all other data subjects involved in CASP which meet the transparency and information requirements of Articles 13 and 14 of the GDPR and has developed versions of these notices for child as well as adult audiences.

## Are there prior concerns over this type of processing or issues of public concern?

### **Guidance:**

*Generally, there will be concerns over this type of processing if Tusla has had personal data breaches or incidents in relation to this type of processing in the past. Please provide any relevant details here so we can ensure the right safeguards are implemented to protect against these issues occurring in the future.*

*Issues of public concern may arise in relation to not only data protection measures but other human rights such as the right to a fair trial, right to freedom of expression, right to privacy etc. Please provide any details of any issues of public concern over this processing here so we can assess.*

Substantiation assessments by Tusla have been the subject of public concern. Concerns have been raised by the judiciary in two recent High Court cases<sup>5</sup> in which emphasis was given to the lack of a comprehensive statutory underpinning for substantiation investigations undertaken by Tusla.

We have set out below concerns raised by:

- Conor O'Mahony, Special Rapporteur for Child Protection
- submissions from various stakeholders relating to section 3 of the 1991 Act

as they raise significant issues of public concern about the operation of section 3 and Tusla's role in conducting these investigations.

In proposing an alternative approach to child abuse investigations which, in his view, would obviate the need for Tusla social workers to conduct quasi-legal investigations, reduce the risk of secondary traumatisation for complainants but provide necessary protections for the constitutional rights of the PSAA by leveraging the safeguards provided by the National Vetting Bureau, Dr Conor O'Mahony examined the legislative background and the proposed approach set out under the 2019 version of the CASP documents available to him at the time<sup>6</sup>.

Given his unique role as Special Rapporteur on Child Protection<sup>7</sup>, it is prudent for Tusla to take these views into account in any consideration of policy development in this area and for this reason these views are included

<sup>5</sup> CD v The Child and Family Agency [2020] IEHC 452 and J v The Child and Family Agency [2020] IEHC 464

<sup>6</sup> O'Mahony, C (2020), Annual Report of the Special Rapporteur on Child Protection, Chapter 2: Investigating and Responding to Complaints of Child Sexual Abuse

<sup>7</sup> The role of the Special Rapporteur on Child Protection was established following the Supreme Court Decision in May 2006 in CC v Ireland, which held that section 1(1) of the Criminal Law (Amendment) Act, 1935, which made it an offence to have unlawful carnal knowledge of a girl aged under 15 years, was unconstitutional as it did not allow for a defence of mistaken belief as to the age of the girl. The term of office

here as ‘issues of public concern’. Dr O Mahony provides a detailed analysis of CASP in his report at Chapter 2 and makes the following points:

*Tusla’s statutory obligation to protect children from future abuse by a person subject to an abuse allegation (referred to as the “PSAA” throughout this chapter) arises independently of any criminal justice implications that may attach to complaints of past child sexual abuse. Evidential difficulties make a successful prosecution challenging on the criminal standard of beyond all reasonable doubt, particularly in retrospective cases—but an assessment on the lower civil standard of balance of probabilities may find that a complaint is founded and that a risk arises that should be mitigated.*

*...when a complaint of abuse is made, the State is obliged to undertake a rigorous investigation of that complaint that is prompt and thorough, capable of securing all available evidence, child-sensitive, and which provides measures to support recovery such as counselling. Failure to adhere to these standards may lead to a violation of Article 3 of the ECHR*

*...in any situation where the abuse of children is a foreseeable risk, the ECHR obliges States Parties to put in place proactive, protective measures designed to mitigate that risk and prevent abuse from occurring. As with risks to identified individuals, it is clear that States cannot choose to ignore foreseeable general risks and fail to put in place any measures to control against them.*

*In the context of complaints of child abuse... the ECHR obliges Ireland to take steps to protect children—whether identified or unidentified—against a risk of sexual abuse in circumstances where State authorities are or ought to be aware of the existence of that risk. If an investigation into a complaint deems the complaint to be well founded, then State authorities are aware of the risk and the obligation to take steps to mitigate that risk is engaged.*

*MQ v Gleeson clarifies that section 3 not only authorises but obliges Tusla to take steps to protect children, including sharing information with third parties, in circumstances where an individual poses a risk that children will be abused. The judgment has subsequently come to be recognised as establishing the foundational principles governing the investigation of complaints of abuse and notification of complaints to third parties, and has been repeatedly cited in later policy documents and case law (where it is often referred to in shorthand as the “Barr Principles”).*

*While the ECHR case law and the Barr Principles provided some clarity as to the nature of the obligation established by section 3, neither those judgments nor section 3 itself provide a framework for conducting investigations; nor does section 3 set out what measures can or should be taken to mitigate risks. In the face of this legislative void, it has been left to Tusla to fill in the blanks in its policy documents, and to the courts to flesh out the governing principles applicable to the process.*

...

*It is also a complex process that involves very high stakes for the rights of children (to protection from harm and to effective investigation of complaints) and the rights of the PSAA (including the right to fair procedures<sup>8</sup> and*

for the Rapporteur is three years and he/she is required to prepare, annually, a report setting out the results of the previous year’s work. The terms of reference for the Special Rapporteur are as follows:

1. The Rapporteur shall, in relation to the protection of children and on the request of the Minister for Children and Youth Affairs:
  - a) Review and report on specific national and international legal developments for the protection of children;
  - b) Examine the scope and application of specific existing or proposed legislative provisions and to make comments/recommendations as appropriate; and
  - c) Report on specific developments in legislation or litigation in relevant jurisdictions.
2. The Rapporteur shall report on relevant litigation in national courts and assess the impact, if any, such litigation will have on child protection.
3. The Rapporteur shall prepare, annually, a report setting out the results of the previous year’s work in relation to 1) and 2) above.
4. The Rapporteur will provide, if requested by the Minister, discrete proposals for reform prior to the submission of the annual report.
5. The annual report of the Rapporteur will be submitted to the Government for approval to publish and will be laid before the Oireachtas and published.

<sup>8</sup> The right to fair procedures was recognised as deriving from Article 40.3.1° of the Constitution in *Garvey v Ireland* [1981] IR 75 at p 97, where O’Higgins CJ stated: “...by Article 40, s.3, there is guaranteed to every citizen whose rights may be affected by decisions taken by others the right to fair and just procedures. This means that under the Constitution powers cannot be exercised unjustly or unfairly.”

*the right to a good name<sup>9</sup>). A delicate balance must be struck between these rights, and detailed procedures are necessary to this end.*

*As such, the general terms of section 3 of the Child Care Act 1991 are arguably unfit for purpose as a legal basis for this specialised and technical area of child protection work.*

*Section 3 was not drafted with investigations of complaints in mind. It contains no detail about the nature of Tusla's obligation to investigate complaints; about the procedural requirements that such an investigation should adhere to; or about the steps that Tusla may take in the event that a complaint is substantiated.*

*... there is no legislative guidance on how the competing rights of children and the PSAA should be weighed against each other. It would be open to the Oireachtas to couch legislation in such a way that strikes a balance so far as possible but clarifies which set of rights is to receive priority in circumstances where they cannot be reconciled. Doing this in the legislation would limit the scope for successful judicial reviews of investigations, and thus strengthen Tusla's hand in carrying out effective investigations.*

*Instead, since section 3 has nothing to say on this issue, the balance of rights has been left as a grey area that has had to be filled in by Tusla in its policy documents.*

*...*

*The current framework involves an inherent conflict of interest on the part of Tusla, in that it is charged with both investigating the complaint and making a decision on whether it is founded and whether information should be shared with third parties. This is problematic from the perspective of both the PSAA and the complainant. A PSAA could potentially challenge this as a breach of natural justice—specifically, the principle of *nemo iudex in causa sua* (no one shall be a judge in his own cause). Whether such a challenge would succeed is unclear, but nonetheless, the perception of a lack of independence serves to undermine confidence in the procedure. The impact on the complainant stems from the measures taken by Tusla to avoid the accusation of conflict of interest or bias by adopting an agnostic stance towards the initial complaint and testing its veracity. By their nature, retrospective complaints of sexual abuse involve vulnerable adults who suffered significant trauma as a child and who are likely to face significant re-traumatisation during the process of disclosing that abuse. There is voluminous evidence in the international literature about the barriers to disclosure and the potential for re-traumatisation inherent in any formal legal process that aims to test the veracity of the complaints.<sup>10</sup>*

*In criminal complaints, Gardaí are instructed to adopt an attitude of “sympathy and understanding” to complainants, while explaining the importance of obtaining a full and consistent statement.<sup>11</sup> It is for a court to decide whether the offence actually occurred or not. In contrast, social workers investigating complaints made to Tusla do not have the benefit of an independent decision-maker and thus cannot take the position of believing the complainant at the outset, as to do so would prejudice the investigation. Instead, CASP charges social workers with “stress-testing” the complaint through a range of measures, including asking the complainant if they are sure about what happened, or whether they may have misinterpreted the events; and whether they might be willing to be questioned directly by the PSAA or the PSAA's solicitor. (The Gardaí do not need to facilitate such measures, since in criminal cases, they take place in the context of court proceedings.)*

*While CASP makes it clear that the complainant always has the right to refuse to be directly questioned by the PSAA, the effect of these measures nonetheless is to make the process more intimidating and less victim-friendly. This may re-traumatise victims and deter them from proceeding with a complaint; indeed, the mere*

<sup>9</sup> Article 40.3.2° of the Constitution

<sup>10</sup> See, eg, D Finkelhor, G Hotaling, I Lewis and C Smith, “Sexual abuse in a national survey of adult men and women: Prevalence, characteristics, and risk factors” (1990) 14(1) Child Abuse and Neglect 19; Sharon Lamb and Susan Edgar-Smith, “Aspects of Disclosure: Mediators of Outcome of Child Sexual Abuse” (1994) 9(3) Journal of Interpersonal Violence 307; DW Smith, EJ Letourneau, BE Saunders, DG Kilpatrick, HS Resnick and CL Best, “Delay in disclosure of childhood rape: Results from a national survey” (2000) 24 Child Abuse and Neglect 273; K London, M Bruck, SJ Ceci and DW Shuman, “Disclosure of child sexual abuse: What does the research tell us about the ways that children tell?” (2005) 11 Psychology, Public Policy, and Law 194; E Olafson and Judge CS Lederman, “The State of the Debate About Children's Disclosure Patterns in Child Sexual Abuse Cases” (2006) Family and Court Journal 27; and D Allnock, “Children and young people disclosing sexual abuse: An introduction to the research” (NSPCC, 2014), available at <http://www.childmatters.org.nz/file/Diploma-Readings/Block-2/Sexual-Abuse/3.4-children-and-young-people-disclosing-sexual-abuse-updated.pdf>.

<sup>11</sup> Garda Síochána Policy on the Investigation of Sexual Crime Crimes against Children/Child Welfare (2nd Edition, 2013) at p 11, available at <https://www.garda.ie/en/About-Us/Publications/Policy-Documents/Policy-on-the-investigation-ofsexual-crime-crimes-against-children-and-child-welfare-.pdf>.

presence of references to “stress-testing” and to cross-examination of complainants in CASP may deter complainants from coming forward at all. This aspect of CASP has been the subject of significant criticism by abuse survivors, support groups and academics<sup>12</sup> (although note that under the current state of the law, the absence of such measures would likely lead to investigations being successfully challenged in court, which would undermine the child protection aims of the investigation).

More generally, research by Mooney has argued that the system for investigating retrospective complaints is lacking in core victim-centred or trauma-informed elements due to inconsistencies in practice, delays in processing investigations and failures to keep complainants informed of progress.<sup>13</sup> While Mooney’s evidence was collected in 2015 (when the investigation of retrospective complaints was at an earlier stage of practice development), he argues that “the core complexities and problematic issues remain”.<sup>14</sup>

## **CHILD CARE ACT REVIEW SUBMISSIONS**

In September 2017 the Department of Children and Youth Affairs (as it then was) held an Open Policy Debate where the implementation of the 1991 Act was discussed with reference to three key themes: supporting families and children, listening to the voice of children and inter-agency work. In 2018 the Department received a large number of submissions as part of a written consultation process on the 1991 Act. In their submissions, stakeholders were invited to comment and make recommendations on the main parts of the Act, as well as on any new parts that they wished to propose. The following are extracts from these submissions which relate specifically to section 3 of the 1991 Act as they raise significant issues of public concern about the operation of section 3 and Tusla’s role:

### **(1) Children’s Rights Alliance<sup>15</sup>**

“Section 3 of the Child Care Act 1991 (as amended) requires Tusla, the Child and Family Agency to take steps to identify children who are not receiving adequate care and protection. The current formulation of section 3 has given rise to significant challenges particularly relating to the investigation of retrospective disclosures of childhood abuse. Many of these challenges are directly related to the absence of an express statutory provision conferring power on Tusla to conduct assessments into alleged abuse against children, not for the purpose of criminal investigations but rather to ‘identify and manage any risk posed to children’.<sup>16</sup>

...

Investigations by the Health Information and Quality Authority (HIQA) have found that the management and oversight of retrospective disclosures is poor, with significant delays in assessing risks to children and in taking action on immediate high risk cases following assessment. An investigation by the Office of the Ombudsman into complaints made about the Child and Family Agency found that lengthy delays in assessing retrospective disclosures can adversely affect the quality of the assessment process due to the reorganisation of case workers over the delay period and the effect this has on the continuity and consistency of the assessment. Delays also place more children at risk of harm.

In its Taking Stock report, the Office of the Ombudsman noted that in a number of cases examined, the alleged abuser did not have their rights to fair procedures upheld during an investigation into retrospective disclosures. Rights to fair procedures in such investigations include sharing information, allowing the alleged abuser opportunities to comment on the accuracy of interview notes and interviewing persons suggested by the alleged abuser. While the right to due process must be followed, the Child and Family Agency must consider its duty to respect the right of the child to be protected from harm.

In response to the investigation of the Office of the Ombudsman, the Child and Family Agency has stated that managing allegations of retrospective abuse has been one of the most significant challenges the Agency has faced since its establishment due to the absence of a ‘specific provision within the [Child Care] Act to conduct assessments of abuse perpetrated against children’. The Agency noted that unlike other State bodies, it has no statutory powers to compel individuals to engage in the assessment or to obtain relevant information from third parties, thereby frustrating investigations.

Article 19 of the UN Convention on the Rights of the Child requires the State to take all appropriate legislative and administrative measures to protect children from all forms of violence.<sup>48</sup> Such protective measures taken

<sup>12</sup> See J Power, “Guidelines for investigating abuse ‘horrifying’, says survivor”, Irish Times, 4 February 2020

<sup>13</sup> J Mooney, “Incorporating the EU Victims Directive into the assessment of retrospective disclosures of childhood sexual abuse”, The Irish Social Worker (Winter 2019) at pp.33-44

<sup>14</sup> Ibid at p 37.

<sup>15</sup> Children’s Rights Alliance (2018) Submission to the DCYA on the Child Care Act 1991 Review

<sup>16</sup> Office of the Ombudsman, Taking Stock: An investigation by the Ombudsman into Complaint Handling and Issues Identified in Complaints made about the Child and Family Agency (Tusla) (Office of the Ombudsman 2017) 14.

by the State should 'include effective procedures for the prevention..., identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment'. The UN Committee on the Rights of the Child has outlined that state authorities responsible for the protection of children from violence may be in violation of Article 19 by omission if they fail to adopt or revise legislation, fail to implement laws and policies and provide insufficient resources needed to 'identify, prevent and react to violence against children'.

The Committee has emphasised that child protection must start with proactive prevention of all forms of violence 'targeting the root cause of violence at the levels of the child, family, perpetrator, community, institution and society'. The assessment of retrospective disclosures falls within the scope of a preventive measure in protecting children from future risk and the Convention imposes an obligation on the State to ensure that the assessments take place in a timely manner to ensure no harm comes to unidentified children. General Comment Number 13 further requires that clear guidance and training is given to social workers when it comes to referrals of child abuse.

...

#### **Recommendation:**

The operation of s.3 of the Child Care Act 1991 should be examined to determine whether the Child and Family Agency has sufficient powers to adequately investigate allegations of retrospective disclosures in order to ensure that any children at risk are identified at the earliest opportunity. It should also ensure that the Agency can take the necessary proactive steps to protect the child in line with children's rights principles."

## **2. Specialist Inquiry Team (SIT) Tusla and Joseph Mooney, Doctoral Researcher, UNESCO Child and Family Research Centre, NUIG**

'...lack of specific legislation for this area of child protection has led to confusion and inaction in the current child protection response to cases of historical abuse or cases where a person is believed to pose a potential risk of sexual harm to children...

Tusla has developed a policy to guide practice under section 3 of the Child Care Act 1991 for historical abuse cases and for cases of extra-familial abuse. However, due to lack of clear legislation in this area, this policy is restrictive with regard to protective actions social workers can take in these cases and focuses on vindicating the constitutional rights of the person accused.

...

#### **Recommendations**

We recognise the competing rights in this area of work; however, we recommend that the 'Paramountcy Principal' with regards to children's rights be firmly stated in Irish law, particularly in this core piece of legislation relating to child protection. We would welcome legislation which would offer clarity around our role, duty and power to assess, manage and share information in cases concerning adults (broadly defined so that an interpretation can include adult survivors, adults of concern and online exploitation).

