

Garda Síochána Act 2005 (Section 42)
(Special Inquiries relating to Garda Síochána)
Order 2013

Report of Ms Emily Logan

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This report is submitted to the Minister for Justice and Equality in accordance with section 42 of the *Garda Síochána Act 2005* (No. 20 of 2005), as amended by the *Criminal Justice Act 2007* (No. 29 of 2007).

Signed: Emily Logan

Emily Logan

Date: 2 April 2014

Table of Contents

PART 1	<u>Introduction</u>	Page
	Glossary of Terms	7
	Establishment of Special Inquiry	11
	Terms of Reference	12
	Outline of the Report	13
	How the Special Inquiry carried out its mandate	14
	Legal and policy framework	17
PART 2	<u>The Case of Child A in Athlone, County Westmeath</u>	22
	Communication that prompted action by An Garda Síochána	22
	Preliminary enquiries undertaken by An Garda Síochána	23
	Enquiries undertaken at Child A's home	25
	Enquiries undertaken at Athlone Garda Station	27
	Decision to invoke section 12 of the <i>Child Care Act 1991</i>	29
	Delivering Child A up to the custody of the HSE	31
	Subsequent interaction with the HSE	32
	Return of Child A to his family	34
	Maintaining confidentiality of information	36
	Conclusions:	
	• Basis for invoking section 12 of the 1991 Act	39
	• Garda-HSE interaction and access to information	57
	• Impact on Child A and his family	59
	• Confidentiality of information	63

PART 3	<u>The Case of Child T in Tallaght, County Dublin</u>	65
	Communication that prompted action by An Garda Síochána	65
	Preliminary enquiries undertaken by An Garda Síochána	66
	Enquiries undertaken at Child T's home	67
	Decision to invoke section 12 of the <i>Child Care Act 1991</i>	70
	Delivering Child T up to the custody of the HSE	72
	Subsequent interaction with the HSE	73
	Return of Child T to her family	75
	Maintaining confidentiality of information	78
	Conclusions	
	<ul style="list-style-type: none"> • Basis for invoking section 12 of the 1991 Act • Garda-HSE interaction and access to information • Impact on Child T and her family • Confidentiality of information 	80 95 98 100
PART 4	<u>Recommendations</u>	104
 <u>Appendices</u>		
Appendix 1	Section 42 of the <i>Garda Síochána Act 2005</i>	120
Appendix 2	Section 12 of the <i>Child Care Act 1991</i>	122
Appendix 3	Timeline for the Special Inquiry	132
Appendix 4	Costs of the Special Inquiry	134

PART 1

Glossary of terms

An Garda Síochána	An Garda Síochána is the national police service of Ireland. Its core functions include the detection and prevention of crime and ensuring Ireland's security. It is generally an unarmed police force.
Barnardos	Barnardos is Ireland's largest children's charity working with vulnerable children and their families.
Buccal swabs	A buccal swab is a way to collect DNA from the cells on the inside of a person's cheek.
Child and Family Agency	The statutory body with responsibility for children and family services in Ireland, including child protection.
Child Care Act 1991	The principal piece of legislation governing child care in Ireland.
Coombe Hospital	The Coombe Women and Infants University Hospital is a teaching hospital providing a range of medical services to both women and newborn infants located in Dublin.
Department of Justice and Equality	The central Government Department with responsibility for matters such as crime and security; equality; civil and criminal law reform; immigration, asylum and naturalisation; and prisons and probation.
Department of Social Protection	The central Government Department with responsibility for policy relating to social protection and social inclusion, as well as social welfare services.
Emergency Care Order	An order that can be sought by the Child and Family Agency for a child who is still at home or who has been removed by the Gardaí in emergency situations. This order may be made without notice being given to the parents or guardians of the child. The order will be made if the judge considers that there is an immediate and serious risk to the health or welfare of the child requiring him/her to be placed, or to remain in, the care of the Child and Family

Agency.

Garda Commissioner	The general direction and control of An Garda Síochána is the responsibility of the Garda Commissioner, who is appointed by the Government. The Commissioner is responsible to the Minister for Justice and Equality.
Garda Rank	<p>The Garda rank structure is as follows (in descending order):</p> <ul style="list-style-type: none">• Commissioner• Deputy Commissioner• Assistant Commissioner• Chief Superintendent• Superintendent• Inspector• Sergeant• Garda• Reserve Garda
Garda Síochána Act 2005	The Garda Síochána Act 2005 is the legislation that sets out the statutory functions of An Garda Síochána, among other things.
Health Service Executive (HSE)	The HSE provides public health and social care services in Ireland. Responsibility for child protection and welfare passed from the HSE to the newly established Child and Family Agency on 1 January 2014.
Iris Oifigiúil	The official Irish State gazette.

Minister for Justice and Equality	The Minister for Justice and Equality is the senior minister at the Department of Justice and Equality.
Missing Persons Bureau	An Garda Síochána's Missing Persons Bureau maintains information on missing persons within the jurisdiction. It also assists District Officers in their investigations of Missing Person Incidents.
Office of the Ombudsman for Children (OCO)	The OCO is the independent, statutory body with responsibility for promoting and monitoring children's rights and welfare in Ireland. Emily Logan is the Ombudsman for Children. She reports directly to the Oireachtas (Parliament) and was appointed by the President of Ireland.
Personal Public Service (PPS) number	The Personal Public Service Number is a unique reference number required to access social welfare benefits, public services and information in Ireland. State agencies that use PPS Numbers to identify individuals include the Department of Social Protection, the Revenue Commissioners and the Health Service Executive (HSE).
Portiuncula Hospital	An acute general and maternity Hospital and one of the hospitals in the Galway and Roscommon University Hospital Group.
Public Health Nurse	Public health nurses are employed by Health Service Executive to provide a range of health care services in the community.
Section 12 of the Child Care Act 1991	Section 12 of the <i>Child Care Act 1991</i> is the provision that allows for children at risk to be removed from their homes in emergency situations.
Special Rapporteur on Child Protection	The role of the Special Rapporteur on Child Protection is to report to the Oireachtas on legal developments relating to the protection of children in Ireland.

Tallaght Hospital

The Adelaide and Meath Hospital, Dublin, incorporating the National Children's Hospital, often referred to simply as Tallaght Hospital, is a teaching hospital in Tallaght, County Dublin, Ireland.

1 Introduction

1.1. Establishment of the Special Inquiry

1.1.1. The Special Inquiry was established by Order of the Minister for Justice and Equality on 9 December 2013, pursuant to Section 42 of the *Garda Síochána Act 2005* (No. 20 of 2005), as amended by the *Criminal Justice Act 2007* (No. 29 of 2007).¹ Notice of the Order establishing the Special Inquiry was published in *Iris Oifigiúil* on 13 December 2013.²

1.1.2. The Minister for Justice and Equality appointed Emily Logan, Ireland's serving Ombudsman for Children, to:

(a) inquire, subject to the terms of reference specified in the *Garda Síochána Act 2005* (Section 42)(Special Inquiries relating to Garda Síochána) Order 2013, into the following matters of public concern:

(i) the exercise by one or more members of the Garda Síochána of powers under section 12 (amended by section 7 of the *Child Care (Amendment) Act 2011* (No.19 of 2011)) of the *Child Care Act 1991* (No.17 of 1991) in respect of

(I) a child in Tallaght, Dublin 24 on 21 October 2013, and

(II) a child in Athlone, County Westmeath on 22 October 2013,

which exercise was the subject of a report dated 6 November 2013 submitted to the Minister by the Garda Commissioner on that date,

and

(b) make a report to the Minister on the conclusion of the inquiry.

¹ Garda Síochána Act 2005 (Section 42)(Special Inquiries relating to Garda Síochána) Order 2013, S.I. No. 481 of 2013. See section 42 of the *Garda Síochána Act 2005*, as amended by section 42 of the *Criminal Justice Act 2007*, at Appendix 1.

² *Iris Oifigiúil* is the official Irish State gazette.

1.2. Terms of Reference

1.2.1. The following were specified as the terms of reference for the Inquiry:

The Inquiry shall have regard to all relevant matters including-

- (a) The information available to An Garda Síochána at the relevant times;
- (b) The nature of any consultation or coordination with the Health Service Executive before or after the exercise of the powers under section 12 (amended by section 7 of the *Child Care (Amendment) Act 2011* (No. 19 of 2011)) of the *Child Care Act 1991* (No. 17 of 1991) in each case;
- (c) The systems and policies for the sharing of information between An Garda Síochána and other relevant organisations involved in the events that are the subject of this inquiry;
- (d) The systems and policies for ensuring the maintenance of appropriate confidentiality in relation to the utilisation of section 12 (amended by section 7 of the *Child Care (Amendment) Act 2011* (No. 19 of 2011)) of the *Child Care Act 1991* (No. 17 of 1991);
- (e) All relevant child protection considerations.

1.3. Outline of the report

- 1.3.1. Part 1 of the report sets out the background to the establishment of the Special Inquiry, its methods of work and the legal and policy framework for the exercise by An Garda Síochána of its functions under section 12 of the *Child Care Act 1991*, as amended (“the 1991 Act”).
- 1.3.2. Part 2 of the report outlines the events relating to the exercise by An Garda Síochána of powers under section 12 of the 1991 Act in respect of a child in Athlone (“Child A”), County Westmeath on 22 October 2013, as well as the Inquiry’s specific findings regarding this case.
- 1.3.3. Part 3 of the report outlines the events relating to the exercise by An Garda Síochána of powers under section 12 of the 1991 Act in respect of a child in Tallaght (“Child T”), Dublin on 21 October 2013, as well as the Inquiry’s specific findings regarding this case.
- 1.3.4. Part 4 sets out the Special Inquiry’s recommendations to the Minister for Justice and Equality.

1.4. How the Inquiry carried out its mandate

Preliminary Enquiries

- 1.4.1. The Inquiry first sought to identify all potential sources of information and documentation necessary to discharge its mandate.
- 1.4.2. Through the Secretary General of the Department of Justice and Equality, the Inquiry received a copy of the report dated 6 November 2013 submitted to the Minister by the Garda Commissioner on the two cases being examined by the Inquiry. Emily Logan received the report on 21 November 2013.
- 1.4.3. In late December 2013, the Inquiry requested the Health Service Executive (“the HSE”)³ to furnish all documentation relevant to the two cases in question, including *in camera* information arising from proceedings under the 1991 Act. All requested information was received by the Inquiry on 3 January 2014.
- 1.4.4. At the request of the Inquiry, the Garda Commissioner and the HSE’s National Director for Children and Family Services each appointed a liaison person to communicate with the Inquiry and to facilitate access to further information and documentation as required.

Procedures

- 1.4.5. Following consideration of all documentation provided by An Garda Síochána and the HSE, it became clear to the Inquiry that it needed to interview relevant individuals in order to complete its understanding of the events in question.

³ Responsibility for children and family services passed from the Health Service Executive to Tusla, the Child and Family Agency, on 1 January 2014. See Child and Family Agency Act 2013(Establishment Day) Order 2013, S.I. 503 of 2013. However, as the events being examined by the Inquiry and the Inquiry’s preliminary requests for information took place prior to the establishment of the Child and Family Agency, the Inquiry’s report refers primarily to the HSE rather than the Agency.

- 1.4.6. For the purposes of undertaking the enquiries envisaged by the Terms of Reference, it was necessary not only to interview members of An Garda Síochána but also other professionals involved in the case, persons familiar with the family and/or the children, and other persons with knowledge or expertise relevant to the Inquiry.
- 1.4.7. Emily Logan proceeded to meet 42 people during the course of the Inquiry, including:
- the children and families at the centre of the cases;
 - the members of An Garda Síochána directly involved in the events in question;
 - HSE Social Workers in the relevant Local Health Offices;
 - Public Health Nurses;
 - the Principal of the school attended by the one of the children taken into care;
 - a Project Leader with Barnardos; and
 - the foster parents in whose care the children were temporarily placed.
- 1.4.8. The Inquiry also met a number of third parties with knowledge and expertise relevant to the Inquiry, including:
- Mr Nils Muižnieks, Commissioner for Human Rights, Council of Europe;
 - Mr Jeroen Schokkenbroek, Special Representative of the Secretary General (SRSG) of the Council of Europe for Roma Issues;
 - Prof. Dermot Walsh, University of Kent, expert in human rights policing; and
 - Dr. Geoffrey Shannon, Special Rapporteur on Child Protection.
- 1.4.9. The Inquiry developed its own procedures for carrying out interviews with those directly involved with the cases under examination. Those who appeared before the Inquiry were furnished with a copy of the provision of the *Garda Síochána Act 2005* underpinning the work of the Inquiry, the statutory instrument establishing the Inquiry, the Inquiry's Terms of Reference and other background information. A number of individuals attending before the inquiry were accompanied, at their request, by a 'support person'; two members of An Garda Síochána were

accompanied by a solicitor. Interviews with both families were held in the presence of a Roma cultural mediator and translator. In addition, both families were accompanied by their respective solicitors.

1.4.10. The purpose of these interviews was:

- to inform the Inquiry of the events surrounding the taking into care of both children; and
- to identify any further sources of information, primarily within An Garda Síochána and the Health Service Executive, that would assist in developing a comprehensive understanding of the events.

1.4.11. With respect to meeting Child A, Child T and their families, the Inquiry determined that it was in the best interests of the children to meet with them in an environment where they were most at ease. Both families accommodated the Inquiry by allowing the meetings to take place in their homes, for which the Inquiry is very grateful.

1.4.12. The Inquiry wishes to emphasise that at no stage of its work has it been necessary to invoke the powers provided under section 42 of the *Garda Síochána Act 2005* to compel cooperation with the Inquiry, either in relation to witnesses or documentation. The Inquiry received the full cooperation of An Garda Síochána, the Health Service Executive and all the individuals with whom the Inquiry met.

1.4.13. The Inquiry wishes to acknowledge the assistance of Mr Paul Harrison and Chief Superintendent Fergus Healy, the nominated liaisons for the Health Service Executive and An Garda Síochána respectively.

1.5. Legal and Policy Framework

Section 12 of the *Child Care Act 1991*

- 1.5.1. The two cases examined by the Inquiry revolved around the exercise by members of An Garda Síochána of powers conferred on them by section 12 of the *Child Care Act 1991*, as amended.
- 1.5.2. Section 12 of the 1991 Act, as it read at the time of the events in question, provided as follows:

“12.—(1) Where a member of the Garda Síochána has *reasonable grounds* for believing that—

(a) there is an *immediate and serious risk to the health or welfare of a child*, and

(b) it would not be sufficient for the protection of the child from such immediate and serious risk to *await the making of an application for an emergency care order by the Health Service Executive under section 13 ... the member, accompanied by such other persons as may be necessary*, may, without warrant, enter (if need be by force) any house or other place (including any building or part of a building, tent, caravan or other temporary or moveable structure, vehicle, vessel, aircraft or hovercraft) and remove the child to safety.

(2) The provisions of *subsection (1)* are without prejudice to any other powers exercisable by a member of the Garda Síochána.

(3) Where a child is removed by a member of the Garda Síochána in accordance with *subsection (1)*, the child shall as soon as possible be delivered up to the custody of the Health Service Executive.

(4) Where a child is delivered up to the custody of the Health Service Executive in accordance with *subsection (3)*, the Executive shall, unless it returns the child to the parent having custody of him or a person acting *in loco parentis* or an order referred to in section 35 has been made in respect of the child, make application for an emergency care order at the next sitting of the District Court held in the same district court district or, in the event that the next such sitting is not due to be

held within three days of the date on which the child is delivered up to the custody of the Executive, at a sitting of the District Court, which has been specially arranged under *section 13(4)*, held within the said three days, and it shall be lawful for the Executive to retain custody of the child pending the hearing of that application.

(5) ...”⁴ [*Emphasis added*]

- 1.5.3. Section 12 of the 1991 Act is far from uncommon by international standards. Many other jurisdictions afford police officers emergency powers to protect children. For example, in England and Wales an equivalent power is afforded to police constables under to section 46 of the Children Act 1989.
- 1.5.4. The Inquiry believes it is fundamentally important that members of An Garda Síochána have emergency powers to protect children when the circumstances demand such action. No information came to the Inquiry’s attention during the course of its work to call into question the essential nature of section 12 of the 1991 Act as part of the statutory framework for the protection of children in Ireland. It is also important that the powers under section 12 are exercised where this is warranted. The concerns raised about the use of section 12 in the cases under consideration should not mean that members of An Garda Síochána become reluctant to use section 12 in cases where it is appropriate to do so. Such an approach could place the safety of children in jeopardy.
- 1.5.5. There are a number of aspects of section 12 of the 1991 Act that are of particular importance, namely: the presence of reasonable grounds underpinning a belief that there is a risk to a child’s health or welfare; the necessarily immediate and serious nature of that risk; and the insufficiency of waiting for an application to the District Court for an emergency care order.

⁴ Section 12 has since been revised to take account of the establishment of the Child and Family Agency. The references to the Health Service Executive have been replaced with references to the Child and Family Agency. See s.90 of the Child and Family Agency Act 2013 and Schedule 2, Part 4, para 8. Section 12(5) of the 1991 Act contains transitional provisions that are not relevant for present purposes.

- 1.5.6. The Inquiry has set out its understanding of the legal parameters of these elements at Appendix 2 below. The Inquiry has also considered the relevance of the *European Convention on Human Rights Act 2003* to the application of section 12 of the 1991 Act, particularly in light of the State's obligations under Article 8 and Article 14 of the European Convention on Human Rights relating to respect for family life and non-discrimination respectively.

Garda Síochána Policy on the Investigation of Sexual Crime, Crimes against Children and Child Welfare (2013) - HQ Directive 48/2013

- 1.5.7. An Garda Síochána's policy on the use of section 12 of the *Child Care Act 1991* is set out in H.Q. Directive 48/2013 and the accompanying policy document, entitled *Garda Síochána Policy on the Investigation of Sexual Crime, Crimes against Children and Child Welfare (2013)*.
- 1.5.8. The guidance states that where members of An Garda Síochána encounter incidents in which the removal of a child to safety must be considered pursuant to section 12 of the *Child Care Act 1991* as amended, two central tenets should be borne in mind:
- That it is generally in the best interests of a child to be brought up in her/his family; and
 - That the welfare of the child is the first and paramount consideration.
- 1.5.9. The guidance states further that a balance must be achieved between those two issues when deciding whether or not to remove a child to safety and that the decision must not be taken lightly.

- 1.5.10. Members of An Garda Síochána are instructed to satisfy themselves that there is an immediate and serious risk to the health and welfare of the children concerned before invoking section 12 of the 1991 Act, and that it would not be sufficient to await the making of an application by the HSE for an emergency care order under section 13 of the 1991 Act or an application for a warrant under section 35 of that Act.