#### **Codification of Case Law**

A body of case law exists in the Irish legal context, specifically judgments from Barr, O'Neill, Hedigan and Keane JJ relating to this area of child protection. These judgments have clarified the following:

- The State's obligation to investigate all allegations of abuse;
- Not limited by the fact that a disclosure is made by an adult of abuse suffered during their childhood;
- Duty includes the prevention of future risk;
- No distinction between present and future risk;
- No distinction between identified and unidentified children at risk;
- Accused entitled to all material unequivocally, all rights under natural justice, fair hearing, testimony etc;
- Tusla has a serious duty to protect the public interest. In this area of social work this translates to assessing historical allegations, making findings on the foundation of these findings and sharing those findings with relevant third parties if a current risk is deemed to exist.

We believe that at a minimum incorporating this case law into legislation would greatly improve the current situation, whereby social workers are interpreting their ability to safeguard children who may be in contact with persons accused of abuse or persons of concern in the context of a very real fear of moving outside of our current legislative basis.

#### **EU Victims Directive**

We recommend that the EU Victims Directive be incorporated into any revision of the current Child Care Act to ensure minimum standards of support are available to those affected by abuse. The Directive gives special regard to victims of sexual offences (2011/92/EU).



Currently this directive is incorporated into Criminal Law (Criminal Justice (Victims of Crime) Act 2017) but it could also be incorporated into Child Protection Legislation as it relates to criminal offences (CSA, physical assault, neglect) regardless of whether the offender is identified, apprehended, prosecuted or convicted and regardless of familial relationship, indicates availability of support to victims from point of reporting, coordinating state responses to avoid repeat victimisation and enable victims to build trust in authorities (2012/29/EU Preamble S(12) S(37) S(53) S(62) S(63)). This would serve to signal that the State is supportive of victims of abuse, both adults and children and over time would greatly assist in reducing the current structural barriers to reporting abuse. This would also demonstrate the Irish State's recognition of and consistency with the research into disclosure of sexual abuse, which identifies it as a process rather than a one off event (Sorosoli, Lynn, Kia-Keating, Maryam, Grossman, Frances (2008), Sorosoli (2010) O'Leary, Patrick and Barber, James (2008), Alaggia, R (2004), Hershkowitz, Irit, Lanes, Omar, Lamb, Michael E (2007), Smith, Daniel et al (2000), Tanner, D and Murphy, Sharon B (2015), Eastman, S (2013))."

### **3. Barnardos**

"Section 3 of the 1991 Act also places a duty upon Tusla to assess retrospective disclosures of childhood abuse. Retrospective disclosures are defined in our National Child Protection and Welfare Guidance as "abuse that an adult discloses that took place during their childhood". Such disclosures can often contain information regarding potential future risk. However, reports by HIQA, the Office of the Ombudsman and others have shown significant issues regarding Tusla's assessment and management of such disclosures. Retrospective disclosures were first included in Irish child protection policy in 1999 and therefore were not foreseen as a function of the then Health Boards at the point of enactment in 1991.

The Child and Family Agency's mandate under Section 3 of the Child Care Act 1991 to identify children not receiving adequate care and protection is therefore not being fulfilled due to legal complexities and lack of clear and delineated statutory authority regarding adult disclosures of childhood abuse. A clear legislative mandate is required to assess disclosures of childhood abuse made by adults. Such a mandate should draw upon existing legal precedent in this area and the EU Victims Directive to ensure reduced exposure to harm for those adults coming forward or those obliged to engage. It would also lead to the proactive identification of risk and protection of children from future abuse.

...

#### **Recommendation:**

Include statutory recognition of Tusla's role in respect of assessing retrospective disclosures of childhood abuse. Incorporate relevant provisions of the EU Victims Directive to ensure the role is victim-centred and ensures support is provided to adults and children who disclose abuse."

### **4. Law Society**

"Section 3 sets out the function and statutory responsibilities of the Child and Family Agency (CFA) in terms of the promotion of welfare of children who are not receiving adequate care and protection.

...

2.2. Section 3(2)(b) states that the welfare of the child "is the first and paramount consideration" and that the views of the child should be given "due consideration" while acknowledging the rights and duties of parents.

2.3. Section 3(2)(c) clearly states that "it is generally in the best interests of a child to be brought up in his own family".

2.4. Subsection 2(a) identifies the requisite steps to identify children at risk and coordinate information about them. This particular subsection has long been used to ground the function of the CFA in the investigation of allegations of child abuse. In *MQ v Gleeson* [1998 4 IR 85] Justice Barr took the view that health boards had an implied right and duty to communicate information about a possible child abuser if, by failing to do so, the safety of some children may be put at risk.

This section has singularly generated a significant amount of case law in the High Court (*I v HSE* [2010 IEHC 159]; *PDP v A Secondary School* [2010 IEHC 189]) and has been the subject of many awards of costs and damages against the HSE and the CFA where the courts have found there to have been departures from fair procedures afforded to persons against whom allegations have been made. Case law has more recently evolved to a point where the High Court has affirmed the right on the part of a person against whom allegations have been made to cross examine (or have cross examined on their behalf) an adult complainant in a form of non-statutory hearing convened by the CFA to determine if allegations are credible or not (*EE v The CFA* [2016 No. 578 JR]).



...

2.6. The complainant in the case of EE had just turned 18 years of age when her disclosure of childhood sexual abuse emerged in the context of private family law proceedings concerning a younger half-sibling and in the absence of any criminal complaint/investigation. These types of scenario frequently arise and the CFA has established specialist teams and a written policy for the assessment of such allegations, yet this fraught area of the law continues to be litigated upon and many feel section 3 as it stands is no longer fit for purpose and that it is out of sync with the legal requirements on the CFA to ensure due process and fair procedures for accused persons

...

2.8. Many persons who make disclosures of retrospective childhood sexual abuse are not ready or willing to make a criminal complaint, leaving a tranche of such allegations to the CFA to assess and determine if other children are at current risk from the persons against whom allegations have been made and, frequently, credible findings are set aside by the High Court following injunctive or judicial review proceedings taken by alleged abused persons.

2.9. Section 3 is neither sufficiently robust nor expansive enough to permit the CFA to lawfully carry out its investigative role parallel to that of An Garda Síochána.

**Recommendations:**

2.10. Should the legislature determine that the CFA should continue to assess and investigate such allegations, section 3 should be amended to clarify the CFA's role and its responsibilities whilst establishing clear statutory procedures for so doing. The Society believes that this would go towards affording fair procedures to accused persons, allow for well-informed findings to be made which can, where appropriate, be communicated to third parties in furtherance of child protection and welfare principles.

2.11. The Society suggests that reporting obligations should be introduced into the legislation.

2.12. In light of Article 42A of the Constitution, the Society believes that consideration should be given as to how the views of children could be heard in such proceedings.

2.12. The principles as to the "best interest" of a child are set out in section 31 of the Guardianship of Infants Act, 1964, and appended to this submission.

2.13. The Society further suggests that either

i. This principle should be specifically included in any amended legislation, or

ii. The section should be amended in order to remove the Agency's obligation to assess and investigate such allegations altogether.

2.14. The Society believes that standalone legislation, which takes into account all of the complex issues, would be more appropriate all deriving the obligation from section 3."

Have you consulted with other stakeholders including data subjects and internal stakeholders? If not justify why this isn't appropriate.

**Guidance:**

*It is good practice to consult with a broad range of stakeholders prior to implementing new processing activities to get their views on how the processing might impact them and so that we can address any concerns prior to the processing being implemented – this is particularly relevant for public sector bodies like Tusla where the processing always constitutes an interference with the right to privacy. Please state here whether you have consulted with stakeholders, including representatives of the individuals whose data will be processed and what the outcome of that consultation is. If you have chosen not to consult with stakeholders, please state why you think such consultation is not appropriate. You should also include here any internal Tusla stakeholders who were consulted as part of this process.*

The CASP consultation process was designed to generate constructive ideas, within the constraints of the existing legal framework, from a diverse range of stakeholders who have a clear interest in the CASP and its implementation.

Tusla's invited stakeholders to engage in a consultation process that was meaningful, transparent and participatory to enable a clear understanding and awareness of the complex challenges, inherent to the CASP such as balancing fair procedures with data protection rights. Tusla endeavoured to involve all interested and affected stakeholders, and to provide an opportunity for them to participate in a meaningful and open way. It was anticipated that such engagement would ultimately strengthen CASP and lead to better outcomes for all those affected by allegations of abuse. This consultation process supported the first iteration of the CASP to be as robust as possible, when implemented.

As part of the consultation process, a number of documents were circulated to key internal and external stakeholders. These documents included:

- The CASP Practice Guidance and Review Procedures
- The Draft CASP Data Protection Guidance
- CASP Information Note relating to Foster Carers and Supported Lodgings Providers
- Information leaflets explaining the procedure to all relevant participants

The focus for the consultation was to seek stakeholders' views on the content and structure of the draft procedure and supporting documentation.

**Governance**

A CASP Working Group was established to review the CASP documentation and develop a plan to consult with internal and external stakeholders. This working group reported to the CASP Governance Group and the CASP Planning and Implementation Group. This working group is made up of the National CASP Leads with representation from the Office of Legal Services, Data Protection Unit, Signs of Safety and Business Support. All of the feedback relevant to the core themes identified in the consultation process was reviewed by the CASP working group. This information will be used by the CASP working group when reviewing the body and content of the CASP documents and will provide further clarity within CASP. The working group will continue to build and develop the final design and layout of the documents in the coming months. All documentation pertaining to the final draft of the first iteration of CASP will be published once approved through Tusla's approval mechanisms for policies and procedures.

**Methodology**

A mixed method approach was developed for the consultation which involved the use of an online survey and 19 consultation sessions for both internal and external stakeholders.

**Survey**

An in-depth questionnaire was developed by the CASP working group which covered all aspects of CASP and which used closed (yes/no) and open-ended questions. This was then transferred to a comprehensive feedback survey on Tusla's Survey System in collaboration with Tusla ICT. This provided internal and external stakeholders with the opportunity to provide feedback on all aspects of the Draft Child Abuse Substantiation Procedure and supporting documents. This digital platform allowed the user to submit feedback on all or specific aspects of the documents. All of the data submitted was hosted on Tusla's Survey System, which had

the ability to generate reports and collate data into specific themes. The information gleaned from the survey would provide a qualitative and quantitative response. This survey was made available to participants via an online survey from the 8th of April 2021 with a closing date initially for the 30th of April 2021 however this was further extended to the 31st May 2021 to allow for maximum participation. The online survey was open to all Tusla staff and approximately 80 groups/individual external stakeholders who are central to the CASP process. The survey was complemented by remote consultation sessions with internal and external stakeholders, which were planned to commence on 17th May 2021, however, due to the malware cyber-attack on the HSE, which also impacted Tusla, these were later rescheduled to September 2021. Interested stakeholders were asked to register their interest in attending a consultation session by email.

### **Consultation Sessions**

These 19 consultations sessions gave stakeholders an overview of the feedback that was garnered from the survey and also gave stakeholders the opportunity to raise any comments they had in relation to the documents that was not already received. These sessions were facilitated by Workforce Learning and Development, led by the CASP Leads with support from Tusla's Office of Legal Services, Signs of Safety Leads and the Tusla Data Protection Unit (DPU) and were held via MS Teams. The CASP Leads provided an overview of CASP along with the themes identified in the analysis from the feedback survey. The Office of Legal Services gave an overview of the statutory basis for substantiation assessments and highlighted the relevant case law which Tusla has taken into account in designing the CASP framework and in putting together this consultation process. The Signs of Safety Leads gave an overview of Tusla's National Approach to Practice and how it supported CASP and the DPU gave an overview of the CASP DPIA process and Tusla's data protection obligations relating to CASP.

Before the sessions concluded participants had the opportunity to feedback and add any additional comments or considerations that they did not have an opportunity to already provide in the other fora (survey and written feedback).

### **Written Submissions**

In addition, a total of 12 individual written submissions were received from both internal and external stakeholders who wished to give more detailed feedback on aspects that some participants felt the survey did not capture.

### **Feedback Register**

All survey and written responses were collated and transferred to a register where they were initially reviewed by the CASP working group in terms of themes, actions required and implications on procedure.

### **Consultation Report**

Commitment was given to providing a written consultation report on the feedback to stakeholders as soon as practicable following the consultation period. It was agreed this would be in the form of a summary report identifying the key themes emerging and what impact the feedback would have on CASP and what had not been incorporated and the reasons why.

It is the intention of the working group that longer term engagement with key stakeholders will continue and will form part of the ongoing consultation process which will monitor the CASP implementation over a number of years.

## **3: Necessity and Proportionality Assessment**

### **Lawful Basis for Processing**

#### **Guidance:**

*For processing of information to be lawful under the GDPR, you need to identify a lawful reason for processing personal data. For the public sector this is normally for a statutory function or legal duty. **What law allows us to process and collect this personal data?***

*Under the Child and Family Agency Act 2013 and the Education and Welfare Act 2000, the functions of the Child and Family Agency are to promote the development, welfare and protection of children and to promote school attendance, participation and retention of all children in the State in the education system.*

*Article 6(1)(e) of the General Data Protection Regulation (GDPR) allows for the processing of personal data where it is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller. Section 38(1) of the Data Protection Act, 2018 gives further effect to the GDPR by allowing for the processing of personal data to the extent that such processing is necessary and proportionate for the performance of a function of a controller conferred by or under an enactment or by the Constitution.*

*GDPR provisions relating to the processing of special category data are relevant to this processing as it is proposed that health data be processed and so a legal basis for processing under Article 9 is also required. The general rule under Article 9(1) of the GDPR is that the processing of special categories of personal data shall be prohibited. However, this prohibition shall not apply if one of the legal bases in Article 9(2) is satisfied.*

*Article 9(2)(h) of the GDPR provides for processing “necessary for the purposes of preventive or occupational medicine, for the assessment of the working capacity of the employee, medical diagnosis, the provision of health or social care or treatment or the management of health or social care systems and services on the basis of Union or Member State law or pursuant to contract with a health professional and subject to conditions and safeguards referred to in paragraph 3.”*

*In accordance with Article 9(3) of the GDPR, personal data may only be processed on the basis of Article 9(2)(h) “when those data are processed by or under the responsibility of a professional subject to an obligation of secrecy under Union or Member State law or rules established by national competent bodies or by another person also subject to an obligation of secrecy under Union or Member State law or rules established by national competent bodies.”*

*Article 9(3) limits processing under Article 9(2)(h) to professionals or other persons’ subject to a legal obligation of secrecy or confidentiality.*

*Section 58 of the Data Protection Act 2018 states the following in relation to the processing of special categories of data for purposes of Article 9(2)(h):*

*“Subject to subsection (2) and to suitable and specific measures being taken to safeguard the fundamental rights and freedoms of data subjects, the processing of special categories of personal data shall be lawful where it is necessary—*

- a) for the purposes of preventative or occupational medicine,*
- b) for the assessment of the working capacity of an employee,*
- c) for medical diagnosis,*
- d) for the provision of medical care, treatment or social care,*
- e) for the management of health or social care systems and services, or*
- f) pursuant to a contract with a health practitioner.*

*(2) Processing shall be lawful in accordance with subsection (1) where it is undertaken by or under the responsibility of (a) a health practitioner, or (b) a person who in the circumstances owes a duty of confidentiality to the data subject that is equivalent to that which would exist if that person were a health practitioner.”*

*Tusla asserts Article 6(1)(e) of the GDPR and section 38 of the Data Protection Act 2018 as its lawful basis for processing personal data and Article 9(2)(h) and section 52 of the Data Protection Act 2018 as its lawful basis for processing.*

***Please state what statutory provision or law requires or permits you to undertake this process so we can assess the lawful basis for processing and whether the above is correct or whether we need to consider another lawful basis.***

### **European Convention on Human Rights (ECHR)**

Art. 8(1) of the ECHR provides that ‘[e]veryone shall have the right to respect for his private and family life, his home and his correspondence.’ However, the right is not absolute and Art. 8(2) sets out the grounds the State may interfere with an individual’s right to privacy:

*‘There shall be no interference by a public authority with the existence of this right except such as is 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 or detection of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.’*

Article 3 of the ECHR provides that ‘[n]o one shall be subjected to torture or to inhuman or degrading treatment or punishment’ and while no express reference is contained therein to children or child abuse Article 3 has

been extensively applied by the European Court of Human Rights to cases where States have failed to adequately protect against or investigate abuse.

The European Convention on Human Rights Act 2003 (ECHR Act) gives effect to the ECHR in Irish law and provides at section 3 that every organ of the State shall perform its functions in a manner compatible with the State's obligations under the Convention provisions. As Tusla is an organ of the state it must have regard to the ECHR in the discharge of its obligations.