Children First: Guidance for the Protection and Welfare of Children

- 1.5.11. *Children First: National Guidance for the Protection and Welfare of Children* is a high-level policy document published by the Department of Children and Youth Affairs providing guidance on how to deal with child protection and welfare concerns.
- 1.5.12. The guidance outlines the powers provided for in section 12 of the 1991 Act.⁵ It also outlines how the Child and Family Agency is to provide for children in emergency situations.⁶
- 1.5.13. *Children First* notes that the removal of children from their parents/carers or their homes can be very stressful and requires sensitive handling, and that the likely effects of separation must be balanced against the danger of leaving the child at home.⁷ The guidance notes further that under no circumstances should a child be left in a situation that exposes him or her to harm or risk of harm pending intervention by the appropriate services.⁸

⁵ Department of Children and Youth Affairs, *Children First: National Guidance for the Protection and Welfare of Children* (Dublin: Government Publications, 2011) section 7.1.2

⁶ *Children First*, section 5.12

⁷ *Children First*, section 5.12.4

⁸ *Children First*, section 5.12.7

PART 2

2. The Case of Child A in Athlone, County Westmeath

The Special Inquiry was tasked with investigating the exercise by An Garda Síochána of powers under section 12 of Child Care Act 1991, as amended, in respect of a two year old child ("Child A") in Athlone, County Westmeath on 22 October 2013.

2.1. Communication that prompted action by An Garda Síochána

2.1.1. At 9.53am on Monday 21 October 2013, the Missing Persons Bureau at Garda Headquarters received an email regarding Child A from a member of the public. The subject line of the email read "*Suspected Child Abduction*".

2.1.2. The individual who sent the email had met Child A and his family at a festival in County Clare in July 2013. She outlined how she had stopped at one of the festival stalls so that her daughters could have their hair braided; this is where she met Child A's family. The individual wrote that the family at the stall consisted of a young couple in their twenties, an older woman and a baby. The member of the public went on to state that:

While my children were getting their braids in I preoccupied myself with the little baby [Child A]. He had very blonde hair and the bluest eyes and his complexion was also fair...I commented on his colouring and the young woman then said "ehh his grandfather" meaning he got his genes from his grandfather. Apart from the baby, all the others were completely dark in complexion, eyes and hair.

2.1.3. The email to the Missing Persons Bureau indicated that the member of the public considered the difference in appearance between the child and the rest of the family to be unusual. She wrote further that:

The recent news about the little girl Maria⁹ who was found made me realise that I should have reported it.

2.1.4. The email sent to the Missing Persons Bureau did not include the name of the family in question. An Garda Síochána was able to identify the family by examining the details provided to Clare County Council by the family in order to obtain a licence to trade at the festival in July 2013. The family was that of Child A, based in Athlone. The matter was therefore referred by Gardaí in County Clare to Athlone Garda Station on the afternoon of Tuesday 22 October 2013, with a request for Gardaí from that station to call to the family's home and *"to make enquiries as to whether a small blonde haired baby boy is a member of their family"*. It was this communication that instigated the visit by members of An Garda Síochána to Child A's home on 22 October 2013.

2.1.5. The member of the public's description of the case as suspected child abduction was significant as far as An Garda Síochána was concerned. Receiving such an email through the Missing Persons Bureau caused the Gardaí in Athlone Garda Station to treat the case as a potentially high-risk situation and one requiring immediate Garda action.

2.2. Preliminary enquiries undertaken by An Garda Síochána

2.2.1. The email forwarded by the Missing Persons Bureau was sent by Gardaí in County Clare to Sergeant G in Athlone Garda Station at 3.24pm on 22 October 2013. As Sergeant G was engaged in other duties, she did not have the opportunity to review the email until 5pm.

2.2.2. After examining the email, Sergeant G undertook an initial search of internal Garda records to establish whether any child protection concerns relating to Child A had previously been brought to the attention of Gardaí. No such records existed.

⁹ "Maria" is a blonde, blue-eyed Roma child who was taken by police from a Roma settlement in Farsala, Greece on 16 October 2013. The case gained significant international media attention.

- 2.2.3. Sergeant G then brought the correspondence to the attention of Inspector H. They discussed the matter and agreed that it would be prudent to assign a member of An Garda Síochána to conduct enquiries regarding the substance of the information contained in the email forwarded by the Missing Persons Bureau. It was decided to appoint the task to Garda J because he was familiar with the family in question and had a good relationship with them.
- 2.2.4. Sergeant G indicated to the Inquiry that the concern raised in the email prompted her to consider whether members of the public, influenced by the international media coverage of the case in Greece, might now believe that blonde children in Roma families are all abducted. However, Sergeant G indicated that the matter relating to Child A still had to be confirmed or further examined because a concern had been raised.
- 2.2.5. At 5.30pm, Sergeant G passed the correspondence forwarded by the Missing Persons Bureau to Garda J and asked him to call to Child A's home.
- 2.2.6. Garda J had come to know Child A's family through the course of his duties and had developed a good relationship with them. He indicated to the Inquiry that his knowledge of the family was such that he would expect to know all the children in the house, but that he had never seen Child A before. When he initially discussed the communication forwarded by the Missing Persons Bureau with Sergeant G, Garda J formed the view that, in light of his knowledge of the family, there was no boy matching Child A's description at the relevant address. The internal Garda report into the case indicates that Garda J's opinion was sufficiently firm that Garda J and Sergeant G did not carry out any further enquiries prior to the visit to Child A's home.

2.3. Enquiries undertaken at Child A's home

- 2.3.1. At 7pm, Garda J called to Child A's home and was accompanied by Garda K. The delay in arriving at Child A's home was due to the absence of transport at the Garda station until that time.
- 2.3.2. Child A was present, as were his mother and father. Garda J noticed that Child A was blonde, pale and had blue eyes, and that he did not appear to resemble his parents. Garda J then asked Child A's mother who the child's parents were; Child A's mother said that the child was her son and that her partner was the child's father.
- 2.3.3. Garda J then requested Child A's parents to produce identification for themselves and to provide birth certificates for their children, Child A and his four-year-old sister. Garda J indicated to the Inquiry that Child A's parents queried why they were being asked to produce the documentation, as Garda J knew them and their family; Garda J indicated that his response to the parents was that he was making enquiries regarding who was staying in the house at that time.
- 2.3.4. The information provided by An Garda Síochána to the Inquiry indicates that Child A's parents were hesitant about producing the requested documents, and that this appeared unusual to Garda J given his good relationship with them. The parents nonetheless provided their own identity cards but could not immediately find the birth certificates; however, the birth certificates were found within twenty minutes and were handed over to Garda K.
- 2.3.5. Garda J and Garda K then examined the birth certificates. Both felt that there were some discrepancies between the two certificates. There were three specific aspects of the birth certificates that caused some concern: the birth certificate for Child A's sister did not include their father's name; his sister's birth certificate recorded a different surname for their mother from that noted on Child A's birth certificate;

and his sister's birth certificate also had a different signature for the child's mother from that included in Child A's birth certificate.

- 2.3.6. In relation to the recording of the father's name on Child A's birth certificate but not that of his sister, Child A's mother explained that she and her partner, Child A's father, were not together at the time of her birth; his name was therefore not recorded on the birth certificate. The Inquiry notes that this explanation was provided to Garda J and Garda K when they were at Child A's home.
- 2.3.7. With respect to the surname for Child A's mother included on his sister's birth certificate, the Inquiry has established that this is the first name of the child's maternal grandmother. The name was recorded on the birth certificate of Child A's older sister in error at Portiuncula Hospital; the Inquiry believes that because of her level of English and literacy at the time and the fact that she was alone at the time of the birth, Child A's mother was not in a position to prevent the inaccurate details being recorded on the certificate.
- 2.3.8. There is a difference between the signature recorded for Child A's mother on his birth certificate and that of his sister. The signature contained on his older sister's birth certificate is indistinct and could not be ascribed clearly to Child A's mother. On Child A's birth certificate, his parents' signatures are printed in block capitals.
- 2.3.9. The Inquiry is satisfied that the discrepancy in the mother's signatures is attributable to her literacy level at the time her daughter was born. The Public Health Nurse with a long-standing professional relationship with the family confirmed to the Inquiry that in the early years of her service's engagement with Child A's mother, she signed documents with an 'X'. By the time Child A was born, his mother was in a position to print her name, which she did on his birth certificate.
- 2.3.10. Having reviewed the birth certificates, Garda J's doubts regarding the documents were not allayed because he was not provided with an explanation for two of the

three concerns he put to Child A's parents. Garda J then consulted with another colleague, Sergeant L, regarding how he should proceed. Sergeant L spoke with Inspector H and they agreed that Child A's parents should be asked to come to the Garda station voluntarily so that further enquiries could be carried out into Child A's identity. Garda J then requested that Child A, his father and his mother accompany him to the station. They agreed to do so.

- 2.3.11. Garda J indicated to the Inquiry that Child A's parents knew that the enquiries related to Child A's identity; Child A's parents submitted to the Inquiry that they did not understand fully why they were being asked to go to the station, though they knew that the Gardaí had concerns regarding Child A's identity. Child A's father indicated to the Inquiry that he agreed to go because he was scared and he did not wish to cause trouble.