### **Bunreacht na hÉireann**

Article 42A.1 introduced an explicit statement in the Irish Constitution in 2012 recognising and affirming that children have natural and imprescriptible rights and stating that the State has an obligation to ensure, as far as practicable, that those rights are protected and vindicated. In relation to Tusla's powers and obligations, it provides that where parents fail in their duty towards their children to such extent that the safety or welfare of the children is likely to be prejudicially affected, the State shall, by proportionate means, endeavour to supply the place of the parents (regardless of the marital status of the parents).

### **The Child Care Act 1991 (as amended)**

The Child Care Act 1991 (the 1991 Act) is the primary piece of Irish legislation governing the welfare of children who are in need of care and protection. Section 3 of the 1991 Act places significant statutory obligations on Tusla to promote the welfare of children who are not receiving adequate care and protection. In performing its functions, Tusla is required to take steps to identify children who are not receiving adequate care and protection and to take such steps as it considers requisite to identify children who are not receiving adequate care and protection and co-ordinate information from all relevant sources relating to children.

### **The Child and Family Agency Act 2013**

Under the Child and Family Agency Act 2013 (the 2013 Act) one of the functions of the Child and Family Agency is to promote the development, welfare and protection of children.

The statutory obligations imposed on Tusla as set out above both permit and require the processing of personal data of children and their parents and guardians who access the services of Tusla or to whom services are provided (Service Users) and other data subjects referred to in this DPIA.

### **Lawful Basis for Processing**

Article 6(1)(e) of the General Data Protection Regulation (GDPR) allows for the processing of personal data where it is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller. Section 38(1) of the Data Protection Act, 2018 gives further effect to the GDPR by allowing for the processing of personal data to the extent that such processing is necessary and proportionate for the performance of a function of a controller conferred by or under an enactment or by the Constitution.

GDPR provisions relating to the processing of special category data are relevant to this processing as it is proposed that health data be processed and so a legal basis for processing under Article 9 is also required. The general rule under Article 9(1) of the GDPR is that the processing of special categories of personal data shall be prohibited. However, this prohibition shall not apply if one of the legal bases in Article 9(2) is satisfied.

Article 9(2)(h) of the GDPR provides for processing "necessary for the purposes of preventive or occupational medicine, for the assessment of the working capacity of the employee, medical diagnosis, the provision of health or social care or treatment or the management of health or social care systems and services on the basis of Union or Member State law or pursuant to contract with a health professional and subject to conditions and safeguards referred to in paragraph 3."

In accordance with Article 9(3) of the GDPR, personal data may only be processed on the basis of Article 9(2)(h) "when those data are processed by or under the responsibility of a professional subject to an obligation of secrecy under Union or Member State law or rules established by national competent bodies or by another person also subject to an obligation of secrecy under Union or Member State law or rules established by national competent bodies."

Article 9(3) limits processing under Article 9(2)(h) to professionals or other persons' subject to a legal obligation of secrecy or confidentiality.

Section 58 of the Data Protection Act 2018 states the following in relation to the processing of special categories of data for purposes of Article 9(2)(h):

“Subject to subsection (2) and to suitable and specific measures being taken to safeguard the fundamental rights and freedoms of data subjects, the processing of special categories of personal data shall be lawful where it is necessary—

- a) for the purposes of preventative or occupational medicine,
- b) for the assessment of the working capacity of an employee,
- c) for medical diagnosis,
- d) for the provision of medical care, treatment or social care,
- e) for the management of health or social care systems and services, or
- f) pursuant to a contract with a health practitioner.

(2) Processing shall be lawful in accordance with subsection (1) where it is undertaken by or under the responsibility of (a) a health practitioner, or (b) a person who in the circumstances owes a duty of confidentiality to the data subject that is equivalent to that which would exist if that person were a health practitioner.”

Tusla asserts Article 6(1)(e) of the GDPR and section 38 of the Data Protection Act 2018 as its lawful basis for processing personal data and Article 9(2)(h) and section 52 of the Data Protection Act 2018 as its lawful basis for processing special category personal data relating to CASP.

#### **Case Law Which Imposes Requirements on Tusla and How CASP Addresses these Requirements**

Court judgments which interpreted Tusla’s duties under section 3 of the 1991 Act provided further clarification of the nature and scope of these duties and helped shape requirements under CASP. Each requirement is set out below along with how this requirement is addressed by CASP.

#### **Requirement to Investigate Complaints, to Investigate Impartially and Not to Stray into Vindicating the Complainant or Sanctioning the Alleged Abuser**

The nature and extent of the duties imposed on the Child and Family Agency by section 3 of the 1991 Act were first considered in the case of *MQ v Gleeson* [1998] 4 I.R. 85. The Court held that Tusla has a right to disclose to a third party information about a PSAA. This right is subject to Tusla’s affording the PSAA the opportunity to be informed of the complaints and the right to respond. Barr J noted that the PSAA should be interviewed, provided with notice of, and information concerning, the complaints and be given the opportunity to respond. Tusla should also conduct a follow up investigation arising from the PSAA’s response. Tusla should not form any opinion on the substance of the complaints leading to disclosure of without first conducting an investigation in accordance with natural justice. Barr J noted that a false complaint if incorrectly interpreted could be very destructive of a family unit for example by wrongfully having children taken into care. It may also destroy or seriously damage a good marital relationship or a relationship between long standing partners. The provision of an independent appeal at the end of the section 3 assessment process is one of the fair procedure rights to which the alleged abuser is entitled.

In *I v Health Services Executive* [2010] IEHC 159 the Court held that Tusla’s duty to investigate complaints and to communicate information regarding risks that are identified arises independently of the criminal justice process. Such an investigation should always occur at the earliest possible time after the risk to a vulnerable child is apprehended and before the risk crystallises into actual harm (i.e. Tusla should not wait until any criminal investigation has progressed). Hedigan J stated “*The respondent’s role in conducting this investigation is not an administration of justice. It does not make any determination of guilt or innocence. Its role is quite distinct from that of the Director of Public Prosecutions. Its role is the protection of vulnerable children. The Director of Public Prosecution’s role is the detection and conviction of criminals, including child abusers.*”

Consideration is set out below in relation to the appropriateness of a one-stage investigative system.

Humphreys J in *CD v CFA* queried the appropriateness of the one-stage inquisitorial/investigative system adopted by Tusla. The basis of his concerns in this regard would appear to be an absence or a perceived



absence of adequate neutrality or independence on the part of the investigator. This is also referred to in the same judge's decision in *EE v CFA* [2016] IEHC 777 at para. 118. Humphreys J suggests, obiter, that a two-stage process with a clear distinction between investigation and decision-making may be merited. Where there is a lack of impartiality in the decision-maker, then the conclusion will be flawed and rightly subject to challenge.

In *J v CFA* Simons J was concerned that those performing their investigative functions firmly understand their specific purpose and neither stray into attempting "*to vindicate the complainant*" or "*to sanction the alleged abuser.*"

In *PDP v A Secondary School* [2010] IEHC 189 where O'Neill J held that the HSE, as the then incumbent of the investigative function, had failed in its duty to act as an impartial investigator of the abuse allegations made. That was due to the interaction between the investigators and the complainant (and the fact that the investigators had delegated their adjudicative responsibility to an extent) that the necessary impartiality was lacking. These deficiencies tainted the whole investigation process. The Court was critical that the complainant was being treated as if a "client type" relationship existed between her and the investigating social worker.

In *JG v Child and Family Agency* [2015] IEHC 172 the Court held that Tusla must act with impartiality; give advance notice in writing of each stage in the investigation process; keep the PSAA informed of any developments in the investigation and give the PSAA sufficient time to respond to allegations. All of these points apply even where the PSAA refuses to cooperate with the investigation.

Simmons J also referred to the danger of purpose creep or misunderstanding by investigators in *J v CFA*:  
*"One difficulty presented by the Agency's approach is that it tends to suggest that the role of the Agency is to adjudicate on an adversarial dispute between a complainant and an alleged abuser. In truth the role is inquisitorial... It is not the Agency's role to vindicate the complainant nor to sanction the alleged abuser. A complainant has a separate remedy by way of civil proceedings for damages and any sanction for the alleged abuser is a matter for the criminal justice system."*

In the judgement of the Court of Appeal in *EE v the Child and Family Agency* [2018] IECA 159 Hedigan J stated at para. 2 that the CFA should have "*a significant margin of appreciation as to how their investigation process is to be conducted.*" He stated further at para 37. "*... it seems to have taken too long...every effort should be made to resolve these investigations as soon as possible consistent with doing them thoroughly and fairly for all... The sooner they are concluded the better.*"

#### How CASP Addresses These Requirements

CASP provides the following detail in relation to the scope, criteria and therefore, the requirement, to conduct substantiation assessments at 'PART A: General Principles and When to Apply CASP' at 'Section 3: When to Use to the Child Abuse Substantiation Procedure (CASP)' Detail of both scope and criteria are set out in this DPIA above at section 1. Role of Tusla and Purpose of Processing.

'PART A: General Principles and When to Apply CASP' at 'Section 2: Principles Governing the Procedure' sets out important principles as follows:

#### **2.0 Principles governing the procedure**

##### **2.1 Tusla's Statutory Obligation**

*The protection and welfare of children is Tusla's primary concern. It is Tusla's statutory obligation and responsibility to promote the welfare of children under Section 3 of the Child Care Act 1991 and under Section 8 (1)(b) of the Child and Family Agency Act 2013.*

*In meeting this obligation and responsibility, where there is a need to share information with a relevant third party to protect an identified child or yet to be identified child or children from harm, Tusla must carry out an assessment of allegations of child abuse in line with fair procedures. This is called a 'substantiation assessment' – an assessment that examines and weighs up all the evidence and decides if the allegation is founded or unfounded on the balance of probabilities. If the allegation is founded a determination is made that the person who is the subject of the abuse allegations poses a potential risk to a child or children. Tusla calls this process the CASP – Child Abuse Substantiation Procedure.*

*When carrying out a substantiation assessment, CASP social workers must take every care in checking the reliability and accuracy of the allegations and in considering the response from the person who is the subject of the abuse allegations.*

*Information that is to be shared with a relevant third party must be accurate and specific, rather than general. A relevant third party must only be provided with the minimum amount of information necessary to protect a child or children.*

*Tusla must also abide by the relevant Data Protection legislation when carrying out a substantiation assessment, when sharing information as part of the substantiation assessment, and when contacting relevant third parties.*

*Separate guidance on data protection obligations is contained in the CASP Data Protection Guidance which should be referred to by CASP social workers throughout their work and especially, when making decisions on information sharing with the PMD, the PSAA and relevant third parties.*

## **2.2 The following principles should inform decision making:**

- *Where there is an immediate serious risk of harm to any child from a PSAA, Tusla must take steps to protect the child or children's safety. This may include contacting a relevant third party if such a measure is necessary to secure their immediate safety needs.*
- *The guiding document – National Guidance for the Protection and Welfare of Children (2017) – must always be followed. (The short title Children First National Guidance will be used in this document.) If a child or children are determined to be at immediate serious risk of harm (see glossary), their immediate safety needs take priority over consideration of the right to inform the person who is the subject of the abuse allegation's (PSAA) of the allegations made against them. This may happen if there is a reasonable concern that contacting the PSAA first may place identified or identifiable children at further risk of harm.*
- *As part of a substantiation assessment, the CASP social worker, must determine if the allegations are 'founded' or 'unfounded' on the balance of probabilities. If they determine that the allegations are founded, they must determine if the PSAA poses a risk of harm to a child or children.*
- *The CASP Social worker must remain impartial throughout the assessment process.*
- *While the CASP social worker must determine if the allegation is founded or unfounded, the purpose of the substantiation assessment is not about the administration of justice but the protection of children. The CASP social worker 'should not stray into attempting to vindicate the complainant or to sanction the PSAA' (J v CFA [2020] IEHC 464)*
- *The substantiation assessment should be undertaken by a CASP social worker who is not known to the PSAA or the PMD, and who has not worked with either party previously.*
- *Tusla must consider the age and stage of development of a child PMD and child PSAA when engaging with them and their parents in a substantiation assessment.*
- *A child PMD or child PSAA should be accompanied by a parent or other responsible adult where appropriate in any substantiation assessment interviews.*
- *An adult PMD or PSAA may be accompanied by a support person in any substantiation assessment interviews.*
- *If situations arise that are not expressly mentioned in this Child Abuse Substantiation Procedure (CASP) document, practitioners and their line managers should use their professional judgement and knowledge. If necessary, they should seek appropriate guidance from relevant Directorates within Tusla.*
- *To support positive communication with the PMD and PSAA, the CASP social worker should make initial contact by telephone where possible, taking care that they are speaking to the correct person. For example, there may be two people with the same name living in the same house.*

## **2.3 Importance of the quality of the substantiation assessment**

*It is important for the CASP social worker to demonstrate that they have carried out the assessment in line with their statutory duties and functions relevant to child protection, fair procedures, and data protection. They must also demonstrate that they have duly considered the factors set out in this Child Abuse Substantiation Procedure (CASP) document.*

*Providing fair procedures to a PSAA is not a matter of choice – it is a fundamental right under natural justice and constitutional law (see also Children First National Guidance (2017, page 47)).*



As social workers manage situations every day that could compromise an individual's right to fair procedures, it is essential for social workers to understand the principles of fair procedures and to always apply them. To support fair procedures, it is best practice that the social worker who assesses disclosures made by the PSAA also undertakes the substantiation assessment of the PSAA's response to the allegations.

The response to a disclosure of abuse made by an adult that they experienced abuse as a child must be as robust as the response provided to children who make allegations of abuse because:

- there is sufficient possibility that a person who abused a child or children in the past is likely to have continued abusing children, and may still be doing so (Calder et al. 2000; Pritchard 2004; Corby 2006; Crosson-Tower 2013).
- the prospect of criminal prosecution remains open to An Garda Síochána

#### **2.4 Simultaneous and consecutive substantiation assessments**

Where referrals of child abuse are received from multiple PMDs regarding the same PSAA, the disclosure of each PMD will be subject to a separate assessment. The same CASP social worker may undertake each assessment, either at the same time or consecutively, if the information in one case is relevant to another case. In these circumstances the PSAA must be provided with the relevant information and documentation at the start of stage 2 of the procedure and have an opportunity to respond. A founded outcome in one case should not be considered grounds for reaching a founded outcome in another case."

#### **Requirement to Afford Fair Procedures to the PSAA**

McKechnie J in the Supreme Court in *Kelly v Dublin City Council* [2019] IESC 56, referring to *In Re Haughey* [1971] IR 217 reaffirmed the need to consider the particular circumstances and context of the matter at hand when determining what is required by fair procedures:

*"In that case, which involved circumstances so well known that it is not necessary to repeat them, this Court, based on the guarantee of fair procedures which it sourced in Article 40.3 of the Constitution, set out what it identified as four minimum protections which should be afforded to a person whose good name and reputation is under attack. These were that the subject person should be given a copy of the evidence against him, that he should have a right with legal representation if he so wished to cross examine his accusers, that he has an entitlement to give evidence and made submissions. These rights have become known as the "In Re Haughey Rights". It must be emphasised however, that the enumeration of such rights was in the context of an inquiry in which witnesses enjoyed statutory immunity. As an abundance of cases subsequently decided will show, the extent to which such rights or any one or more of them will become applicable, is dependent on the specific circumstances and context of each case."*

In the specific context of sexual abuse allegations by Tusla, McDermott J in *WM v CFA* [2017] IEHC 587 implied that the full gamut of fair procedure rights will not always be available to a PSAA:

*"The court is satisfied that the circumstances in which the full panoply of fair procedure rights is required in its determination of the credibility of sexual abuse allegations in a child protection investigation and assessment may vary."*

A PSAAs fair procedure rights may be affected by the mere instigation of the investigation process if other persons are made aware of its existence. This was recognised by Humphreys J in *P. O'T v Child and Family Agency* [2016] IEHC 101 where he held at para 18:

*"In relation to child abuse and child neglect investigations there appear to be two critical acts involved; the formation of an opinion that a complaint against an applicant is sustained, and the decision to notify a third party. I would be inclined to the view that, in principle, either or both of these decisions are amenable to certiorari, subject of course to their being sufficient grounds to do so. To that extent I prefer the analysis of O'Malley J. in *J.G. v. Child and Family Agency* [2015] IEHC 172 (Unreported, High Court, 11th March, 2015) para. 103 and to that of Barrett J. in *A. v. Child and Family Agency* [2015] IEHC 679 (Unreported, High Court, 4th November, 2015). In particular, the decision to notify third parties can have irreversible effects on the lives of all concerned. It is frequently impossible for a person to resume employment or a position, once that is "temporarily" suspended, as may happen arising from such a notification. Family relationships may be irreversibly sundered on the mere making a third party aware of a complaint, even if it is not ultimately upheld. Clearly enormous care is required in this context, and where possible voluntary mitigation of risk by the person the subject of the complaint rather than third party notification by the agency is a more proportionate response. If third party notification is required, apart from in an emergency, adequate notice (of some days at least) should be given to enable the court to intervene if there are grounds to do so, albeit that the court will, in such*

*situations, normally be required to start from a position of deference to the risk assessment carried out by the agency.”*

In *P v A Secondary School* [2010] IEHC 189, O’Neill J listed what he believed to be the minimum requirements of natural justice required in a child abuse investigation, namely:

- The entitlement to have made available to a PSAA all of the relevant material assembled and considered by the investigators into the allegations made;
- The entitlement of a PSAA to be heard in his own defence;
- The entitlement of a PSAA to have the testimony of such persons who can give testimony on his behalf, relevant to the allegations in issue, heard and considered by the investigator;
- The entitlement to cross-examine the complainant in circumstances where the complainant is now an adult – the absolute nature of this requirement was questioned by McDermott J in *TR v CFA*.

The Court in *A v Child and Family Agency* [2015] IEHC 679 held that a PSAA has the right to fair procedures in the conduct of the investigation. There is no fixed menu as to what is required by fair procedures. Though precedent is of assistance, whether an investigation is fair and unfair primarily depends on the circumstances of the case and the stage that the process is at.

In both *MQ v Gleeson* [1998] 4 IR 85 and *I v Health Services Executive* [2010] IEHC 159 the Court held that the PSAA must be afforded the opportunity to respond to allegations before findings are made and shared with third parties while in *MQ v Gleeson* the Court held that records of the investigation should include factors favourable to the PSAA.

While the entitlement to fair procedures of the PSAA has many limbs, not all limbs are guaranteed and there is therefore a degree of fluidity in the obligations of Tusla in this regard. The individual circumstances of the complaint at hand will almost always be relevant in determining what specific procedures are required to be fair and whether there has in fact been a breach of a PSAA’s entitlement to fair procedures when one or more of the fair procedure rights is intended to be circumscribed.

A PSAA’s right to privacy, a good name and other personal rights are potentially severely impacted by a child abuse investigation and/or ‘Founded’ finding. Therefore, a PSAA would appear to be entitled to a very high level of protection in terms of fair procedures. Significant countervailing considerations are needed for any fair procedure rights to be reduced or diluted in any meaningful way.

#### How CASP Addresses These Requirements

‘PART A: General Principles and When to Apply CASP’ at ‘Section 1: Introduction’ states:

*‘Tusla treats everyone affected by allegations of abuse with fairness, dignity, and respect while also ensuring that decisions are made in line with the law, policy, and best practice.’*

‘PART A: General Principles and When to Apply CASP’ at ‘Section 2: Principles Governing the Procedure’ (set out in detail above) sets out the importance of, and the right of the PSAA to fair procedures and the requirement for Tusla to remain objective as follows: of treating all PSAAs fairly and not pre-judging any PSAA.

‘Part B: Procedure for responding to referrals of child abuse under CASP’ at sections 15 and 16 contains detailed guidance on the rights of the PSAA and the steps to be followed at stage 2 of the substantiation assessment to ensure fair procedures are afforded to the PSAA.

#### **“15.0 Stage 2 of the substantiation assessment: Initial engagement with the PSAA**

##### **15.1 Introduction to stage 2**

*At the beginning of stage 2 of the substantiation assessment, the CASP social worker should give the PSAA (and their parents if the PSAA is a child) copies of all relevant information and documentation gathered in the substantiation assessment process. Importantly, the CASP social worker cannot reach any conclusions before the PSAA has been given an opportunity to respond to the allegations.*

*During stage 2 of the substantiation assessment, Tusla must continue to ensure fair procedures are afforded to the PSAA by completing the following actions:*

- Write to the PSAA (and their parents if the PSAA is a child) at the earliest opportunity of stage 2. The letter should invite them to an initial office appointment to be informed of the concerns that have been brought to Tusla's attention and assessed by the CASP social worker so far.
- Give the PSAA the option of bringing a support person with them to this initial office appointment, and any subsequent meetings, but inform them that it is not a requirement. Where the CASP social worker is concerned that a PSAA has a particular vulnerability, the PSAA should be given information about relevant supports.
- Ensure that any relevant information or documentation gathered by the CASP social worker during stage 2 is provided to the PSAA (and their parents if the PSAA is a child).
- Update the PSAA (and their parents if the PSAA is a child) at least every eight weeks. If delays to a substantiation assessment occur, the CASP social worker should discuss any potential delay to a substantiation assessment with their line manager.

### **15.2 The initial meeting with the PSAA**

*In the initial meeting, the CASP social worker will:*

#### **When meeting with the PSAA**

- Conduct the initial office meeting jointly with another social worker colleague or another professionally qualified member of Tusla staff.
- Confirm the identity of the PSAA when they arrive for the office appointment. Look for an official ID, that is, a State photographic identification (for example, a driving licence or passport), or other acceptable documents. Do not keep a copy of this ID.
- Check with the PSAA if they have any literacy and/or language issues that may prevent them from being able to read the information. Discuss and agree with them a suitable means to communicate information to them.

#### **Inform the PSAA of their rights**

- Inform the PSAA (and their parents if the PSAA is a child) that they have the following rights:
- To seek legal advice. The CASP social worker should discuss any alternative supports with the PSAA if there is a concern about a vulnerability that may affect their ability to access legal advice.
- To receive all relevant information and documentation gathered by the CASP social worker in the substantiation assessment process to inform their response to the allegations. This is subject to any restrictions on disclosure made in exceptional circumstances.
- To submit any documentation that they believe is relevant and/or that they seek to rely on to help their case.
- To make any oral or written submissions they wish to rely on and have considered by Tusla during the substantiation assessment process.
- To identify any people they believe to have information relevant to the substantiation assessment process and whom they believe should therefore be interviewed by Tusla.
- Data protection rights and they should be provided with a copy of the CASP Data Protection Notice
- To make a complaint about Tusla at any stage during the process and give them a copy of Tusla's "Tell us - Feedback and Complaints: Policy and Procedure"

#### **Give the PSAA (and their parents if the PSAA is a child) the following:**

- Details and an explanation of the process to be followed
- A copy of this Child Abuse Substantiation Procedure (CASP)
- The relevant information leaflet for Persons Subject of Abuse Allegations (PSAA) relating to Tusla's substantiation assessment of child abuse allegations
- Full written details of the allegations (including the identity of the PMD), and a copy of all relevant information and documentation gathered by the CASP social worker as part of the substantiation assessment. This will include a copy of written information, including any reports about the allegations made against the PSAA. If there is information in the relevant documents which is not relevant to the assessment and relates to someone other than the PMD or the PSAA, it may be removed on the grounds of data protection. (See CASP Data Protection Guidance)
- Details of any identified relevant third party with whom contact is being considered.

#### **Important information**

- The CASP social worker must advise the PSAA not to respond to the allegations at this initial office appointment, and to read the documents provided before responding. If the PSAA tries to give their response to the allegations at this stage, the CASP social worker should advise them to take the

opportunity to read the information given to them first and tell them that they will have an opportunity to give their response at the next meeting.

- The CASP social worker must offer PSAA another meeting to provide a response to the allegations. The PSAA is not obliged to meet with the CASP social worker if they so wish, but they should be advised that any written submission they wish to provide will be considered.
- The PSAA must be advised that any written response from them or any in person meeting will be used as part of the substantiation assessment to determine if the allegations are founded and, if so, if there is any potential risk of harm towards specific, identifiable, or yet to be identified children.
- The PSAA (and their parents if the PSAA is a child) must be informed that, in the absence of their agreement to meet or provide a written response to the allegations, the assessment will go ahead without the benefit of their response.

### **15.3 Where the PSAA is engaging in the substantiation process but declines an initial office appointment**

If the PSAA is engaging in the substantiation process but declines an initial office appointment, the CASP social worker must ensure that:

- a letter containing full written details of the allegation(s) (including the identity of the PMD), together with details of the process to be followed is sent to the PSAA, (and their parents if the PSAA is a child). The actions in Section 15.2 (The initial contact meeting - Informing the PSAA of their rights) should be followed.
- any steps that need to be taken to verify the identity of the PSAA should be taken before posting the above letters. These steps may include carrying out a home visit to the intended address for the letters and verifying the PSAA is present at that address.
- the PSAA is allowed 28 days to respond to correspondence. If no response is received, a second letter should be sent allowing a further 14 days for response.

### **15.4 Where a PSAA declines to engage in the substantiation process**

If a PSAA (and their parents if the PSAA is a child) declines to engage in the substantiation process, the CASP social worker must ensure that:

- a letter containing full written details of the allegation(s) (including the identity of the PMD), together with details of the process to be followed is sent to the PSAA, (and their parents if the PSAA is a child). The steps in Section 15.2 (The initial contact meeting - Informing the PSAA of their rights) should be followed.
- any steps that need to be taken to verify the identity of the PSAA should be taken before posting the above letters. These steps may include carrying out a home visit to the intended address for the letters and verifying the PSAA is present at that address.
- the PSAA is allowed 28 days to respond to correspondence. If no response is received, a second letter should be sent allowing a further 14 days for response.
- if no response is received, the CASP social worker should assess the relevant information which has been gathered as part of the substantiation process and reach a provisional conclusion in line with the criteria set out in Section 19 (Provisional Conclusion).
- the PSAA is informed of the provisional conclusion even if they have not responded to previous communication.
- even if no response is received from the PSAA in relation to the provisional conclusion, the assessment proceeds to a final conclusion and, if founded, an assessment of risk is completed
- If relevant third parties are to be notified, please refer to Section 21 (Notifying a relevant third party after a founded outcome).

### **Issues specific to adult and child PSAA's**

- The potential vulnerability and support requirements of a PSAA should always be borne in mind. Tusla will seek to help with any potential vulnerability and support requirements a PSAA may have. The CASP social worker will provide information on relevant supports in the PSAA's area.
- The PSAA is entitled to have a support person with them during any interviews.
- Tusla will determine the level of risk of harm to children that a PSAA poses if a final conclusion includes a founded outcome. They will also determine what, if any, actions are required to protect children who may be at risk of harm.
- Tusla may be obliged to notify relevant third parties of their child protection concerns based on these determinations.

***In addition***

- *Tusla must consider the age and stage of development of the child PSAA when engaging with them and their parents in a substantiation assessment*
- *A child PSAA should be accompanied by a parent or other responsible adult in any interviews related to the substantiation assessment.*

***16.0 Stage 2 substantiation assessment: meeting with the PSAA to assess their response to the allegations made against them***

***16.1 Stage 2 interview process with the PSAA***

*The purpose of stage 2 of the substantiation assessment is to provide the PSAA with all relevant information and documentation gathered in the process so far and to give the PSAA an opportunity to respond to the allegations. The initial interview and any subsequent interviews should be conducted jointly by the CASP social worker and another social worker colleague or another professionally qualified member of Tusla staff.*

***Before the interview process with the PSAA the CASP social worker will:***

- *inform the PSAA (and their parents if the PSAA is a child) of their **data protection rights** and give them access to the **CASP Data Protection Notice**.*
- *ensure the PSAA has been supplied with appropriate information before the interview, including all relevant information and documentation gathered by the CASP social worker to date in the substantiation assessment process.*
- *explain the substantiation assessment process and the purpose of the interview to the PSAA (and their parents if the PSAA is a child).*
- *arrange the interview in a timely manner after receiving receipt of confirmation from the PSAA that they are willing to participate in the substantiation assessment process.*
- *ensure that the PSAA can access appropriate forms of support. The PSAA (and their parents if the PSAA is a child) should be directed to relevant local, regional, or national therapeutic services that may be of help to them.*

***At the start of the interview process with the PSAA the CASP social worker will:***

- *explain the limits of confidentiality in case any admission or disclosure is given by the PSAA during the interview.*
- *explain that Tusla may be required to notify An Garda Síochána about information provided in the interview.*
- *explain that the interview with the PSAA is part of the process of assessing the allegations against them. Explain that following the interview and any other necessary enquiries, Tusla will reach a provisional conclusion which will include an outcome as to whether the allegations against the PSAA are founded or unfounded.*
- *explain that the provisional conclusion will set out whether the allegations are founded and if so, whether the PSAA poses a risk of harm to children. The PSAA will have an opportunity to respond to the provisional conclusion. Any response will be considered and the CASP social worker will undertake any necessary further enquiries. Following this, a final conclusion will be issued.*
- *make it clear to the PSAA that no determination has been made on whether the allegations have been founded or unfounded in advance of the PSAA's response, and that a determination can only be made once the PSAA has been given an opportunity to respond to the allegations.*

***When meeting with the PSAA to receive a response to the allegations***

*When giving the PSAA an opportunity to respond, the CASP social worker will:*

- *go through the allegation(s) with the PSAA and allow them to respond to each allegation.*
- *give the PSAA an opportunity to identify any other people who they believe may have relevant information to the substantiation assessment process and who they believe should be interviewed by Tusla. If it is decided not to interview the witness or witnesses proposed by the PSAA, the PSAA should be informed of this and given the reasons why. The reasons for such a decision should be carefully recorded.*
- *inform the PSAA that they may request an opportunity to have questions put to the PMD or witness about the allegations. (See Section 17.3 Process where the PSAA requests to have questions put to the PMD or witness)*



- *try to build a picture of the PSAA as an individual and of their relationship with the PMD, if any. This will allow the CASP social worker to set the allegations against the PSAA's background history, for example (but not limited to), their social, sexual, and physical development history, their life experience, and knowledge of the PMD. This may help to inform the conclusion and determination of any risk of harm to children.*
- *go through the PSAA's own history and allow them to give any details of their life which they think are important and relevant to the substantiation assessment.*
- *seek the PSAA's views about the CASP social worker either contacting or interviewing people identified during the CASP social worker's contact with the PSAA. For example, the CASP social worker may identify other people who they consider might have relevant information in relation to the allegations and or information which may assist them in building a picture of the PSAA as an individual, and in determining any potential risk of harm to children. If the PSAA does not agree, the CASP social worker should discuss this with their line manager.*
- *consider if there is an immediate serious risk of harm to identified or identifiable children. Advise the PSAA that if there are such concerns, it may be necessary to take protective action (which can include informing relevant third parties) in advance of a conclusion being reached where this is necessary to ensure a child's safety. (See Section 4: A child's right to be safe from harm.)*
- *if the PSAA admits to the allegations explore with them if there are other incidents of child abuse that they may wish to speak about. It should be made clear to them that any such disclosures will be reported to An Garda Síochána in all cases. Where a victim identified by the PSAA is still a child and their identity is known, then the Tusla area where the child lives will be informed.*
- *once the interview is finished, inform the PSAA that they will be given a copy of the typed notes from the interview as well as any other relevant information and documentation gathered so far during stage 2.*
- *tell the PSAA that they will be informed in writing of Tusla's provisional conclusion about the allegations when this is reached.*

#### **16.2 Support or legal representation for the PSAA at interview**

- *If the PSAA brings a legal representative or support person, the process set out above remains the same.*
- *The presence of a legal representative or support person does not change the nature of the interview, and the CASP social worker's questions should be directed to the PSAA. If issues arise that the CASP social worker believes require legal advice, the meeting can be adjourned, if necessary, so that advice can be obtained.*
- *If the PSAA or their legal representative or support person has any questions about the process, refer them to where they can acquire this information. The PSAA can also be referred to this Child Abuse Substantiation Procedure (CASP). The support person can address questions in the same way as questions from the PSAA.*
- *If a support person is present for the interview, they should sign a letter confirming they understand their obligation to keep confidential the information being disclosed.*

#### **16.3 Actions to be carried out after the interview with PSAA**

*After the interview with the PSAA, the CASP social worker must:*

- *scan all handwritten notes to Tusla Case Management System (TCMS) and shred the originals.*
- *prepare a typed note of the interview and send it to the PSAA (and their parents if the PSAA is a child).*
- *give the PSAA the opportunity to notify the CASP social worker of any clarifications or inaccuracies within 10 days of the notes being sent to them.*
- *record any areas of dispute raised by the PSAA regarding the accuracy or content of the interview notes and keep these together with the interview notes on record.*
- *carry out any further assessment that may be appropriate in light of the information and response given by the PSAA, including interviewing other people identified as relevant to the substantiation assessment.*
- *advise the PSAA as soon as is possible if a person identified by the PSAA declines a request to be interviewed.*
- *provide the PSAA with a copy of all relevant information and documentation if further assessment has been undertaken following the interview.*

- *meet with, or contact the PSAA again, where necessary, to allow them to respond to any relevant information gathered from the PMD or a witness.*
- *refer the matter to the Tusla area where the newly identified PSAA resides if the PSAA discloses that they were abused and has identified a PSAA. It is the responsibility of the Tusla area where the newly identified PSAA resides to make the notification to An Garda Síochána.*
- *consider if the PSAA has denied the allegations, or put forward an alternative version of events, putting these to the PMD. (See Section 17.3 Process where the PSAA requests to have questions put to the PMD or witness)."*

#### **Requirement to Disclose Relevant Material to the PSAA**

The obligation on Tusla to disclose materials to the PSAA has been underlined in various High Court cases concerning section 3 investigations. In *WM v CFA* [2017] IEHC 587, the High Court held the following: *"One of the fundamental requirements of fair procedures is that a person accused of very serious misconduct in the course of an investigation, assessment or inquiry the result of which may result in an adverse finding and consequences for him/her must be given notice of the allegations and full details and disclosure of materials upon which they are based. This was central to the decision in M.Q. v Gleeson It has been a core principle of the right to fair procedures as set out in Re Haughey [1971] I.R. 325 and reaffirmed in the context of allegations of child sexual abuse in PDP v. Board of Management [2010] IEHC 189 in which O'Neill J. stated that: "the applicant is entitled to have made available to him all of the material assembled by the second named respondent in its investigation into the allegations made against him that is relevant to those allegations."*

The Court in *EO'C v Child and Family Agency* [2019] IEHC 843 held that the PSAA should be provided with an accurate statement of the details of the complaint, and not merely a summary version.