2.4. Enquiries undertaken at Athlone Garda Station

- 2.4.1. At approximately 7.30pm, Child A and his parents arrived at Athlone Garda Station. Garda J informed Sergeant M, who was the duty Sergeant in the station at the time, that the parents and child were in the interview room on a voluntary basis and that he was following up on a suspected abduction enquiry from the Missing Persons Bureau in Garda Headquarters.
- 2.4.2. In order to advance his enquiries, Garda J contacted Portiuncula Hospital - the maternity hospital indicated on Child A's birth certificate as his place of birth - at 7.45pm. The hospital was not in a position to confirm the details of Child A's birth immediately; however, Garda J received a telephone call at 8pm from the Hospital indicating that Child A's mother had given birth to a baby boy on the same date as the date of birth included on Child A's birth certificate. Garda J enquired if the hospital had any further details relating to the child on file – such as any details relating to his appearance – but he was informed that no such details were recorded.

- 2.4.3. Following the confirmation by the hospital in which Child A was born of the details on his birth certificate, there were further consultations between Garda J and his colleagues. There was consensus among them that the information provided by the hospital was not sufficient to assuage their doubts. A number of other avenues were explored to gather further information, including the possibility of contacting the midwife who assisted with Child A's birth and other Health Service Executive staff members.
- 2.4.4. In parallel with this, Inspector H discussed the matter with Superintendent N. This discussion included a consideration of possibly invoking section 12 of the 1991 Act in the event that Child A's identity was not established to the satisfaction of An Garda Síochána. The Inquiry understands that one of the concerns shared by Inspector H and Superintendent N was that, in the event that Child A was not in fact the child of the couple in the Garda station at that time, there would be a risk of flight now that his parents had been made aware of the Garda enquiries.
- 2.4.5. Superintendent N also contacted Sergeant M to ask if an interpreter was needed. Sergeant M indicated that an interpreter would not be necessary, as his view was that Child A's father had sufficiently good English to obviate the need for such assistance.
- 2.4.6. At approximately 8.25pm, Garda J requested Child A's parents to provide contact details and names for any social workers that had dealt with the family and with Child A. They could not provide any at that time. Garda J asked Child A's parents if they were aware of the cases relating to the identity of blonde, blue-eyed and pale children in Greece and Tallaght. Garda J indicated that he posed this question in order to underline the significance of the enquiries that he and his colleagues were undertaking with respect to Child A. Child A's parents indicated that they were unaware of the cases at that time.

2.5. Decision to invoke section 12 of the Child Care Act 1991

2.5.1. Following further discussion with his colleagues, Garda J determined that the concerns regarding Child A's identity had not been addressed adequately. Furthermore, it was agreed among the members of An Garda Síochána involved in these discussions that no further information could be obtained that night. As a result, and in light of the concerns held by the Gardaí involved regarding the risk of flight should Child A be returned home, Garda J decided to invoke section 12 of the 1991 Act at 9pm. The Inquiry understands that this was the first occasion on which Garda J invoked this provision of the 1991 Act but notes that he was in constant contact with his superiors throughout the process.

2.5.2. The internal Garda report into the incident summarised the rationale for invoking section 12 of the 1991 Act as follows:

- Garda J undertook his enquiries in response to an email from the Missing Persons Bureau regarding a case of *"suspected child abduction"*.
- From his knowledge of the family, Garda J was satisfied that Child A's father did not have a child matching Child A's description.
- Upon arrival at the family home, Garda J found a child matching the description in the email sent to the Missing Persons Bureau.
- Garda J had extensive knowledge of the family and he was aware of previous bench warrants for certain family members, as well as what is described in the Garda report as the family's transient nature.
- Garda J had seen Child A's mother with his older sister on many occasions in Athlone but Garda J had never seen Child A.
- Child A's parents were hesitant in providing documentation to Garda J and his colleague when they called to Child A's home.
- There were discrepancies between Child A's birth certificate and that of his sister, which were not explained in full to Garda J.

- The Gardaí could not obtain further information regarding Child A's identity from the Health Service Executive at the time of their enquiries on 22 October 2013.
- Although Portiuncula Hospital had confirmed that Child A's mother had given birth to a boy on the date indicated on Child A's birth certificate, the Hospital could not provide a description of the child.
- Child A's family were by that stage aware that Gardaí were carrying out enquiries regarding the child's identity; the Gardaí were concerned that if the child were returned, he might be removed from the jurisdiction.
- Garda J and his senior colleagues were of the view that no other operational alternatives provided an appropriate safeguard for Child A's welfare.
- As no Court was available at that time, Garda J considered that it would not be appropriate to seek a warrant under section 35 of the 1991 Act or wait for an emergency care order under section 13 of the *Child Care Act 1991*.
- Garda J was satisfied on these grounds that there was an immediate and serious risk to the health and welfare of Child A and that invoking section 12 of the Child Care Act was the most prudent course of action.

2.5.3. Approximately half an hour before Garda J invoked section 12 of the 1991 Act, Superintendent N advised Sergeant M to seek permission from Child A's parents to allow buccal swabs to be taken from them and from Child A in order to establish their genetic relationship. These swabs were ultimately taken at 9.44pm. Superintendent N had made arrangements for the samples to be sent to the Forensic Science Laboratory and they were dispatched at 9am the following morning.

2.5.4. Sergeant G – who had initially received the email forwarded by the Missing Persons Bureau – had been kept apprised of developments in relation to this case. Shortly after 9pm on 22 October, she attempted to contact a local HSE Social Work Team Leader in order to ascertain whether the HSE had any relevant information, though she knew that the contact was being made outside working hours and was

therefore unlikely to succeed. In the event, the Social Work Team Leader did not receive Sergeant G's message until the following morning.

2.5.5. After Garda J had invoked section 12 of the Child Care Act 1991, Child A's parents provided him with the name and number of a Project Leader with Barnardos who had been supporting the family since August 2011. Garda J attempted to contact the Project Leader but was unsuccessful; she only received his message the following morning.

2.5.6. In advance of his placement in foster care, Child A's parents were asked if the child had any health needs of which the foster carers should be aware. It was in the context of this conversation that Child A's father indicated to Garda J and to Sergeant M that Child A has albinism.

2.5.7. The Inquiry has established that at three months of age, Child A was referred by the Public Health Nurse to the local early intervention team because he did not meet two domains of his developmental milestones, indicating possible developmental delay. In addition, the child presented with nystagmus (involuntary eye movement) causing concern about possible visual impairment. A referral to Our Lady's Hospital for Children, Crumlin resulted in a diagnosis of oculocutaneous albinism, with nystagmus and visual impairment presenting as symptoms of the albinism.

2.6. Delivering Child A up to the custody of the Health Service Executive

2.6.1. Arrangements were made for Child A's placement with a foster family overnight. This was done through Five Rivers Fostering Ireland, an organisation contracted by the Health Service Executive to provide emergency placements of this nature. At 10.45pm, Child A was driven to his foster care placement by three members of An Garda Síochána. Child A arrived at his placement at 11.05pm.

2.6.2. From that point on, the responsibility for Child A rested with the HSE. However, what happened after Child A was delivered up to the custody of the HSE is relevant for the purposes of the Special Inquiry. It is, for example, relevant in assessing the impact of the process initiated by the invocation of section 12 on Child A and on his family. It is also relevant to assessing the coordination by An Garda Síochána with the HSE after section 12 was invoked. Furthermore, it is relevant to a consideration of whether steps taken after section 12 was invoked might instead have been taken before section 12 was invoked. Finally, the Inquiry believes it is also relevant to an assessment of whether confidentiality was appropriately maintained in the case of Child A.

2.6.3. Child A was placed with very experienced foster parents. On his arrival, the foster mother noticed Child A's nystagmus and asked why his eyes were moving. She was told by one of the Gardaí that accompanied the child that this happens to him when he is angry. The information available to the Inquiry suggests that the foster parents displayed great kindness to Child A and comforted him until he fell asleep. Apart from calling out for his mother at approximately 4am, Child A slept through the night. In the morning he continued to call out for his mother. The foster parents reported that on the morning of 23 October, Child A initially didn't want to eat anything but that he ultimately had some breakfast cereal prior to being brought back to Athlone.

2.7. Subsequent interaction with the Health Service Executive

2.7.1. Shortly after 9am on Wednesday 23 October, Sergeant G spoke with the local HSE Social Work Team Leader whom she had tried to contact the previous evening. She also contacted the Duty Social Worker and the Public Health Nurse who had been engaging with Child A since his birth. Sergeant G was informed of the various

services that had engaged with Child A's family and of the child's nystagmus and albinism. None of the HSE services had any doubts regarding the child's identity.

2.7.2. The local Public Health Nursing team received a preliminary and final notification of Child A's birth from Portiuncula Hospital within 36 hours of Child A's birth, in accordance with standard practice. A named Public Health Nurse (PHN) has worked with the family since September 2009. The same PHN was assigned to Child A shortly after his birth in 2011. In addition to the routine developmental checks, the PHN has supported Child A's parents in addressing particular health needs that Child A has, namely those arising from his albinism, nystagmus and visual impairment. Child A and his family are therefore well known to the PHN, who has a substantial, ongoing professional relationship with the family. This information was not available to An Garda Síochána until the morning of 23 October 2013.

2.7.3. The local HSE Social Work Team also held information relevant to the identification of Child A. A number of referrals had been made to the local HSE Social Work Team in relation to the material conditions in which Child A's family lived as a result of their poverty and ineligibility to access certain social welfare supports. The first of these referrals was made by the Public Health Nurse following her first visit to Child A the day after his birth. The concern on that occasion was that Child A's parents did not have sufficient resources to provide formula for their new-born baby; subsequent referrals also related to difficulties stemming from material deprivation. Child A's family was referred by the HSE on to other services and has received support from St. Vincent de Paul and from Barnardos. This information was not available to An Garda Síochána until the morning of 23 October 2013.