Barr J in *MQ* implies that there may be scenarios where restrictions on the sharing of information considered may be appropriate:

*"In the ordinary course in serious cases the complaint should be put to the alleged abuser in the course of the investigation and he/she should be given an opportunity of responding to it. However, an exception in that regard may arise where the board official concerned has a reasonable concern that to do so might put the child in further jeopardy as, for example, where the abused child is the complainant."*

Therefore, there is a very limited scope for withholding relevant documentation from a PSAA where there is a clear and continuing risk of harm to identifiable persons as a result of disclosure. Given the nature of issues involved, such a withholding could only be justified in the most extreme of cases and where the information is withheld to the least extent possible. All other possible options in respect of disclosure, such as whether anonymisation or independent drafted summaries of the evidence provided, would have to be considered before an ultimate decision to withhold could be constitutionally justified.

Any initial decision to withhold the information gathered at Stage One of the process would obviously have to be made before that information is disclosed to a PSAA at Stage Two of the process. That decision to withhold relevant information would have to be kept constantly under review and be reactive to any information that suggests that any initial perception of harm is no longer accurate. Therefore, in some instances it may be necessary to disclose information which had initially been withheld due to a risk of serious harm.

Examples of a complainant's sensitive personal information which may be considered by an investigator are said to include:

- Evidence of therapeutic supports the complainant is receiving;
- Evidence of any substance misuse by the complainant;
- Family disharmony or mental health problems;
- Medical/psychological evidence of abuse/trauma as determined by an expert, for example a report from the complainant's psychologist or GP;
- Evidence of adolescent 'acting out', sexualised behaviour or promiscuity

Extreme care must be used if, and when, an investigator is referring to these factors/materials when reaching his or her conclusion. Some of the factors may be considered in the context of the complainant's credibility, such as substance abuse, or mental health problems which may affect the accuracy of a complainant's account

in large or small measure. Family disharmony may potentially present a motivation for a false allegation to be made. Some of the material may only go so far as to evidence that a complainant has been abused but not necessarily abused by a PSAA, such as medical evidence or therapeutic supports being received by a complainant. Therefore, at all stages of the process, investigators must be aware of the potentially limited relevance of the above categories of information. Again, the investigator must be acutely aware of the function of a child abuse investigation, that is to ensure the protection of children going forward. Where this material is available to investigators at Stage One of the process, it should be assessed for relevance against fundamental criterion.

There must also be reasonable grounds for requesting the above information in the first place. Such reasonable grounds may come from the investigator's interactions with the complainant or other witnesses or from the PSAA. This information should not be sought as a matter of course but only where it is indicated that it is of relevance.

The obligation of Tusla is only to disclose all relevant information. If information is considered not to be relevant at Stage One of the process, there is no fair procedure obligation to disclose it. In fact, a blanket policy of disclosing all material considered, including exceptionally sensitive personal material, regardless of relevance would amount to a clear breach of a complainant's right to privacy and data protection.

Investigators should therefore be advised to remove any irrelevant material from the file and be directed to completely ignore its existence. If an investigator feels that it is not possible for whatever reason to ignore this irrelevant material, they should be replaced by another investigator to ensure the impartiality of the ultimate decision-making process.

Insofar as the material is relevant to the investigators, it should be disclosed to a PSAA unless disclosure is deemed to present a serious risk of harm to an identifiable person. Any non-relevant parts should be redacted to protect the privacy rights of the complainant or any other person and this reason for redaction should be noted on the document itself. Only the redacted document should continue to be held on file.

#### How CASP Addresses These Requirements

Relevant material is defined as 'relevant information and documentation' in the glossary of terms for CASP as follows:

*"Relevant information and documentation: Where an assessment moves to stage 2, the PSAA is entitled to receive all relevant information and documentation which the CASP social worker has gathered during the course of the assessment. Information and documentation are relevant if they disclose a fact or facts which, on their own or together with other facts, make the allegation appear more likely than not to have happened than would be without that information."*

**Section 9 of CASP: 'The recording and management information as part of CASP'** states the following in relation to the requirement to provide relevant information and documentation to the PSAA:

#### **"9.1 Introduction**

*The CASP Data Protection Guidance provides detailed information on Tusla's data protection obligations to, and the data protection rights of service users to whom CASP may apply. The CASP Data Protection Guidance should always be referred to for help in applying data protection obligations in the context of CASP.*

#### **9.2 Sharing information with a PSAA**

*Where the assessment moves to stage 2, fair procedures require that the PSAA is informed of allegations made against them and provided with all relevant information and documentation gathered by the CASP social worker. This information must be provided in accordance with the procedure, even if the PSAA does not request it. If there is information contained within the relevant documentation gathered by the CASP social worker which is not relevant and relates to people other than the PMD or the PSAA, that information should be redacted on the grounds of data protection.*

**Section 11.6 of CASP: 'The CASP Preliminary Enquiry'** contains guidance on the requirement to inform the PMD of Tusla's obligation to provide the PSAA with all relevant information and documentation:

*'As part of the preliminary enquiry stage of the assessment, the CASP social worker will contact the PMD (and their parents if the PMD is a child). The CASP social worker should:*

...



- Advise that, at the end of stage 1, if a decision is made to move to stage 2, the PSAA will be entitled to receive all relevant information and documentation gathered during the substantiation assessment. The CASP social worker must explain that the information will include the PMD's identity, details of the allegations, a copy of the notes from the PMD's interview with the CASP social worker and a copy of any notes in respect of the CASP social worker's contact with and or interviews with witnesses.
- Inform the PMD that any non-relevant information will be redacted prior to being provided to the PSAA

**Section 11.8 of CASP: 'Where a PMD and/or witness requests anonymity'** contains guidance on the requirement to inform the PMD and/or a witness of Tusla's obligation to provide the PSAA with all relevant information and documentation:

*"If a person making a disclosure later decides that they no longer wish to remain anonymous, the CASP social worker should explain that, if the assessment moves to stage 2, that process involves disclosing all relevant information and documentation, including the identity of the PMD and any witnesses, to the PSAA.*

*The CASP social worker should explain that the PSAA has a right to know who has made allegations against them so that they can make representations in the substantiation assessment process. Tusla cannot carry out a substantiation assessment which affords fair procedures to the PSAA unless this information is disclosed."*

Section 14 contains detailed guidance on the requirements to provide relevant information and documentation to the PSAA.

#### **"14.0 Stage 1 of the substantiation assessment: formal interview with the PMD**

...

##### **14.6 If it is decided to move to stage 2**

- The PSAA (and their parents if the PSAA is a child) is entitled to receive all relevant information and documentation gathered up to that point of the assessment. Information is said to be relevant if it discloses a fact or facts(s) which either supports or undermines the disclosure made by the PMD.
- The CASP social worker should obtain a second review from their line manager (a four-eye review) of all the information the CASP social worker is considering disclosing to the PSAA. This should happen before any decision is made to move the assessment to stage 2.
- The CASP social worker should keep the PMD (and their parents if the PMD is a child) informed as to when and how it is planned to share their data with the PSAA. Also, the CASP social worker should provide the PMD with copies of the specific data relating to them before it is shared with the PSAA.
- The CASP social worker should give the PMD (and their parents if the PMD is a child) the opportunity to raise objections to sharing their information.

#### **Withholding of relevant information and documentation in exceptional cases**

- If there is a concern that there is a serious risk of harm posed to the PMD by the release of certain relevant information and documentation to the PSAA, Tusla will consider such risk with a view to determining if it is appropriate to disclose same to the PSAA. Relevant information and documentation can only be withheld from the PSAA in stage 2 in extremely limited and exceptional circumstances where there is a clear and continuing serious risk of harm to an identified person.
- Given the nature of issues involved, such a withholding of information and documentation can only be justified in the most extreme of cases. Even if it is decided to withhold information and documentation, this is done to the least extent possible. A decision to withhold or limit the provision of relevant information to the PSAA should be made in consultation with the CASP social worker's line manager and legal advice from Tusla office of legal Services should be sought. Any decision to withhold relevant information and documentation from the PSAA must be kept under constant review, and be reactive to any new information that suggests that the initial perception of risk of serious harm is no longer accurate.

...

Section 15 of CASP provides further detailed guidance on the requirement to provide relevant information and documentation to the PSAA.

#### **"Section 15.0 Stage 2 of the substantiation assessment: Initial engagement with the PSAA:**

##### **15.1 Introduction to stage 2**

At the beginning of stage 2 of the substantiation assessment, the CASP social worker should give the PSAA (and their parents if the PSAA is a child) copies of all relevant information and documentation gathered in the substantiation assessment process.

Importantly, the CASP social worker cannot reach any conclusions before the PSAA has been given an opportunity to respond to the allegations.

**Section 15.2 Initial Meeting with the PSAA** stipulates that the PSAA must be informed of his or her rights:

*"Inform the PSAA of their rights*

*Inform the PSAA (and their parents if the PSAA is a child) that they have the following rights:*

- *To seek legal advice. The CASP social worker should discuss any alternative supports with the PSAA if there is a concern about a vulnerability that may affect their ability to access legal advice.*
- *To receive all relevant information and documentation gathered by the CASP social worker in the substantiation assessment process to inform their response to the allegations. This is subject to any restrictions on disclosure made in exceptional circumstances.*
- *To submit any documentation that they believe is relevant and or that they seek to rely on to help their case.*
- *To make any oral or written submissions they wish to rely on and have considered by Tusla during the substantiation assessment process.*
- *To identify any people they believe to have information relevant to the substantiation assessment process and whom they believe should therefore be interviewed by Tusla.*
- *Data protection rights and they should be provided with a copy of the CASP Data Protection Notice*
- *To make a complaint about Tusla at any stage during the process and give them a copy of Tusla's "Tell us - Feedback and Complaints: Policy and Procedure"*

## **16.0 Stage 2 substantiation assessment: meeting with the PSAA to assess their response to the allegations made against them**

**16.1 Stage 2 interview process with the PSAA** provides further guidance on the requirement to provide relevant information and documentation to the PSAA:

*"The purpose of stage 2 of the substantiation assessment is to provide the PSAA with all relevant information and documentation gathered in the process so far and to give the PSAA an opportunity to respond to the allegations. The initial interview and any subsequent interviews should be conducted jointly by the CASP social worker and another social worker colleague or another professionally qualified member of Tusla staff.*

**Before the interview process with the PSAA the CASP social worker will:**

- *inform the PSAA (and their parents if the PSAA is a child) of their data protection rights and give them access to the CASP Data Protection Notice.*
- *ensure the PSAA has been supplied with appropriate information before the interview, including all relevant information and documentation gathered by the CASP social worker to date in the substantiation assessment process."*

Section 18 contains detailed guidance on the factors that the CASP Social Worker should take into account in determining whether information and documentation are relevant for the purposes of a substantiation assessment:

## **"18.0 Factors to consider in reaching a founded or unfounded outcome**

### **18.1 Balance of probabilities**

*Saying something is proven on 'the balance of probabilities' means it has been determined that it is more likely than not to have happened. In court cases, "the balance of probabilities" is often explained to juries as "which story is the more likely". This is not the higher standard of proof for criminal prosecution, which is 'beyond a reasonable doubt'.*

*In a CASP case, the standard of proof is not as high as in criminal cases. In criminal cases, the accused is entitled to an acquittal if the prosecution has not established his or her guilt beyond reasonable doubt. What this means is that if there is any doubt in the minds of a jury then the accused is entitled to the benefit of that doubt and must be found not guilty.*

*In deciding whether allegations are founded or unfounded on the balance of probabilities, account needs to be taken of:*

- *any oral evidence, especially from people who witnessed the alleged events*
- *any documentation or records from the time of the alleged event*
- *any circumstantial evidence tending to support one account rather than the other and*

- any motivations of the PMD and any witnesses.

*The CASP social worker should consider the likelihood or not of the event having occurred. The more unlikely the event, the stronger the evidence must be to establish on the balance of probabilities that it occurred.*

## **18.2 Factors for consideration when assessing the information gathered**

*It is not intended here, even if it were possible, to set out all factors that may be relevant in deciding if the allegation is founded or unfounded. Each case is unique, and the variety of human experience and behaviour so great that it would be impossible to make a comprehensive list of all possible considerations which could arise. Issues which arise may include the following:*

### **18.2.1 The need to be trauma aware**

*The CASP social worker should be aware of the range of a person's possible responses to physical, emotional, sexual abuse and neglect. People who have experienced abuse can present with certain signs of trauma which the CASP social worker must consider in their assessment of the allegation.*

*The CASP social worker should consider if there is a pattern, or history of behaviours and presentations that may be linked to a person's experience of abuse and or neglect. Whilst these presentations and behaviours may indicate that the PMD experienced abuse, these factors alone, would not be sufficient to reach a founded outcome.*

### **18.2.2 Context**

*It is important to consider the context in which the alleged abuse took place and not just the specific allegations of the abuse. Exploring the context of the allegations of abuse, allows the CASP social worker to confirm the possibility, or not, that the PMD and PSAA were known to each other and had contact with each other. Consider what has led to the PMD's disclosure being made and the circumstances that have preceded the PMD's disclosure.*

*Consider the nature of the relationship between the PMD and the PSAA.*

*How are the PMD and PSAA known to each other?*

*Can this be established (through timelines or a genogram which is a picture of a person's family relationships and history)?*

- *Did or does this connection contribute to the PSAA's access to the PMD?*
- *Can this information be verified through other means, such as interviewing other people?*
- *Does the information and documentation gathered confirm the context within which the alleged abuse took place?*

### **18.2.3 Event details**

*When interviewing the PMD, the CASP social worker should explore and document details of the disclosure of abuse. They should explore with the PMD the details of where and when the alleged abuse took place; the nature, frequency, and duration of the alleged abuse; and, if relevant, any details of how it is alleged the PSAA maintained the PMD's compliance and or secrecy (that is, by coercion, threats, bribes, and so on).*

*The details sought and gathered may include perception; verbal reconstruction; details of the environment; details of actions; unusual details; the identification of any objects that were used in the alleged abuse; and sensory details, such as tastes, smells, sights, and sounds.*

### **18.2.4 Peripheral details**

*The CASP social worker should explore and consider details relating to the surroundings of a person's disclosure of abuse. Peripheral details can provide information that is unique to a person's disclosure, such that the PMD may provide additional information that may support the context of the alleged abuse. For example, the PMD may be able to describe what season it was, or if it was bright or dark at the time of the alleged incident; or what furnishings, decorations, landmarks and so on, that they could see around them at the time of the alleged abuse.*

*Research shows that it is not unusual for loss of information and other distortions during memory recall to apply to 'peripheral details'. Therefore, any weight attributed to such details gathered in a substantiation assessment must be carefully considered when reaching an outcome.*

### **18.2.5 Social and family environment**

*The CASP social worker should consider the social and family environment within which the alleged abuse took place, and any information relating to either the PMD's or PSAA's social and family environments that existed before or after the alleged abuse. Understanding the environment of both the PMD and the PSAA will help the CASP social worker in understanding if the occurrence of the alleged abuse event was possible or not.*

*The CASP social worker should consider if the pattern of alleged abuse, is likely, and if the circumstances relating to the social and family environment, within which the alleged abuse took place, allowed an act of alleged abuse to occur. Explore if there were any witnesses or people nearby when the alleged abuse took place. Explore if there is a history of mistreatment, neglect, abuse, or conflict within either the PMD or the PSAA's family home or social and family environment. Explore if the PMD disclosed the alleged abuse to anyone and if anything within the PMD's family or social circumstances changed after they disclosed.*

*Family conflict may potentially present a motivation for false disclosures to be made. Such information may diminish or support the reliability of the PMD account and must be considered carefully when determining an outcome.*

*Factors such as any substance abuse or mental health problems should be considered in the context of the PMD's disclosure. Information about such factors will only have been sought if there were reasonable grounds for seeking it. Careful consideration must be given to referring to these factors and information when reaching an outcome.*

*It is important for the CASP social worker to critically assess and understand that such matters may add to, or detract, from the reliability of the PMD's account. Evidence of any substance abuse or past behavioural issues may show that the PMD has faced difficulties or has been abused but may not necessarily provide enough information to determine that the abuse was perpetrated by the PSAA.*

#### **18.2.6 Unique/Idiosyncratic Information**

*Unique or idiosyncratic information is information that is specifically relevant to either the PMD or the PSAA as well as the context of the alleged abuse. For example, personal details in relation to the PSAA that may or may not be generally known but can be verified include past injuries, scars, tattoos, and so on. The CASP social worker should explore and consider any information provided by the PMD's disclosure and by the PSAA's response that may be specific to the context, environment or peripheral details gathered. Such information may either support or detract from the reliability of a disclosure of abuse, and, therefore, is a key consideration when carrying out a reliability and accuracy check.*

#### **18.2.7 Emotional reaction consistent with the abuse being described**

*Emotional reactions need to be considered carefully. There will be a variety of emotional responses depending on several factors, including the PMD's relationship with the PSAA, the nature and context of the alleged abuse, the PMD's gender and age (if they are a child, adolescent, or an adult), and so on. The CASP social worker should consider any possible presentations or underlying diagnosis or diagnoses that may alter or distort emotional responses to significant traumatic incidents.*

#### **18.2.8 Reliability and accuracy check**

*Consider if the PMD has been consistent in their disclosure and, if not, whether the inconsistencies can be explained. Consider if the PMD's account is reliable and accurate. This may involve exploring the extent to which the PMD's disclosure is consistent with any available evidence. Consider if it has been necessary to ascertain the PMD response to any denials made, alternative versions of events provided by the PSAA, or other issues raised by the PSAA. Where it has been deemed necessary to re-engage with the PMD to check the reliability and accuracy of their account, but where it has not been possible to do so, strong consistent evidence will be necessary to ground a founded outcome.*

#### **18.2.9 Witness accounts consistent with accounts provided by the PMD and or the PSAA**

*The CASP social worker should carefully consider any information provided by people who may have witnessed the alleged abuse and or have information that either supports or detracts from the accounts given by the PMD and the PSAA in relation to the alleged abuse.*

*When assessing accounts given by witnesses, consider if the witness has been consistent in providing their response and, if not, whether the inconsistencies can be explained. It should be considered if any witness is exaggerating, or has difficulty recalling events, or is either hostile to or friendly with the PSAA or PMD or may be unreliable for some reason. The CASP social worker should consider if a witness has a motive for giving a false account.*

#### **18.2.10 Documentation that supports the PMD's or PSAA's account**

The PMD or PSAA may be able to produce information and documents, for example diaries, letters, images, text messages, notes from the time of the alleged event that confirm details or support the description of an incident or their version of events.