2.7.4. Barnardos has been providing a range of supports to Child A and his family since August 2011. These include: reading and communicating the contents of correspondence sent from State authorities to Child A's parents; making travel arrangements for Child A to attend medical appointments in Our Lady's Children's

Hospital in Crumlin; accompanying Child A and his parents to medical appointments; and bringing prescription medicine to the family. Child A and his family have a named Project Leader who has worked closely with the family throughout their engagement with Barnardos. This information was not available to An Garda Síochána until the morning of 23 October 2013.

2.8. Return of Child A to his family

- 2.8.1. Child A's parents arrived at the local Health Centre shortly after 8am on 23 October 2013, looking for the named Public Health Nurse who had been engaging with the family and with Child A. The PHN described the parents as being pale and in a state of distress and shock, explaining that Child A had been taken by the Gardaí and asking the PHN to contact the Gardaí on their behalf. The PHN reported to the Inquiry that in her view, Child A's parents did not understand fully what had happened the previous night, beyond the fact that their child had been taken by Gardaí.
- 2.8.2. At approximately 9.30am on 23 October 2013, a case conference was held in Athlone Garda Station at which Sergeant G relayed the information provided by the HSE to her colleagues. The conclusion of this meeting was that An Garda Síochána had no further concerns regarding Child A and were satisfied that Child A's identity was no longer in doubt. Sergeant G communicated this decision to the HSE Social Work Team Leader at 10.16am.
- 2.8.3. The HSE Social Work Team had undertaken its own separate network checks in relation to Child A, which had included contact with the Public Health Nurse, Child A's General Practitioner and Barnardos. The HSE was satisfied that Child A's identity was not in doubt given the extensive engagement between the HSE and Child A's family. The HSE was also clear that there were no child protection concerns in relation to the child. The HSE Social Work Team was satisfied not to wait for DNA

tests and was of the view that Child A should be returned to his family immediately. The HSE Social Work Team communicated its decision to return Child A to the care of his parents to An Garda Síochána at 10.50am.

- 2.8.4. The HSE made arrangements for Child A to be returned to the care of his parents. In an effort to return the child to his family as soon as possible, the Duty Social Worker who handled the case on the morning of 23 October requested the foster parents to bring Child A to the social work offices.
- 2.8.5. Child A was brought to the local Health Centre at approximately 11.30am on 23 October 2013. The Duty Social Worker reported that Child A would not leave the arms of the foster parent until his own parents arrived and that on their arrival, Child A's mood and demeanour transformed significantly for the better.
- 2.8.6. Child A was reunited with his parents and returned to their care. The foster parent stated that Child A's father thanked him for looking after Child A.
- 2.8.7. Later that day, Child A and his family went to Ballinasloe. A member of the public saw him and his parents and contacted the local Garda station to indicate that he or she had seen a young boy with fair skin, blue eyes and blonde hair in the company of members of the Roma community. Gardaí in Ballinasloe contacted Athlone Garda Station and forwarded a photo of the family in order to establish whether it was the same family that had been at the centre of the case in Athlone. Garda J confirmed that the child seen by the member of the public in Ballinasloe that afternoon was Child A.

2.9. Maintaining confidentiality of information

- 2.9.1. The Inquiry was charged with considering the systems and policies for ensuring the maintenance of appropriate confidentiality in relation to the utilisation of section 12 of the *Child Care Act 1991*.
- 2.9.2. There are a range of requirements placed on members of An Garda Síochána not to disclose sensitive information that may come to members' attention in the course of their duties. These include:
- Section 62 of the *Garda Síochána Act 2005*;
 - The *Garda Síochána (Discipline) Regulations 2007*;
 - Chapter 17 of the *Garda Síochána Code*;
 - HQ Directive 95/2012 'Data Protection in An Garda Síochána', along with its associated Code of Practice; and
 - The *Child Care Act 1991*, as amended.
- 2.9.3. Section 62 of the *Garda Síochána Act 2005* provides that a member of An Garda Síochána shall not disclose any information obtained in the course of carrying out his or her duties if that person knows that the disclosure of the information is likely to have a harmful effect. Such a disclosure is deemed to have a harmful effect if it results in the publication of personal information and constitutes an unwarranted and serious infringement of a person's right to privacy.¹⁰ It is an offence to contravene this provision of the 2005 Act.¹¹
- 2.9.4. Under Regulation 5 of the *Garda Síochána (Discipline) Regulations 2007*, it is a breach of discipline to make an unauthorised communication in relation to any information which comes to the member's knowledge in the course of his or her duties and was not available to members of the public.¹² This excludes a

¹⁰ Section 62(2)(h) of the *Garda Síochána Act 2005*

¹¹ Section 62(5) of the *Garda Síochána Act 2005*

¹² See Regulation 5 and para. 7(a) of the Schedule to the *Garda Síochána (Discipline) Regulations 2007*

communication made in the execution of a Garda's duties or authorised by the Commissioner.¹³

- 2.9.5. Section 17.2.1 of the Garda Síochána Code provides that members of An Garda Síochána will not publish or cause to be published or by any indiscretion or want of due care, act or fail to act in any way that may lead to the publication in any newspaper, placard or other public print – including publication via the internet or by circulation of email or otherwise – of any letter, order, statement or return, or any extract, or matter whatsoever of an official nature, without express authority to that effect.¹⁴
- 2.9.6. Section 17 goes on to specify under what circumstances information may be shared with the media and by what channels such information may be conveyed. The Inquiry notes that section 17.5 of the Code highlights that, in general, the limitations on the release of information to the media apply to matters of personal privacy.
- 2.9.7. Garda HQ Directive 95/2012 on the issue of data protection states that the inappropriate release of any data in the possession of An Garda Síochána to external agencies or individuals is prohibited. It states further that the unauthorised release of Garda information to any source external to An Garda Síochána will be fully investigated and processed in accordance with the Garda Síochána (Discipline) Regulations 2007. The Data Protection Code of Guidance for An Garda Síochána provides further detail regarding the obligations placed on Gardaí in this domain.¹⁵

¹³ See para. 7(b) of the Schedule to the Garda Síochána (Discipline) Regulations 2007

¹⁴ Section 17.2.1 of the Garda Síochána Code.

¹⁵ An Garda Síochána, *Data Protection: Code of Practice for An Garda Síochána* (2012); see in particular section 4.3.

2.9.8. The *Child Care Act 1991*, as amended, also places restrictions on the information that may be shared in relation to proceedings under the Act. Section 29(1) lays down the *in camera* rule. It provides that “*proceedings under Part III, IV or VI [of the 1991 Act] shall be heard otherwise than in public*”.¹⁶ Section 31(1) of the 1991 Act provides further that:

No matter likely to lead members of the public to identify a child who is or has been the subject of proceedings under Part III, IV or VI shall be published in a written publication available to the public or be broadcast.

2.9.9. Breach of section 31 of the 1991 Act is an offence. Breach of the *in camera* rule set out in section 29 of the 1991 Act is a contempt of court.

2.9.10. The Inquiry understands that in the case of Child A, local Garda management followed procedure in relation to initially contacting the Garda Press Office on the evening of 22 October 2013 in relation to the case. Athlone Garda Station made further contact with the Garda Press Office on the morning of 23 October 2013 to establish whether the Press Office had received any contacts from the media regarding the case; the Press Office confirmed that no such contacts had been made. Other members of An Garda Síochána in Athlone Garda Station were briefed by local Garda management on the morning of 23 October and reminded that any contacts from the media should be directed to the Garda Press Office.

2.9.11. The Inquiry has established from the media reporting on the case of Child A that they were made aware of the case not long before Child A was returned to his parents’ care on the morning of 23 October 2013. Child A’s parents and the Project Leader from Barnardos reported that there was a media presence at their home when they returned from the office of the local Social Work Team.

¹⁶ Section 29(1) of the Child Care Act 1991. Parts III, IV and VI of the 1991 Act relate to the protection of children in emergencies, care proceedings and children in the care of the Child and Family Agency respectively.

2.10. Conclusions

Basis for invoking section 12 of the Child Care Act 1991

Communication from the member of the public

- 2.10.1. It is clear to the Inquiry from both the internal Garda reports and its interviews with members of the An Garda Síochána that the description of the concern from the member of the public as suspected child abduction – coupled with the fact that the communication had been forwarded by the Missing Persons Bureau – conferred a sense of seriousness on the communication.
- 2.10.2. However, it is not clear to what extent the source and nature of the information contained in the email was evaluated by An Garda Síochána.
- 2.10.3. The member of the public who sent the email did not indicate that she had any knowledge of Child A's family or that she had interacted with them on any occasion other than the one occasion described in the email. That interaction between them in July 2013 was described in cordial terms; indeed, the member of the public was not prompted to raise any concerns regarding Child A at the time, some three months before her email to An Garda Síochána.
- 2.10.4. The concern raised by the member of the public in her email of 21 October 2013 to the Missing Persons Bureau appears to have rested on two grounds. The first was the physical dissimilarity between Child A and his family. The second was the perceived similarity between this case and the one in Greece relating to the child named "Maria", which had gained significant international media attention by the time the email was sent to the Missing Persons Bureau on the morning of 21 October 2013.