#### **18.2.11 Medical or psychological evidence of abuse or trauma as determined by an expert**

This includes medical evidence such as documentation, correspondence, or reports detailing: pregnancy, sexually transmitted diseases, medical evidence, X-rays, hospital visits, mental health issues, general practitioner visits and psychological and counselling support. Careful consideration must be given to seeking or referring to these factors and information when reaching an outcome. Some of the information such as medical evidence or therapeutic supports being received by the PMD may indicate that the PMD has been abused. Whilst this may indicate that the PMD experienced abuse, these factors on their own may not necessarily provide enough information to determine that the abuse was perpetrated by the PSAA.

In the context of allegations of sexual abuse, the absence of medical findings – which occurs in most cases – does not rule out that abuse has occurred.

#### **18.2.12 An admission on the part of the PSAA**

Sometimes there can be an acknowledgement of abusive behaviour by the PSAA. This would, under normal circumstances, substantiate that abuse has taken place. However, there are a range of responses to allegations of abuse with elements of acceptance and denial that can change over time. These may include the PSAA:

- admitting the behaviour but not considering it to be abusive
- admitting the behaviour but saying it was ‘therapy’ or ‘education’
- admitting the behaviour but thinking it didn’t hurt the child
- admitting the behaviour but minimising the extent or frequency
- admitting the abusive acts but blaming the child
- admitting the abusive acts but blaming others
- blaming other factors (medication, ‘blackouts’, alcohol, and so on)
- saying that if improper touching happened it was by accident

(Underwager and Wakefield 1999)

It is also important to consider if there are grounds for believing that the admissions may not be reliable considering all the circumstances of the case, including the age, mental capacity, mental state, and apparent understanding of the PSAA.

#### **18.2.13 The response offered by the PSAA lacks foundation and reliability.**

The PSAA is not obliged to meet with the CASP social worker or to provide any response to the allegations. If the PSAA chooses not to respond, the CASP social worker will have to reach an outcome without the benefit of their input. The CASP social worker cannot give additional weight to the account of the PMD or any witness based on the PSAA’s lack of response.

If the PSAA has provided an explanation or response, the CASP social worker should carefully consider the PSAA’s account in light of all the information gathered in the assessment when considered as a whole.

#### **18.2.14 A verdict in a criminal trial during a substantiation assessment with respect to the allegations under assessment**

Where a PSAA is convicted of an offence that is consistent with the detail of the allegation under assessment, considerable weight can be given to this fact when determining an outcome.

The CASP social worker must ensure that the detail of the criminal conviction and the detail of the allegation under assessment are the same.

If a verdict of not guilty is returned the CASP social worker should keep in mind that the standard of proof in a criminal prosecution is “beyond reasonable doubt”. This is a higher standard than that applied in a CASP assessment where the standard of proof is the balance of probabilities.

#### **18.2.15 Director of Public Prosecutions (DPP) decision not to proceed with a criminal charge**

A decision by the Director of Public Prosecutions (DPP) not to proceed with a case is an indication that the DPP is not satisfied the case can be proven beyond a reasonable doubt. However, that does not mean that the balance of probabilities standard cannot be reached. The DPP decision not to proceed with the criminal charge does not take away from Tusla’s statutory obligation to protect children under the Child Care Act 1991.



#### **18.2.16 Consideration of child abuse allegations made in custody disputes**

*These can be very difficult situations in which to determine whether the allegations are founded or unfounded. In these circumstances, it may be difficult to gather objective and reliable information. The CASP social worker should approach the assessment of the allegations in such circumstances with an open mind and be familiar with the relevant literature associated with such cases (Wakefield, H. "Sexual Abuse Allegations in Custody Disputes". 2004 J.M. Craig Press, Inc.).*

*The CASP social worker should consider the family dynamics and the timing and circumstances surrounding the disclosure. Possible motivational factors to falsify a disclosure of abuse and any pre-existing biases on the part of those who may have reported the abuse or who have discussed the alleged abuse with the PMD should be explored.*

#### **Requirement to Use Neutral Terminology**

In *CD v The Child and Family Agency*, at para 29, Humphreys J repeated a previous criticism from his judgment in *OT v The Child and Family Agency* [2016] 101 in relation to the description of a PSAA as an "alleged abuser" in the 2014 guidance. He suggested, without making any finding, that the use of such a term may be lacking in the necessary neutrality and attempts to equate it to the use of "alleged criminal" in a criminal trial.

#### **How CASP Addresses This Requirement**

The alleged abuser is referred to as the Person the Subject of Abuse Allegations (PSAA) throughout all CASP documents.

#### **Requirement to Stress-test the Complainant's Allegations and Cross-Examination**

In *EO'C v Child and Family Agency* [2019] IEHC 843 the Court held that the PSAA's version of events must be put to the complainant before a conclusion is reached as to whether the complaint is founded.

In both *FA v CFA* and *EOC v CFA* [2019] IEHC 843, the High Court noted that there is an obligation on Tusla to ensure that the PSAA's version of events is put to the complainant for comment (although not always in the form of cross-examination.) McGrath J commented in *FA* that: "*it is difficult to see how the conclusion of founded was established with the necessary level of probability in the absence of a consideration of the stress testing of the complainant's evidence. As McDermott J. observed, the more serious the allegation, the more cogent the evidence required to support it.*"

In both *PDP v A Secondary School* [2010] IEHC 189 and *EE v Child and Family Agency* [2016] IEHC 777 the Court held that the PSAA may have the right to cross-examine the complainant (by counsel, but not necessarily directly) during the second stage of the assessment.

In *WM v Child and Family Agency* [2017] IEHC 587 and *TR v Child and Family Agency* [2017] IEHC 595 however, the Court held that cross examination is not invariably required, and this right may be subject to fair, reasonable and proportionate restrictions to protect the complainant due to factors such as age, mental capacity or levels of trauma. Each case must be considered on its own facts.

In *EE v Child and Family Agency* [2018] IECA 159 the Court held that Tusla has significant discretion in determining the precise requirements for cross examination that might be needed to ensure procedural fairness in a particular case.

In *TR v Child and Family Agency* [2017] IEHC 595 the Court held that there is no right to cross-examination or to observe the demeanour of the complainant during interviews conducted as part of the first stage of the assessment.

In both *FA v CFA* and *EOC v CFA* [2019] IEHC 843 the High Court noted that there is an obligation on Tusla to ensure that the PSAA's version of events is put to the complainant for comment although not always in the form of cross-examination. McGrath J commented in *FA* that:

*"It is difficult to see how the conclusion of founded was established with the necessary level of probability in the absence of a consideration of the stress testing of the complainant's evidence. As McDermott J observed, the more serious the allegation, the more cogent the evidence required to support it."*

Para 106 of TR McDermott J noted:

*"...it may be very difficult for assessors to hold that an allegation has been established as 'founded' to the level of probability in the absence of an opportunity to cross-examine a complainant. In particular, the more serious the allegation the more cogent the evidence required to support it."*

MacGrath J in FA held at para 148:

*"... it is difficult to see how the conclusion of founded was established with the necessary level of probability in the absence of a consideration of the stress testing of the complainant's evidence"*

Some form of re-interview will be necessitated in the vast majority of cases in order to comply with the requirement of fair procedures and often to reach a founded conclusion where a PSAA provides an alternative version of events. The credibility of the complainant is important. Therefore, any system which does not adequately ensure that the decision-maker has appropriate access to the complainant to assess their emotional response in providing their own account and responding to any account of the PSAA's is also likely to be fundamentally deficient.

#### How CASP Addresses This Requirement

The glossary of terms for CASP refers to stress-testing as a reliability and accuracy check which is defined as follows (the term 'stress-testing' itself is not used anywhere in the document):

**Reliability and accuracy check:** *The thorough examination and testing of the reliability, plausibility, and consistency of a disclosure a person is making. This may involve exploring the extent to which the person's disclosure is consistent with any available evidence and may involve (at a later date) seeking the person's response to any denials made by, any alternative versions of events provided, or other issues raised by the PSAA.*

'PART A: General Principles and When to Apply CASP' at 'Section 2: Principles Governing the Procedure' sets out important principles as follows:

#### **2.0 Principles governing the procedure**

##### **2.1 Tusla's Statutory Obligation**

...

*When carrying out a substantiation assessment, CASP social workers must take every care in checking the reliability and accuracy of the allegations and in considering the response from the person who is the subject of the abuse allegations.*

**Section 11.6 CASP Preliminary Enquiry** states the following in relation to the reliability and accuracy check:

*As part of the preliminary enquiry stage of the assessment, the CASP social worker will contact the PMD (and their parents if the PMD is a child). The CASP social worker should:*

...

*Inform the PMD that the allegations will be subjected to a reliability and accuracy check and, if the PSAA denies the allegations, or raises other issues in relation to the allegations, or puts forward a different version of events, the PSAA's account may need to be put to the PMD for comment.*

**Section 14.0 Stage 1 of the substantiation assessment: formal interview with the PMD** states the following in relation to the reliability and accuracy check:

#### **14.1 Introduction to stage 1**

*During the interview, the CASP social worker should:*

##### **Seek and clarify written and verbal information**

...

*Explain to the PMD that an important part of the interview process is checking the reliability and accuracy of the PMD's disclosure as fully as possible, as fair procedures require that a person's allegations cannot be accepted without an assessment. This is done at an interview by putting specific questions to the PMD in order to explore and test the potential reliability and accuracy of their account. This approach helps to ensure that the interview process with the PMD is robust and fair. It will also help to reduce the likelihood of having to re-interview the PMD on the same matters.*

**Section 17.0 'Reliability and accuracy check'** contains detailed guidance on the requirements to perform a reliability and accuracy check as follows:

## ***“Introduction***

*A reliability and accuracy check is the thorough examination and testing by the CASP social worker of the reliability, plausibility, and consistency of a disclosure a person is making. This may involve exploring the extent to which the person’s disclosure is consistent with any available evidence and may involve seeking the person’s response to any denials made, any alternative versions of events provided, or other issues raised by the PSAA.*

### **17.1 Where Reliability and Accuracy Check is required**

*If a PSAA has denied the allegations, or put forward an alternative version of events, the CASP social worker must consider carrying out a reliability and accuracy check by putting this to the PMD. The decision to do so should be fair, reasonable, and proportionate, based on the circumstances of the individual case and the reasons should be carefully recorded. The CASP social worker should consider the circumstances and sensitivities of the PMD before engaging with them.*

*The CASP social worker should keep in mind that strong, consistent evidence will be necessary to ground a founded outcome if it is deemed necessary to engage with the PMD to check the reliability and accuracy of their account, but it has not been possible to do so.*

*If a decision is made to carry out a reliability and accuracy check on the allegations the CASP social worker should consider clarifying with the PSAA or their legal representatives if there were any issues they would like to be explored with the PMD.*

### **Considerations for reliability and accuracy check where PMD is a child**

*The CASP social worker should consider the following factors when deciding whether to meet with a child to put the PSAA’s version of events to them:*

- a) The child’s age and stage of development*
- b) The time elapsed between the initial interview with the child about the alleged abuse and the proposed interview with the child to put the PSAA’s version of event to them. Long delays between repeated interviews may reduce the accuracy of new information from a child but short delays between interviews may not (see *The Effects of Repeated Interviewing on Children’s Forensic Statements of Sexual Abuse*, I. Hershkowitz, A. Terner, December 2007).*
- c) The possibility of re-traumatising the child, particularly in respect of serious allegations.*
- d) The vulnerabilities of the child.*
- e) The number of times that the child has been interviewed - Re-interviewing a child about information already obtained within another interview format is widely discouraged. (APSAC, 2012; Merchant & Toth, 2006; NCA, 2016; Saywitz & Comparo, 2009).*
- f) Engage with the child (and their parents if the PMD is a child) or guardians when considering the need to meet with the child to put the PSAA’s version of events to them.*

### **17.2 Guiding Principles where the PSAA requests to have questions put to the PMD or witness**

*If the PSAA requests to have questions put to the PMD or a witness, this request must be considered by the CASP social worker in a fair and proportionate manner. The CASP social worker will consider the means through which this might be achieved. The manner and form in which this is to happen is a decision for the CASP social worker. Direct questioning of the PMD or witness by the PSAA should generally be avoided particularly if the PMD or witness is a child. However, an adult PMD, the parents of a child PMD, or a witness, may not necessarily be resistant to direct questioning by the PSAA or their legal representative. Therefore, the CASP social worker should seek their view of how this questioning might be managed.*

*Even if a child PMD or witness and their parents are agreeable to direct questioning of the child by the PSAA or their legal representative, the CASP social worker should still consider if it is more appropriate for the CASP social worker themselves to put an agreed set of questions to the child. If this is not acceptable to the PSAA, the CASP social worker should consider alternative ways of having the questions put to the PMD or witness (see Table x Alternative means of having questions put to the PMD or witness).*

*The PMD or witness always has the right to refuse to be directly questioned by the PSAA or their legal representative. Tusla will not compel the PMD or a witness to have questions put to them by or on behalf of the PSAA. If the PSAA wishes to directly question the PMD or witness and the CASP social worker determines this is not appropriate, or the PMD or witness refuse, then the CASP social worker will consider alternative means to have the questions put to them.*

### **17.3 Process where the PSAA requests to have questions put to the PMD or witness Engagement with PSAA**



*If the PSAA requests to have questions put to the PMD or witness the CASP social worker will engage with the PSAA about their request. The CASP social worker will:*

- *consider the PSAA's request in a fair and proportionate manner. The manner and form in which this is to happen is a decision for the CASP social worker.*
- *consider the appropriateness and relevance of the questions the PSAA wishes to put to the PMD or witness.*
- *seek agreement of the PSAA that the CASP social worker will put an agreed set of questions to the PMD or witness. Explain that following the interview the CASP social worker will provide a written account of this interview to the PSAA.*
- *if the PSAA is not satisfied with this means of having their questions put to the PMD or witness the CASP social worker will consider the PSAA's reasons for this. The CASP social worker will engage with the PMD or witness in relation to alternative means of having the questions put to them (see Table x Alternative means of having questions put to the PMD or witness).*

### **Engagement with PMD**

*The CASP social worker will also engage with the PMD in relation to the PSAA's request.*

*The CASP social worker should:*

- *seek the views of the PMD as to how this request might be managed. In particular, seek the agreement of the PMD or witness that the CASP social worker will ask them an agreed set of questions. The CASP social worker will inform the PMD or witness that they will provide a written account of this interview to the PSAA.*
- *explain that if the PSAA is not satisfied with this means of having their questions put to the PMD or witness the CASP social worker will consider the PSAA's reasons for this and will engage with the PMD or witness in relation to alternative means of having the questions put.*
- *give the PMD information about the alternative ways in which this can be done and seek the views of the PMD or witness about this. (See Table x Alternative means of having questions put to the PMD or witness)*
- *explain that a refusal to engage in a further interview may have an impact on the substantiation assessment, where the CASP social worker determines this is necessary as part of a reliability and accuracy check.*