- 2.10.5. The Inquiry is firmly of the view that physical dissimilarities between parents and their children do not constitute a reasonable basis for suspecting that such children have been abducted. There are many reasons why a child might not resemble his or her parents. The Inquiry does not believe it is necessary to set out information regarding heritable traits or indeed outline reasons unrelated to a child's genetic background that would explain why he or she does not apparently show such a resemblance. It is taken to be self-evident that, in general terms, children do not always look like their parents. It is equally self-evident that this applies to children in the Roma community. Such a dissimilarity should not stand in need of further explanation with respect to a Roma child where it would not occasion suspicion regarding the identity of another child.
- 2.10.6. As regards the international dimension to the concerns expressed by the member of the public, she does not appear to have been aware of the broader context of the international events. The concerns raised in the Greek case were influenced by - and indeed fed - unfounded and deeply prejudiced myths regarding members of the Roma community abducting children. The member of the public appears to have been heavily influenced by the media coverage of the case in Greece, which led to a suspicion of child abduction in the absence of any indications or evidence that would support such a conclusion.
- 2.10.7. In light of this, it is not clear why An Garda Síochána placed such weight on the member of the public's description of the case as one of suspected child abduction and determined that it was a potentially high-risk situation and one requiring immediate Garda action. Indeed, the Inquiry notes in this regard that one of the internal Garda reports on this case commented that:

The continued use of the heading used by [member of the public who sent the email] 'Suspected Child Abduction' was unhelpful regarding this matter, and only expressed the opinion of [member of the public who sent the email], not of An Garda Síochána.

- 2.10.8. The Inquiry accepts that An Garda Síochána cannot ignore concerns that are brought to its attention. However, the Inquiry believes that it is necessary and appropriate to evaluate the source and nature of such concerns.
- 2.10.9. In this case, the member of public who contacted the Missing Persons Bureau came to an entirely unwarranted conclusion of suspected child abduction based solely on the child's appearance and the media coverage of the case in Greece. Had other information been provided – for example, concerns based on demonstrable knowledge of the family in question or concerns regarding the observed interaction between the family members and Child A – it would be understandable to treat the case with a degree of urgency. Meeting a Roma family on one occasion and observing that the family includes a child with blonde hair, blue eyes and pale skin does not support a conclusion of suspected child abduction.
- 2.10.10. The Inquiry concludes that An Garda Síochána had not in fact been presented with any information that would suggest a case of child abduction. The description by the member of the public of the case as one of suspected child abduction was entirely unsupported by any of the information contained in her communication to the Missing Persons Bureau. The Inquiry does not believe that this communication provided a sufficient basis for forming the view that the case was potentially high-risk, nor does the Inquiry believe that the email should have generated such doubt with respect to Child A's identity.
- 2.10.11. The Inquiry believes that it was appropriate for An Garda Síochána to carry out enquiries in response to the communication sent to the Missing Persons Bureau; however, the Inquiry is of the view that the concerns set out in that email should have been evaluated more critically by An Garda Síochána and that this should in turn have tempered the suspicions held by the Gardaí in relation to Child A to a significant degree.

Prior knowledge of Child A's family

- 2.10.12. From interviewing both Garda J and Child A's family, it is clear to the Inquiry that a well-established and cordial relationship existed between them at the time of the incident on 22 October 2013. The Inquiry also notes that this positive relationship has continued even after the events that are the subject of this Inquiry, highlighting the commitment of the Garda in question to his duties in the area of community engagement.
- 2.10.13. Garda J's work in the community and his knowledge of Child A's family generated an expectation – shared by Garda J and his superiors - that he would know all the children in Child A's family and, more generally, the children of the "patch" in which he works. Garda J indicated to the Inquiry that he often sees Child A's family in Athlone and had never seen Child A prior to calling to Child A's home on 22 October 2013. This led Garda J to hold a firm opinion there was no child matching Child A's description living in the household in question. The Inquiry recalls that it was on this basis that Garda J and Sergeant G did not carry out any further enquiries prior to the visit to Child A's home.
- 2.10.14. The facts of this case demonstrate that such a strong expectation of an individual Garda's knowledge of a particular family or area is not warranted. The possibility that a Garda working in the community might not have seen a child is greater with respect to younger children, as the number of occasions on which such children might be observed is obviously smaller.
- 2.10.15. The Inquiry accepts that Garda J has a good knowledge of Child A's family. However, the Inquiry believes that in light of the sporadic nature of Garda J's interaction with the family – which may be contrasted with other services and

statutory bodies that have an ongoing relationship Child A's family – it is reasonable to assume that Garda J may not have encountered a very young child in the household.

2.10.16. As a result, the Inquiry does not believe that the Gardaí should have drawn such a strong inference from the fact that Garda J was unaware of Child A's existence. The Inquiry concludes that the decision not to carry out any further enquiries prior to visiting Child A's home on the basis of Garda J's knowledge of his family was unjustified. The Inquiry accepts, however, that by the time the matter was taken up by Garda J, the capacity to carry out enquiries that evening would probably have been limited by the fact that it was already after the end of the working day; the relevant services may not have been contactable at that time.

2.10.17. Another aspect of the Gardaí's prior knowledge of the family that was deemed relevant for the purposes of invoking section 12 of the Child Care Act 1991 was the existence of previous bench warrants relating to Child A's family, including extended family members.

2.10.18. The Inquiry notes the inclusion of the bench warrant history for a number of family members in the internal Garda report into this incident. The Inquiry has established that they related to minor matters and had no connection with child abduction, child abuse or exploitation of any kind. The Inquiry is therefore of the view that the existence of previous bench warrants for members of Child A's extended family was not immediately relevant to determining whether there was an immediate and serious risk to Child A's health or welfare arising from a possible abduction.

Birth certificates

- 2.10.19. As noted above, Garda J and his colleagues had concerns regarding the fact that Child A's parents appeared hesitant in providing their own identification and their children's birth certificates, and that it took them some twenty minutes to find and furnish the latter.
- 2.10.20. Garda J indicated to the Inquiry that when Child A's parents were asked for the identification, they pointed out that Garda J knew them, suggesting that Garda J should not have any doubts regarding their children's identity. Garda J described further how their interaction with him was not as cordial as usual from that point on. Nonetheless, Child A's parents then provided their identification to the Gardaí and subsequently provided them with the birth certificates once they were found.
- 2.10.21. The Inquiry regards it as understandable that parents would have a reaction such as this under the circumstances. Members of An Garda Síochána had arrived at their home and requested to see identification for their children, which they had not done before. Although Garda J had explained that he was making enquiries regarding who was staying in the house at that time, the absence of any further explanation regarding what prompted the visit that particular evening or why the documentation was requested could reasonably be expected to engender a sense of apprehension in Child A's parents.
- 2.10.22. The Inquiry notes that Child A's parents nonetheless provided their own identification to the Gardaí and that it took them twenty minutes to find the children's birth certificates. The Inquiry does not believe that it is unusual or exceptional for a search for documents to take this length of time, nor does the Inquiry regard the delay as significant.

2.10.23. In summary, the Inquiry is of the view that the negative inference drawn by the Gardaí from the manner in which the children's birth certificates were produced was not warranted. The documents were produced within a reasonable timeframe and the initially hesitant reaction of Child A's parents was understandable.

2.10.24. Once Garda J and his colleague examined the birth certificates, they noted three discrepancies between Child A's birth certificate and that of his sister: the birth certificate for Child A's sister did not include their father's name; his sister's birth certificate recorded a different surname for their mother from that noted on Child A's birth certificate; and his sister's birth certificate also had a different signature for the child's mother from that included in Child A's birth certificate.

2.10.25. The first of these discrepancies was explained to Garda J and Garda K when they were at Child A's home. The Inquiry believes that the explanation provided – that Child A's mother and his father were experiencing difficulties and were not together at the time of his older sister's birth – was entirely reasonable and, indeed, provides the readiest explanation for the fact that the child's father was not recorded on the birth certificate.

2.10.26. The second discrepancy was the fact that the surname for Child A's mother included on his sister's birth certificate was not the same as the surname recorded on his own birth certificate. The surname recorded on Child A's birth certificate matched the surname known to An Garda Síochána. The Inquiry has established that the surname recorded on his sister's birth certificate is in fact the first name of the child's maternal grandmother. The name was recorded on the birth certificate of Child A's older sister in error by staff in Portiuncula Hospital. The Inquiry believes that the most likely explanation for this is that Child A's mother was alone at the time of the child's birth and, given her level of English and literacy at the time, she was not in a position to prevent the inaccurate details being recorded on the birth certificate.

2.10.27. Garda J indicated to the Inquiry that when Child A's mother was asked about this discrepancy, she laughed and said "that's a Romanian thing". There are a number of reasons why Child A's mother may not have provided the full explanation for the anomaly on her daughter's birth certificate: that she did not fully understand the question that was put to her; that she was not in a position to articulate the answer fully in English; or that there was a sensitivity over the fact that she had not been in a position to correct the information at the time. Whatever the explanation was, the Inquiry accepts that the discrepancy was not explained to Garda J and Garda K on the evening of 22 October 2013 and that there was no obvious explanation for it.

2.10.28. The third discrepancy identified by the Gardaí was the difference between the signature recorded for Child A's mother on his birth certificate and that of his sister. The signature contained on his older sister's birth certificate is indistinct and could not be ascribed clearly to Child A's mother. On Child A's birth certificate, his parents' signatures are printed in block capitals.

2.10.29. As noted above, the Inquiry is satisfied that the discrepancy in the mother's signatures is attributable to her literacy level at the time her daughter was born. The Inquiry accepts that this was not explained to Garda J and Garda K on the evening of 22 October. However, the Inquiry believes that the issue of literacy should have presented itself as a possible explanation for the discrepancy noted by Garda J and Garda K; this is especially so when it was clear that Child A's parents printed rather than signed their names on the boy's birth certificate.

2.10.30. Notwithstanding the queries raised by the birth certificates at the time, the Inquiry notes that the anomalous aspects - the absence of a father's name, the presence of a different surname and the absence of a clear signature – all relate to the birth

certificate for Child A's sister. Child A's birth certificate had all of this information, and it accorded with the details available to An Garda Síochána at the time of their enquiries. No concerns were expressed regarding Child A's sister in relation to these anomalies, nor were any inferences drawn by the Gardaí in relation to her identity and parentage.

2.10.31. It is unclear to the Inquiry why the discrepancies between the birth certificates should have occasioned such doubt in relation to Child A but not his sister. In light of this, the Inquiry believes that the negative inferences drawn from the examination of the birth certificates by An Garda Síochána at Child A's home were not warranted.

The flight risk

2.10.32. The possibility that Child A might be removed from the jurisdiction if he were not taken into care on the evening of 22 October was an integral component of Garda J's assessment of immediacy for the purposes of invoking section 12 of the 1991 Act. Garda J and his colleagues considered that there was a flight risk based primarily on what was described in the internal Garda reports as the family's transient nature.

2.10.33. The Inquiry does not regard Child A's family as being transient. It is true that Child A's family does travel to different parts of the country for work; however, Athlone has been their home for many years. Indeed, the stability of their residence in Athlone was such that Garda J drew a strong inference from the fact that he had not seen Child A before. The Inquiry does not believe that such an inference would have been drawn had the family been truly transient, as this would suggest a far less stable period of residence in Athlone.

2.10.34. Furthermore, the Public Health Nurse with whom the family has engaged with respect to Child A's care confirmed to the Inquiry – and to Gardaí in Athlone Garda

Station on 23 October – that the family has not had any prolonged period of absence from Athlone since the time of Child A's birth.

2.10.35. If a family wished to remove a child from this country, the existence of family networks extending to other jurisdictions would be able to facilitate that. This holds true for any family – including Irish families – that have such international family networks. However, the Inquiry believes that a more fundamental point is that whatever flight risk may have existed was largely created by the arrival of the Gardaí at Child A's home.

2.10.36. As there were no indications provided to An Garda Síochána that Child A was being harmed or mistreated, the Inquiry believes that there was no strong reason for calling to Child A's home at that time and precipitating the situation that unfolded on the evening of 22 October.

2.10.37. Moreover, the Inquiry understands from the information provided to it by An Garda Síochána regarding the management of abduction cases that the Gardaí can and do undertake discreet enquiries at times. In cases of parental abduction, for example, An Garda Síochána can be asked to undertake enquiries regarding the whereabouts of children, as outlined in the *Garda Síochána Policy on the Investigation of Sexual Crime, Crimes against Children and Child Welfare (2013)*:

*Where a parent and child are believed to be in Ireland, the Central Authority [for the purposes of the Hague Convention or Luxembourg Convention - in Ireland, this is the Department of Justice and Equality] makes a request to An Garda Síochána to carry out **discreet** enquiries in relation to the whereabouts*

*of the child, to enable the initiation of appropriate proceedings in the High Court [original emphasis]*¹⁷

2.10.38. The Garda Síochána Guidance on the Recording, Investigation and Management of Missing Persons further specifies that when An Garda Síochána is requested to carry out such discreet enquiries, direct contact should *not* be made with the persons concerned in the enquiry without the prior authority or sanction of the Department of Justice and Equality.¹⁸ The need for discretion in such cases is evident: the fact of being subject to overt Garda enquiries could create a flight risk where none existed before. The Inquiry notes that discreet enquiries would not be appropriate, of course, if there were child welfare or protection concerns other than the unlawful removal of the child from another jurisdiction. In such circumstances, a more robust response would be necessary.

2.10.39. Notwithstanding the obvious differences between cases of parental abduction and the concerns that gave rise to the Garda actions in relation to Child A, adopting a similar approach involving discreet enquiries and one that initially avoids making contact with the family in question has distinct advantages. The Inquiry recalls that the case of Child A – and indeed that of Child T in Tallaght – was highly unusual; it was neither a typical instance of invoking section 12 of the 1991 Act, nor was it a typical instance of enquiring into a case of possible child abduction.

2.10.40. The Inquiry believes that the unusual nature of such cases warrants a different approach. In such instances, the Inquiry believes that more discreet enquiries would be more appropriate and prudent, subject to the existence of any concerns that a child may suffer ill-treatment.

¹⁷ An Garda Síochána, *Garda Síochána Policy on the Investigation of Sexual Crime, Crimes against Children and Child Welfare* (2013), HQ 48/2013, at p. 81

¹⁸ An Garda Síochána, *Guidance on the Recording, Investigation and Management of Missing Persons* (2012), section 3.6

2.10.41. Had An Garda Síochána carried out such discreet enquiries on 23 October and refrained from calling to Child A's home on the evening of 22 October, the Inquiry believes that the flight risk would not have been created.

Information from Portiuncula Hospital

2.10.42. Whilst Child A and his parents were at Athlone Garda Station, Garda J contacted Portiuncula Hospital to see if the Hospital held a record for Child A's birth. The Hospital confirmed that it did have a record of a baby boy being born to Child A's mother on the date indicated on Child A's birth certificate.

2.10.43. Garda J and his colleagues were of the view that this was insufficient to allay their concerns regarding Child A's identity, and that further information – including information regarding Child A's appearance – should be sought.

2.10.44. It is unclear to the Inquiry why the confirmation of details on Child A's birth certificate provided by Portiuncula Hospital was not given greater weight in the Gardaí's decision-making. This information confirmed the authenticity of the birth certificate; the only remaining question for An Garda Síochána was whether the birth certificate related to the child who was in Athlone Garda Station at that time with the couple claiming to be his parents.

2.10.45. If the birth certificate did not relate to that child, it must relate to another child born to Child A's mother on that day in Portiuncula Hospital. This would mean Child A's parents had a different child of the same age as Child A, who was unaccounted for.

2.10.46. Although the members of the An Garda Síochána interviewed by the Inquiry were clear that they did not positively believe this to be the case, they were concerned

that it was a possibility. The extreme scenario that was considered, albeit as a remote possibility, was that Child A's parents may have been involved in a child abduction ring.

2.10.47. However, once the confirmation from Portiuncula Hospital became available, the doubt regarding Child A's parentage would have to be predicated on the existence of another child of the same age born to his parents and on the idea that Child A had come into their care by other, illegal means. Absent any evidence suggesting this highly improbable scenario, the Inquiry believes that it should not have had been accorded the weight it was given in the assessment of whether there was a serious and immediate risk to the welfare of Child A.

Child A's appearance and ethnic background

2.10.48. It was accepted by all the members of An Garda Síochána interviewed by the Inquiry that Child A's appearance – and in particular the fact that he did not resemble the members of his immediate family – played an important role in raising doubts regarding his parentage.

2.10.49. As the Inquiry has already noted, it is firmly of the view that physical dissimilarities between parents and their children do not constitute a reasonable basis for suspecting that such children have been abducted. The Inquiry therefore believes that drawing strong inferences from such a perception in the absence of any other information suggesting a child has been abducted would be manifestly unreasonable.

2.10.50. Although the Inquiry does not believe that parents should have to demonstrate why their children do not resemble them in the absence of other information that would give rise to concern regarding a child's identity, there were particular

reasons for believing that such dissimilarities between Child A and his parents might exist in this case.

2.10.51. The Inquiry notes in this regard that in the initial communication sent to the Missing Persons Bureau that prompted the Garda enquiries on 22 October 2013, Child A's mother was reported as suggesting that Child A resembled his grandfather. This was never put to Child A's parents by An Garda Síochána but when the Inquiry met with Child A's family in their home, it was clear from an examination of family photographs that Child A's maternal grandfather does indeed have a pale complexion, blue eyes and blonde hair.

2.10.52. Of greater significance is the fact that Child A has oculocutaneous albinism. The internal Garda reports into the case record that this medical information regarding Child A was brought to the attention of An Garda Síochána on the morning of 23 October 2013 by the HSE, after Child A had been delivered up to the custody of the HSE.

2.10.53. The internal Garda reports are inaccurate in this respect. Child A's father indicated to the Inquiry that he informed the Gardaí of his son's albinism on the night of 22 October 2013, after section 12 of the *Child Care Act 1991* had been invoked but before his son had been taken to his foster care placement. This was confirmed to the Inquiry by the two members of An Garda Síochána who were made aware of it at that time. In commenting on this to Inquiry, one of the members of An Garda Síochána in question said:

The child being albino in hindsight tells us that the explanation of the striking differences is now explained. Obviously children of any community can have children that may not look like them. But at that time it was irrelevant to me.

2.10.54. The Inquiry believes, on the contrary, that Child A's albinism was very relevant at that time; this is especially so as Child A had not yet been removed from the care of his parents. Indeed, the internal Garda reports acknowledge that Child A's medical condition "*accounts for his skin, hair and eye colour*".

2.10.55. The Inquiry does not believe that Child A's parents should need to rely on the fact that their son has albinism to explain his appearance and dispel doubts regarding his parentage. Nonetheless, the fact remains that his albinism provides a compelling explanation for his physical appearance.