### **Where the CASP social worker is considering ways in which questions may be put to the PMD or witness:**

*If the PSAA is not satisfied with the CASP social worker putting their questions to the PMD or witness, the CASP social worker will consider alternative ways in which questions may be put to the PMD or witness. The CASP social worker should not make any arrangements for the PSAA or their legal representative to question or observe the PMD or witness without discussing this with their line manager and reaching agreement from the PMD or witness. It may also be necessary for their line manager to seek legal advice before any arrangement is made for the PSAA or their legal representative to observe or put questions to the PMD or witness.*

*If the PSAA is not satisfied with the CASP social worker putting an agreed set of question to the PMD or witness the CASP social worker will:*

- *consider the reasons why the PSAA has rejected the CASP social worker putting an agreed set of questions to the PMD or witness*
- *engage with the PSAA and PMD or witness and seek their views in relation to alternative means of having the questions put, with reference to the table below*
- *explain the alternative means by which the questions could be put*
- *consider the age and any vulnerability of the PMD or witness when determining the appropriateness of each alternative*

*Alternative means of having questions put to the PMD or witness*

**Table 1 Alternative means of having questions put to the PMD or witness**

Alternative	Alternative means of having questions put to the PMD or witness	Before putting in place alternative means for having questions put to the PMD or witness the CASP social worker will:
A	Giving the PSAA access to an audio recording of the CASP social worker's interview with the PMD or witness.	<ul style="list-style-type: none"> <li>consider why the PSAA has rejected receiving a written account of the CASP social worker's interview with the PMD or witness</li> <li>explain alternative A to the PSAA and PMD or witness</li> <li>consider age and any vulnerabilities of PMD</li> <li>seek agreement from the PSAA and PMD or witness to engage in this alternative.</li> </ul>
B	Provide the PSAA and or their legal representative with an opportunity to observe the CASP social worker's interview with the PMD or witness using video link or teleconference.	<ul style="list-style-type: none"> <li>consider why the PSAA has rejected alternative A</li> <li>explain alternative B to the PSAA and PMD or witness</li> <li>consider age and any vulnerabilities of PMD</li> <li>seek agreement from the PSAA and PMD or witness to engage in this alternative.</li> </ul>
C	Provide the PSAA and or their legal representative with the opportunity to be physically present to observe the CASP social worker's interview with the PMD or witness in an appropriate setting	<ul style="list-style-type: none"> <li>consider why the PSAA has rejected alternatives A &amp; B</li> <li>explain alternative C to the PSAA and PMD or witness</li> <li>Consider age and any vulnerabilities of PMD</li> <li>Seek agreement from the PSAA and PMD or witness to engage in this alternative.</li> </ul>
D	Provide the PSAA or their legal representative with the opportunity to question the PMD or witness and the PSAA to be physically present to observe the interview in an appropriate setting	<ul style="list-style-type: none"> <li>consider why the PSAA has rejected alternatives A, B &amp; C</li> <li>explain alternative D to the PSAA and PMD or witness</li> <li>Seek agreement from the PSAA and PMD or witness to engage in this alternative.</li> <li>Consider age and any vulnerabilities of PMD</li> <li>consider using a screen to separate the PSAA from the PMD or witness being questioned.</li> <li>consider the relevance of the questions to be put to the PMD or witness before the interview</li> </ul>
E	Provide the PSAA with the opportunity to be physically present to directly question the PMD or witness in an appropriate setting	<ul style="list-style-type: none"> <li>consider why the PSAA has rejected alternatives A, B, C &amp; D</li> <li>explain alternative E to the PSAA and PMD or witness</li> <li>Seek agreement from the PSAA and PMD or witness to engage in this alternative.</li> <li>Consider age and any vulnerabilities of PMD</li> <li>consider using a screen to separate the PSAA from the PMD or witness being questioned.</li> <li>consider the relevance of the questions to be put to the PMD or witness before the interview</li> </ul>

***What happens if the PSAA is not satisfied with how the questions have been put to the PMD or witness?***

*Working with the co-operation of both the PMD or witness, and the PSAA in these situations is important. Having put questions to the PMD or witness, either by way of interview with the CASP social worker or other means, the CASP social worker will determine if they have been able to test the reliability and accuracy of the account.*

***What happens if CASP social worker determines that direct questioning is not required***

*If the PSAA is dissatisfied that they have not been able to directly question the PMD or witness the CASP social worker should continue with the substantiation assessment provided the CASP social worker has determined that they have been able to carry."*

**Section 19.0 Provisional Conclusion** states that the CASP social worker will reach a provisional conclusion once all relevant information and documentation gathered as part of the assessment has been carefully assessed and that:

***"19.1. Prior to reaching a provisional conclusion***

*The CASP social worker must be able to demonstrate that they have:*

- *sought and obtained relevant information and documentation from the PMD, the PSAA, any witnesses and other relevant people to adequately reach an outcome about the alleged abuse*
- *cross-referenced relevant information from one source with information provided by other sources*
- *provided the PSAA with all relevant information and documentation and given an opportunity to respond*
- *afforded the PSAA fair procedures and taken a full account of their response to the allegations, including all information or documentation supporting their account*
- *put the PSAA's account to the PMD and or witness for their comment (where appropriate and necessary).*
- *assessed the allegation based on a clear understanding of this procedure, Children First, the Child Care Act 1991, the Child and Family Agency Act 2013, relevant case law, and Tusla policy.*

*Once the CASP social worker is satisfied that they can demonstrate all the above they can proceed to making a provisional conclusion."*

## How Function Creep is Prevented

**Guidance:**

*We must ensure that personal data are collected for specified, explicit and legitimate purpose and not further processed in an incompatible manner. "Function creep" is where a purpose for which the personal data was obtained is gradually widened or blurred. Please state here how you will ensure that the personal data collected here is used only for the purposes set out in this DPIA.*

The CASP Data Protection Guidance states the following in relation to purpose limitation:

*"Tusla must:*

- *be clear from the outset why we are collecting personal data in relation to CASP and what we intend to do with it;*
- *comply with documentation obligations to specify our purposes in relation to CASP;*
- *comply with transparency obligations to inform individuals about our purposes; and*
- *ensure that if we plan to use or disclose personal data for any purpose that is additional to or different from the originally specified purpose, the new use is fair, lawful and transparent i.e. that we have a legal basis for processing, that we tell data subjects about this new use.*

*In order to comply with the requirement of purpose limitation in relation to CASP:*

- *Use only approved forms and templates in relation to the CASP process;*
- *Be familiar with the purpose of the data processing as described in the CASP Data Protection Notices;*
- *Always use the correct approved form when collecting personal data and keep the purpose in mind as you collect and input the personal data into the form;*
- *Always use the correct approved correspondence template when disclosing personal data in writing and keep the purpose in mind as you prepare the correspondence;*
- *Limit data processing in spoken information, disclosure on site, and audio or video recording to the purpose specified in the same manner as you would to any written record;*

- *Comply in full with the requirements of the CASP.”*

In addition to the above guidance, CASP Standard Forms and Templates have been designed (and reviewed by the DPU for data protection compliance) and will be built into TCMS for use as part of the standard business process for CASP.

## What Information Will be Provided to Data Subjects

### **Guidance:**

*Tusla has a standard overarching privacy notice which explains how we use information generally. If this doesn't cover new uses of information set out in this process, we may need to give data subjects a new privacy notice. Please detail here whether the standard privacy notices have been provided to individuals and if new notice needed how that will be provided to individuals e.g. verbal privacy notice, website privacy notice, paper privacy notice or leaflet. Please also set out here what information, apart from a privacy notice is provided to individuals about this process.*

CASP includes a timetable at section 7.0 with dates by which each key action for every stage of CASP and the corresponding data protection notifications must be completed.

PMDs are informed at the time their data is collected at the beginning of the process as to how their data will be processed throughout CASP. In accordance with the requirements of Article 14 of the GDPR, a PSAA is notified within 30 days of opening the file in respect of him or her i.e. receipt of a referral. Notification to the PSAA is subject to the requirements of CASP which provide that child protection considerations take precedence over a PSAA's data protection rights and that in some instances it may be required to notify a third party prior to notification to the PSAA where a child is at immediate risk. A PSAA will be notified if the substantiation assessment proceeds to stage 2 and will be provided with all relevant information and documentation at the start of stage 2 of the substantiation assessment.

The CASP Data Protection Guidance contains sections on transparency as follows:

### **"6.1.2 Transparency and the Requirement to Provide Data Protection Notices to CASP Data Subjects"**

*Under the principle of transparency, Tusla must provide certain information to data subjects when they collect their personal data, such as: the identity of the controller; the contact details of the controller and (if they have one) their 'data protection officer' (DPO); the purposes and 'legal basis' for the processing; who the data will be shared with; how long the data will be stored; and the existence of the data subject's various rights including:*

- *the right to be informed (through, for example, the Data Protection Notice)*
- *the right of access (through the Subject Access Request process)*
- *the right to rectification*
- *the right to erasure*
- *the right to restrict processing*
- *the right to object*

*Tusla is only permitted to use personal data fairly and transparently and in line with the purposes only for which it obtained. If we are using personal data in any way that is not expected by an individual and they don't know about it, this is processing that is unfair and not transparent and will be a breach of data protection legislation.*

*Tusla is required to provide this information a concise, transparent, intelligible and easily accessible form, using clear and plain language, in particular for any information addressed specifically to a child.*

*When Tusla collects personal data directly from a data subject, say for example in the case of CASP where a complaint is made directly to Tusla by either an Adult or a Child PMD, Tusla must, at the time when personal data are collected, provide that data subject with all of the following information:*

1. *the identity and the contact details of the controller, i.e. Tusla;*
2. *the contact details of the data protection officer;*
3. *the purposes of the processing for which the personal data are intended as well as the legal basis for the processing;*
4. *the recipients or categories of recipients of the personal data, if any;*
5. *the period for which the personal data will be stored, or if that is not possible, the criteria used to determine that period;*
6. *the existence of the right to request from Tusla access to and rectification or erasure of personal data or restriction of processing concerning the data subject or to object to processing;*
7. *the right to lodge a complaint with a supervisory authority.*

Where personal data are not collected directly from the data subject, for example in relation to CASP where Tusla receives a mandated report from a mandated person and therefore receives personal data of a PMD and PSAA indirectly or Tusla receives a report or referral directly from a PMD and receives personal data of the PSAA indirectly in that report or referral, Tusla provide the PSAA with the information set out below within a reasonable period after obtaining the personal data, but at the latest within one month or where the personal data are to be used for communication with the PSAA, at the latest at the time of the first communication to the PSAA. **Note: The CASP Social Worker should use the relevant templates in TCM as they have been drafted solely for this purpose and comply with data protection legislation.**

**There are exceptions to the requirement to provide this information to the PSAA where to do so would for example, place a child at immediate serious risk or would, in the opinion of An Garda Síochána (AGS), jeopardise a criminal investigation. These exceptions however restrict the PSAA's right to information so can only be exercised in limited circumstances and on a temporary basis and all requests to avail of these exceptions must be referred to the Tusla Data Protection Unit (DPU) for recording, tracking and processing.**

1. the identity and the contact details of the controller, i.e. Tusla;
2. the contact details of the data protection officer;
3. the purposes of the processing for which the personal data are intended as well as the legal basis for the processing;
4. the categories of personal data concerned;
5. the recipients or categories of recipients of the personal data, if any;
6. the period for which the personal data will be stored, or if that is not possible, the criteria used to determine that period;
7. the existence of the right to request from the controller access to and rectification or erasure of personal data or restriction of processing concerning the data subject and to object to processing as well as the right to data portability;
8. the right to lodge a complaint with a supervisory authority;
9. from which source the personal data originate, and if applicable, whether it came from publicly accessible sources.

#### **Attention**

In order to comply with the requirement of transparency in relation to CASP:

- The Tusla Data Protection Unit (DPU) has drafted purpose specific data protection notices for CASP. These are:
  - o the CASP PMD Data Protection Notice (Adult version)
  - o the CASP PMD Data Protection Notice (Child version)
  - o the CASP PSAA Data Protection Notice (Adult version)
  - o the CASP PSAA Data Protection Notice (Child Version)
  - o the CASP General Data Protection Notice (for all other data subjects) (Adult version)
  - o the CASP Witness Data Protection Notice (Child Version)
- All staff operating the CASP process must familiarise themselves with the contents of these Data Protection Notices and be able to explain them to the relevant individuals so that they understand what will happen to their personal data, why and what their rights are in relation to their personal data
- Where personal data are collected directly from an individual by Tusla, the relevant Data Protection Notice must be provided to that individual before, or at the time, the personal data are collected;
- Where personal data are NOT collected directly from the individual by Tusla, the relevant CASP Data Protection Notice must be provided to the data subject as soon as possible after receipt of the personal data but no later than one month after Tusla receives the personal data; (see timetable at 7.0 in CASP for more guidance)
- The relevant CASP Data Protection Notice must be provided in printed hard copy to the individual when meeting in person and explain it to the individual;
- The relevant CASP Data Protection Notice must be attached to correspondence (attached as PDF to email correspondence)
- All versions of the CASP Data Protection Notice must be made available at all Tusla contact points (locations around the country)



## How Individuals' rights (inform, access, object, restrict, erase) will be implemented and supported

### **Guidance:**

*Individuals about whom we process personal data including our Services users have the following rights (with limitations and exceptions):*

- *the right to be informed (through for example the privacy notice referred to above*
- *the right of access (through the Subject Access Request process)*
- *the right to rectification*
- *the right to erasure*
- *the right to restrict processing*
- *the right to object*

*Individuals are informed about the rights in the privacy notice but we need to make sure that we can process requests in relation to these rights when they arise. The Data Protection Unit (DPU) has standard operating procedures in place in relation to these rights but you need to set out here how you will make personal data available as part of these procedures e.g. what processes will be in place to ensure that files and personal data can be retrieved quickly to comply with access, erasure, objection etc. requests.*

During the course of developing CASP and arising out of concerns for the data protection rights of the PMD, Tusla considered whether it could avail of an exemption under the GDPR in order to refrain from providing the PSAA with information required under Article 14 in relation to how his or her personal data is being processed and why. The exemption which Tusla considered was Article 14(5)(B) which provides that the obligations in Article 14 do not apply insofar as it "... is likely to render impossible or seriously impair the achievement of the objectives of that processing" and which is intended to deal with issues such as proportionality and scenarios where the requisite notice would need to be to a large amount of data subjects. It also appears to be envisaged to be applicable where there is a limited prejudice to a data subject from the processing conducted and in circumstances where the processing is extremely unlikely to have a meaningful impact specifically on the data subject(s) concerned such as where the processing is for archiving or statistical purposes.

Tusla ultimately arrived at the position that as the objective of the processing in a CASP substantiation assessment is to decide whether the PSAA poses a risk to children it cannot be said that the objectives of processing are actually impaired by compliance with the requirements of Article 14 which is limited in effect and does not require the disclosure of the identity of the PMD and further that there was no realistic interference with a PMD's data protection rights in informing a PSAA under Article 14 (within 30 days of receipt of a referral) of the fact that Tusla is processing their data.

It should be noted, however that, as set out above, Tusla may restrict the PSAA's right to be informed on a limited and temporary basis if the circumstances are such that to provide the required information to the PSAA would for example, place a child at immediate serious risk or would, in the opinion of An Garda Síochána (AGS), jeopardise a criminal investigation. These exceptions however restrict the PSAA's right to information so can only be exercised in limited circumstances and on a temporary basis and all requests to avail of these exceptions must be referred to the DPU for recording, tracking and processing.

The CASP Data Protection Guidance contains the following section on data subject rights management:

### **"6.1.3 Data Subject Rights Management**

*All data subjects whose personal data is processed under the CASP process, including but not limited to, PMDs, PSAAs and third parties have the following rights in relation to their personal data:*

#### **The Right to Be Informed**

*This is the right to be provided with clear, transparent and easily understandable information about how we use their personal data and their rights. This information is contained in the relevant CASP Data Protection Notice.*

#### **The Right of Access**

*Data subjects have the right to:*

- *receive confirmation from us that their personal data is being processed so they're aware of and can check that we're using their personal data in accordance with data protection law;*

- receive confirmation from us about the type of personal data we hold about them, why we use it, what we use it for and information about their rights (all of this is included in the CASP Data Protection Notice); and
- access to their personal data.

Data subjects can request copies of paper and electronic records (including recorded calls, where applicable) about them that we hold, share or use. To deal with their request, we can request proof of identity and enough personal data to enable us to locate the personal data they request.

#### **When will access not be provided?**

We can only provide data subjects with their personal data, not personal data about another person. Also, where access would adversely affect another person's rights, we are not required to provide this. Due to legal privilege, we may not be able to show them everything that we learned in connection with a legal claim or legal proceeding.

#### **The Right to Rectification**

Data subjects are entitled to have their personal data corrected if it's inaccurate or incomplete. They have the right to obtain from us without undue delay the correction of inaccurate personal data concerning you. If they tell us that the personal data we hold on them is incorrect, we will review it and if we agree with them, we will correct our records. If we do not agree with them, we will let them know.

#### **The Right of Erasure**

This is also known as 'the right to be forgotten' and enables data subjects to request the deletion or removal of their personal data where there's no compelling reason for us to keep using it. This is not an absolute right. We may have a right or obligation to retain the personal data, such as where we are under a legal or statutory obligation to do so or have another valid legal reason to retain it.

#### **When can data subjects request erasure?**

Subject to the section below, data subjects have a right to have their personal data erased, and to prevent processing, where:

- the personal data is no longer necessary for the purpose it was originally collected/processed;
- we have been processing their personal data in breach of data protection laws; or
- the personal data has to be erased in order to comply with a legal obligation.

#### **When can we refuse erasure requests?**

The right to erasure does not apply where personal data is processed for certain specified reasons, including where the processing is necessary for the performance of a task in the public interest or the exercise of official authority vested in Tusla or for the establishment, exercise or defence of legal claims.

#### **The Right to Restrict Processing**

In certain situations, data subjects have the right to 'block' or suppress further use of information. When processing is restricted, we can still store the information, but may not use it further.

#### **When is restriction available?**

Data subjects have the right to restrict the processing of their personal data:

- where they disagree with the accuracy of the information, we need to restrict the processing until we have verified the accuracy of the information;
- when processing is unlawful and they oppose erasure and request restriction instead;
- if we no longer need the personal data but they need this to establish, exercise or defend a legal claim; or
- where they have objected to the processing and we are considering whether that objection is valid.

#### **The Right of Objection**

Data subjects have the right to object to certain types of processing of their personal data. We will assess any objection and determine whether we may still process the personal data if we have a valid legal reason for doing so.



*We will continue to process the personal data where it is necessary for research and statistical purposes carried out in the public interest as the right to object does not apply in this instance.*

***Attention***

- *The data subject rights set out above must be explained to data subjects when providing them with the CASP Data Protection Notice.*
- *These are fundamental protections afforded to data subjects under the GDPR and Tusla is required to comply in full with all requirements relating to these rights.*
- *Because these rights are so important, ALL requests relating to these rights must be referred to the DPU for recording, tracking and processing.*
- *The restrictions to these rights or the exceptions as set out above serve to deprive data subjects of these rights and so are applied on a temporary basis and in limited circumstances only, which is why it is important that the DPU oversee all responses to any data subject rights requests.*
- *Any individual can exercise their data protection rights by submitting a request to Tusla. This can be done in any way. For convenience, Tusla offers people the option of submitting their request via the [Data Subject Rights Portal](#)*

## How Data Minimisation is Ensured

### **Guidance:**

*We have to ensure that we only collect the minimum amount of information we need for the purpose of our processing i.e. that the personal data are adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed. Does the purpose need personal data? Please provide a detailed response here on how you have checked that you are only collecting information that is relevant, necessary and adequate for the purpose you need this information for? Please also state how you have ensured that every item of personal data is justified in terms of the purpose at all times the personal data are processed.*

The CASP Data Protection Guidance contains the following section:

### **“6.3 Data Minimisation**

*Tusla must ensure that we only collect the minimum amount of information we need for the purpose of our processing i.e. that the personal data are adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed.*

*We must ensure therefore that all personal data we process is:*

- *adequate – sufficient to properly fulfil our CASP requirements;*
- *relevant – has a rational link to the requirements of CASP; and*
- *limited to what is necessary – we do not collect or hold more than we need for the requirements of CASP.*

*Compliance with the principle of data minimisation can be achieved by restricting personal data to only what is absolutely necessary to achieve the processing purpose. Data minimisation applies at all stages of processing including initial collection i.e. collect only what you need and no more, and sharing and disclosure i.e. disclosure the absolute minimum amount of personal data needed for the purposes of the sharing.*

### **WARNING!**

*Caution must be exercised when corresponding with third parties in relation to abuse allegations.*

***Disclosures of abuse are specific to the individuals who made them , therefore providing details of a disclosure may lead to identification of the PMD.***

*Where it is absolutely necessary to provide details of the disclosure of abuse, staff members must ensure that the PMD (or any other third party) cannot be identified, either directly or indirectly, through the information provided in correspondence with third parties. For example, even if staff members do not disclose personal data which directly identifies the PMD (e.g., name, address etc.), the third party may still be able to identify the PMD, by other means such as the PMD’s age and relationship to the PSAA so replacing these identifiers with [PMD NCCIS Identifier] (as set out in the standard forms and templates) helps to safeguard the data protection and privacy rights of PMDs.*

***Play your part by ensuring that you comply in full with the “Guidelines for informing Third Parties of child protection concerns arising out of an investigation by Tusla into allegations of child abuse and neglect under the Policy & Procedure for Responding to Allegations of Child Abuse and Neglect 2014 or the Child Abuse Substantiation Procedure & Guidance 2019***

*In order to comply with the data minimisation requirements relating to CASP, staff must:*

### **General Requirements**

- *Only request and collect the minimum amount of personal data needed for the relevant stages in the CASP process and be clear about why you need it. If you don’t need it for any of the stages in the CASP process and all activities within each stage as set out in CASP you should not ask for it or keep it.*
- *If you receive more personal data than you need, return what you don’t need;*

- Use only the correct approved forms and correspondence templates to minimise the personal data collected or disclosed;
- When drafting correspondence only personal data which is strictly necessary to achieve the purpose of the correspondence should be included and only transmitted to the intended recipient once their identity and legal entitlement verified and contact details confirmed - any other personal data should be removed;
- Only the minimum amount of personal data required to be transmitted externally by post should be transmitted by post and post should only be used where in person or email transmission is not possible;
- Only the minimum amount of personal data required to be transmitted by email should be transmitted by email and email should only be used where in person transmission is not possible;
- Where it is not strictly necessary to disclose the identity of individuals in correspondence, both direct identifiers (e.g. name and address) and indirect identifiers e.g. any other information that may identify individuals (e.g. relationships) should be removed;
- One useful way of removing personal data to protect the identity of individuals from unauthorised disclosure to third parties is pseudonymisation which involves replacing names and any other identifiers which are easily attributed to individuals with other references. You will note some of the TCMS template letters contain a [PSAA NCCIS identifier] or a [PMD NCCIS identifier] rather than the name of the PSAA or PMD with the name of the PSAA or PMD being disclosed in separate correspondence which contains only the [PSAA NCCIS identifier] or a [PMD NCCIS identifier] and name of the PSAA or PMD and no other information. The Tusla staff member can link this reference to the individual by accessing the PSAA or PMD person record on NCCIS), but as this additional information is not included in the correspondence if the correspondence was issued to the wrong recipient in error or intercepted by someone other than the intended recipient that someone would not be able to identify the PSAA or PMD from the correspondence alone – this is both a data minimisation and a data security control.
- Personal data of one individual (e.g. PMD) may only be disclosed to another individual or organisation (e.g. PSAA) under the CASP process if it is strictly necessary to discharge the requirements of CASP and must be limited only to the personal data strictly necessary to discharge that requirement. Ask yourself whether you need to disclose the personal data for any of the steps under CASP, if you can't answer yes don't share it and if unsure ask your line manager before sharing any personal data.

#### **Relevant Information and Documentation**

- When disclosing personal data contained within 'relevant information and documentation' to the PSAA in order to afford fair procedures to the PSAA the question of what information and documentation is relevant to the substantiation assessment is important when considering what must be disclosed and what must be redacted.
- In considering what information is relevant, social workers should have regard to section 18.2 of CASP Practice Guidance which sets out factors that may be relevant for consideration by social workers when making a determination of founded or unfounded. These factors include environmental details, contextual details, event details, emotional reaction consistent with abuse being described, witness statements consistent with the PMD's statement and/or behaviour, contemporaneous documentation that supports the PMD's testimony, medical/psychological evidence of abuse/trauma as determined by an expert.
- See detailed instructions in the table below on what personal data to redact before disclosure of 'relevant information and documentation' to the PSAA'

The CASP Data Protection Guidance also contains a detailed table of redaction instructions for each data set in scope of CASP.

In addition to the above guidance, CASP Standard Forms and Templates have been designed (and reviewed by the DPU for data protection compliance) and will be built into TCMS for use as part of the standard business process for CASP.

## How Data Accuracy is Ensured

### **Guidance:**

*We have to ensure that all personal data that we process is accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay. Personal data are inaccurate if they are incorrect or misleading as to any matter of fact. No obligation to keep all personal data up to date (only when this is necessary – e.g. taking action against the data subject) There is an obligation will be on the controller to demonstrate accuracy.*

*You should also note here that in accordance with the Data Protection Guidance Practice Matter all correspondence containing sensitive personal data must have a second review (four eyes review, doer and checker) of the name, address and content to ensure that the right content goes to the right person at the right address so include in your answer how you ensure second reviews are conducted where necessary.*

*What measures will be put in place to ensure that data is accurate and up to date? e.g. audit checks, peer checking.*

The CASP Data Protection Guidance contains the following section on data accuracy:

### **“6.4 Data Accuracy**

*Tusla must ensure that all personal data that we process is accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay. Personal data are inaccurate if they are incorrect or misleading as to any matter of fact. There is an obligation on Tusla to demonstrate accuracy.*

#### **Second Review (4 -Eye Review) Process for CASP**

*A ‘second review’ is a process of having at least two people check a document or record to ensure that the right content is contained within that document or record.*

*The following are minimum mandatory requirements relating to CASP:*

- ✓ *When opening a Case Record in relation to an Investigation on TCMS one person (doer) creates the record and inputs the relevant information and a second person (reviewer) checks to make sure that the information is correct;*
- ✓ *When opening a Person Record for a PSAA on NCCIS one person (doer) creates the record and inputs the relevant information and a second person (reviewer) checks to make sure that the information is correct;*
- ✓ *When opening a Person Record for a PMD on NCCIS one person (doer) creates the record and inputs the relevant information and a second person (reviewer) checks to make sure that the information is correct;*
- ✓ *When preparing all correspondence with the PMD and before the correspondence is issued, one person (doer) prepares the correspondence and a second person (reviewer) checks to make sure that the information contained in the correspondence is correct and that it is being sent to the right person at the right address;*
- ✓ *When preparing all correspondence with the PSAA and before the correspondence is issued, one person (doer) prepares the correspondence and a second person (reviewer) checks to make sure that the information contained in the correspondence is correct and that it is being sent to the right person at the right address;*
- ✓ *When preparing all correspondence with third parties and before the correspondence is issued, one person (doer) prepares the correspondence and a second person (reviewer) checks to make sure that the information contained in the correspondence is correct and that it is being sent to the right person at the right address*
- ✓ *When preparing all notifications to relevant third parties and before the correspondence is issued, one person (doer) prepares the correspondence and a second person (reviewer) checks to make sure that the information contained in the correspondence is correct and that it is being sent to the right person at the right address*
- ✓ *All correspondence which has already been reviewed as part of the standard process does not require a second review of the content, but does require a second independent review of the name and address*

before it is posted (e.g. CASP notification of allegations that has already been reviewed by two of the following: Principal Social Workers, Team Leader or Social Worker).

- ✓ All correspondence which is standardised, such as a template letter (which has been written using a BLANK TEMPLATE) only requires a second review of the name and address to confirm the correspondence will issue to the correct recipient.
- ✓ All correspondence which has any other additional personal data contained within it, either of the addressee or of another data subject, must have a second review of the name, address and the content.
- ✓ When individuals are being sent correspondence as part of the CASP process it is critical that those recipients only receive the information that they are entitled to receive and that all other information that they are not entitled to receive is redacted. If you are ever unsure on how to redact any personal data, you must inform your line manager prior to issuing any correspondence.
- ✓ Where a second independent review is not possible (e.g. Lone working), mitigating procedures must be put in place, e.g. Delayed Posting or Batch Checking. This is where correspondence is prepared for post and delayed for a period of time to allow for a further appropriate check by the same person (name/address/content depending on requirements) before it is posted.

#### **Attention**

A significant number of personal data breaches have occurred in Tusla due to inaccuracies in data processed by Tusla.

Data transmitted externally by post must be accurate, complete and up to date and particularly names and addresses of recipients must be those of the intended recipient given the high risk of unauthorised disclosure due to incorrect name and address being entered on correspondence either because this information is transcribed incorrectly from sources such as NCCIS or because the information contained on those sources is inaccurate or out of date.

Further there is a significant risk of unauthorised access due to incorrect reliance being placed on the accuracy of addresses being obtained from third party sources.

It is imperative that everyone play their part in safeguarding personal data by:

- ✓ Ensuring that all databases containing contact details of Service Users and third parties are accurate and kept up to date
- ✓ Regularly verifying addresses when engaging with Service Users and ensuring that the correct address is entered on NCCIS or other databases
- ✓ Regularly verifying addresses and contact details obtained from third party sources with the intended recipient before sending any correspondence
- ✓ Only use BLANK templates when creating correspondence. NEVER use previously populated correspondence as a template for new correspondence
- ✓ NEVER handwrite an address on an envelope. Use windowed envelopes only and fold the letter correctly in the envelope so that only the name and address of the recipient is visible through the window and no other information is visible
- ✓ Transmit CASP correspondence in person if possible.
- ✓ If in person transmission is not possible, use secure electronic transmission. This means that all correspondence must be password protected and attached to an email and emailed to the recipient and the password must be disclosed to the recipient over the phone. NEVER include any CASP correspondence or data in the body of the email
- ✓ If in person and email transmission is not possible, use registered or couriered post only. NEVER use ordinary post to transmit CASP correspondence. Retain a receipt of the register or courier to help track and trace the correspondence in the event of a personal data breach."

### **Data Processor Compliance**

#### **Guidance:**

If Tusla engages a third party to act on its behalf in relation to this processing, that is to process the personal data collected for this process on the instructions of Tusla, this third party may be a data processor. Tusla can only engage a

*data processor if it is satisfied that the data processor can provide sufficient guarantees to Tusla that the personal data it will process on Tusla's behalf will be secured and safeguarded and processed in compliance with data protection legislation. All arrangements with data processors must be governed by a data processing agreement that complies with the requirements of Article 28 of the GDPR.*

*Please state here if you are engaging a data processor in relation to this processing and if a data processing agreement is in place or is required. Please also provide details on what due diligence you have undertaken in relation to this processor to ensure that they can provide guarantees that Tusla personal data will be safeguarded.*

All proposed data sharing with third parties will comply with the requirements of Tusla's Third Party Data Protection and Privacy Risk Management Policy and Standard Operating Procedure before any sharing of personal data takes place.

## Safeguarding International Transfers

### Guidance:

*If TUSLA shares information with a third party that are based in a country outside the EEA, Tusla may be required to implement special type agreements (a SCC Controller to Processor or SCC Controller to Controller under Article 46 of the GDPR) or ensure other forms of safeguards are in place to ensure that the personal data is afforded the same level of protection as if it were processed inside the EEA. It is important therefore for us to understand if any of the personal data will be transferred to any countries so please list any countries outside of Ireland where this data may be processed if relevant.*

Information relevant to child protection concerns will be shared with services in other jurisdictions who hold a stake in child protection and welfare where it has been determined that there may be immediate serious risk to a child.

### **Brussels II, the Hague Convention and Other International Instruments**

EC Regulation 2201/2003 is a single legal instrument which seeks to facilitate the work of Courts and legal practitioners, providing for divorce and 'parental responsibility' and the regulation of cross-border rights of access between children and their parents.

Intercountry data sharing coordinated and managed by International Social Services Ireland (ISSI) under Brussels II and the Hague Convention and as set out below may involve the personal data collected as part of this process. This sharing is carefully managed through established procedures governed by ISSI which is a part of Tusla that facilitates communication among social services in different countries in order to resolve socio-legal problems of individuals and families resulting from migration and international mobility. ISSI cooperates with and receives referrals from Tusla, the Department of Justice and Equality, the Department of Foreign Affairs, other state bodies and the ISS international network. ISSI uses its international network to manage referrals for intercountry services received from Tusla in relation to:

- record checks
- welfare checks
- requests for information/sharing of information
- requests for kinship/fostering assessments
- placement of children in another jurisdiction
- family tracing/search for roots
- family reunification
- separated children seeking asylum
- international surrogacy

and from Government Departments in relation to:

- seeking information with/from other EU countries: Article 55 of Council Regulation (EC) No 2201/2003 (Brussels II)
- child placement from another EU jurisdiction/an Irish child in another EU country: Article 56 of Council Regulation (EC) No 2201/2003 (Brussels II)
- child protection in international child abduction: The Hague Convention of 1996
- international child custody and access: European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody

## Information Owner's Attestation

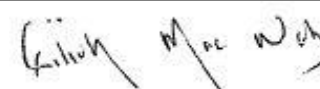
### Attestation:

1. I am satisfied that data processing activities have been accurately described and documented
2. I am satisfied that any significant changes to existing processing activities which triggered the requirement for this DPIA have been assessed and documented accurately
3. Based on the above, and to the best of my knowledge, I am satisfied with the quality, completeness and accuracy of the above template.

Information Owner Responsible for Signing Off on this template that is, responsible for implementation any actions to remediate any risks identified in this template and for confirming the factual accuracy of all content in this template

**Eilidh MacNab**  
Regional Chief Officer  
Dublin North East

Information Owner's Signature



Date of Attestation

14<sup>th</sup> March 2022