2.10.56. The Inquiry therefore believes that it was unreasonable for An Garda Síochána not to weigh this information at all in the period immediately prior to placing Child A in care. Indeed, the Inquiry believes that whatever doubts the Gardaí had in relation to Child A's identity up to the point should have been decisively put to rest when they were informed by Child A's father that he was an albino.

2.10.57. For the reasons set out above, the Inquiry also does not believe that the factors other than Child A's appearance that gave rise to concerns regarding his identity warranted the level of suspicion that the Gardaí evidently had in relation to Child A's parentage. The Inquiry must therefore conclude that an additional element is required to explain this level of suspicion.

2.10.58. The Inquiry is of the view that there was a readiness to believe that the child may have been abducted, which cast the other causes of concern to the Gardaí in a particular light and elevated their importance and urgency. The Inquiry believes that this was not simply a reflection of the fact that Child A did not resemble other members of his family; it stemmed from a perception of the particular family that he did not resemble. It is in this connection that the Inquiry believes that Child A's ethnic background was relevant.

2.10.59. In considering the role played by ethnicity in decision-making by An Garda Síochána with respect to Child A, the Inquiry has had regard to a number of relevant standards, including those set out in the European Union Agency for Fundamental Rights' guide for law enforcement agencies entitled *Towards More Effective Policing: Understanding and Preventing Discriminatory Ethnic Profiling: A Guide*¹⁹ and the European Commission Against Racism and Intolerance's (ECRI) General Policy Recommendation No. 11 on combating racism and racial discrimination in policing.²⁰

2.10.60. Profiling allows individuals to be categorised on the basis of some observable characteristics in order to infer others that are not observable.²¹ The most widely accepted definition for ethnic profiling is contained in the relevant ECRI General Policy Recommendation, namely:

*The use by the police, with no objective and reasonable justification, of grounds such as race, colour, language, religion, nationality or national or ethnic origin, in control, surveillance or investigation activities.*²²

2.10.61. The Guide for law enforcement officials produced by the European Union's Agency for Fundamental Rights clarifies that profiling may take place at an organisational level and/or an operational level.²³

¹⁹ European Union Agency for Fundamental Rights, *Towards More Effective Policing: Understanding and Preventing Discriminatory Ethnic Profiling: A Guide* (Luxembourg: Publications Office of the European Union, 2010)

²⁰ European Commission Against Racism and Intolerance (ECRI), *General Policy Recommendation No. 11 on Combating Racism and Racial Discrimination in Policing* (2007) CRI(2007)39 (Strasbourg: Council of Europe, 2007)

²¹ European Union Agency for Fundamental Rights, *Towards More Effective Policing*, p. 9

²² ECRI General Policy Recommendation No. 11, at para. 1

²³ European Union Agency for Fundamental Rights, *Towards More Effective Policing*, p. 13

2.10.62. The Guide notes that discriminatory profiling at an organisational level involves explicit written or oral instructions issued at a high level instructing officers to target particular groups with enforcement action.²⁴ There is no information to suggest to the Inquiry that this took place in relation to the use of section 12 of the 1991 Act by An Garda Síochána with respect to Child A.

2.10.63. The Fundamental Rights Agency's Guide goes on to note that at an operational level, profiling may occur in a more subtle manner where individual officers may apply stereotypes or generalisations based on race, ethnicity or religion. This may be consciously motivated by personal prejudices, or it may be that officers are not conscious of the degree to which they are applying generalisations and stereotypes.²⁵

2.10.64. It is in this regard the Inquiry recalls the fact that the Gardai involved in the case of Child A were conscious of the events unfolding in Greece regarding the child known as "Maria" and also the events taking place in Tallaght. The Inquiry recalls that much of the international media coverage of that case perpetuated negative myths regarding the Roma community. In particular, the readiness to believe that "Maria" had been abducted was fed by a widespread and long-standing belief that the Roma are "child-abductors". This belief, utterly without foundation, was given credence during the period in which the story regarding "Maria" was prominent in the media. While it is not possible for the Inquiry to assess definitively the impact this case may have had on the decision-making of An Garda Síochána with respect to Child A, it is reasonable to conclude that this contextual element made the abduction hypothesis more plausible and contributed to the immediacy of the perceived risk to Child A: if a child in broadly similar circumstances in Greece could have been abducted, so too could a child in Ireland.

²⁴ Ibid.

²⁵ Ibid.

2.10.65. The Inquiry recalls further that one of the scenarios considered by Gardai in Athlone – although considered as an extreme scenario – was that Child A’s parents could be involved in an abduction ring, without any reasonable indication that this might be so. Finally, the Inquiry recalls the strong view held by Gardai in Athlone Garda Station regarding what they described as the transient nature of Child A’s family. The Inquiry has already outlined above why it believes this description to be inaccurate based on the length of time the family had lived in Athlone; however, the Inquiry believes that this exaggerated notion of transience contributed to the plausibility of the extreme scenario considered by the Gardai in this case.

2.10.66. Bearing in mind the standards outlined above and the foregoing considerations, the Inquiry concludes that the readiness to believe Child A may have been abducted exceeded the evidence available to An Garda Síochána. In the absence of any explanation for this the Inquiry concludes further that this was tied inextricably to the fact that Child A’s family is Roma. The Inquiry is of the view that it was this element that gave the grounds for concern identified by An Garda Síochána an elevated plausibility. To the extent that Child A’s ethnicity was so influential in determining the decision to remove him from the care of his parents, with no objective or reasonable justification, the Inquiry concludes that the actions of the Garda Síochána in this case conformed to the definition of ethnic profiling.

2.10.67. It is clear to the Inquiry that Garda decision-making was not sufficiently sensitive to the possibility that stereotypes could play a role in its decision-making with respect to Child A, and consequently cause other facts to be seen in such a way as to confirm and conform to those stereotypes. The Inquiry must acknowledge, however, that the members of An Garda Síochána involved in the case of Child A believed they were acting in his best interests.

2.10.68. The Inquiry understands that the member of An Garda Síochána who invoked section 12 of the 1991 Act in Child A’s case has not received specific training related

to the Roma community, although one of his colleagues involved in the case is an Ethnic Liaison Officer. The Inquiry believes that this may have contributed to the absence of any consideration of the possibility that prevailing stereotypes regarding the Roma community may have played a role in An Garda Síochána's decision-making.

Garda-HSE interaction and access to information

2.10.69. The Special Inquiry was tasked with considering the nature of An Garda Síochána's interaction with the HSE and with other organisations in possession of information relevant to Child A's case.

2.10.70. It is beyond the scope of the Inquiry to evaluate Garda-HSE cooperation in a general sense. However, the particular circumstances of this case do give rise to a number of conclusions regarding this very important relationship.

HSE Social Work Team

2.10.71. The Inquiry has already highlighted that the local HSE Social Work Team in Athlone had extensive knowledge of Child A, that the Social Work Team Leader knew immediately who Child A was when apprised of the situation by An Garda Síochána on the morning of 23 October and that the HSE had no concerns regarding Child A's identity.

2.10.72. Notwithstanding the efforts made by members of An Garda Síochána to contact the local HSE Social Work Team on the evening of 22 October, no such contact was possible until the morning of 23 October. This demonstrates clearly the difficulties that can emerge when An Garda Síochána attempts to access information held by the local Social Work Team outside ordinary business hours.

2.10.73. The Inquiry is aware that reform of the system for storing and accessing child protection information is a current priority for the Child and Family Agency. The Inquiry believes that serious consideration should be given to the possibility that An Garda Síochána could have access – either directly or through an out of hours social work service - to the information held by the Child and Family Agency outside normal business hours and that this should form part of the on-going reform process. The Inquiry believes that ready access to the information held by the HSE regarding Child A could potentially have prevented An Garda Síochána from invoking section 12 in respect of the child on the evening of 22 October 2013.

Public Health Nursing Team

2.10.74. The information held by the local Public Health Nursing Team was arguably of greater significance in dispelling doubts regarding Child A's identity; unlike the Social Work Team, a named Public Health Nurse had been engaging with Child A and his family on an on-going basis since the time of this birth in 2011. The Public Health Nurse in question had no doubts whatever in relation to Child A's parentage and was in a position to identify the child immediately when she became aware of the Gardaí's concerns on 23 October 2013.

2.10.75. The Inquiry understands that there is no protocol or formal mechanism in place for An Garda Síochána to access information held by Public Health Nurses. Typically, in cases of concern regarding a child's welfare a Public Health Nurse will contact the relevant Social Work Team, which may then make contact with the Gardaí if necessary.

2.10.76. The Inquiry believes that the unusual circumstances of Child A's case made the information held by the Public Health Nursing Team especially relevant to An Garda Síochána's enquiries. Information held by a State authority with a mandate to provide services to all children in the period prior to the commencement of formal education – including home visits and direct engagement with those children - is

therefore of critical importance. Public Health Nursing records can effectively rule out the possibility of abduction at a young age.

2.10.77. With these considerations in mind, the Inquiry believes that there is a compelling need for a more formal and direct channel of communication between An Garda Síochána and Public Health Nurses in cases where doubts are raised regarding a young child's identity. Indeed, it is likely that in such unusual situations, engaging with local Public Health Nurses would be of greater benefit than the contacts with the local Social Work Team.

Other services

2.10.78. The Inquiry recalls the other services that had provided support to Child A and to his family – especially the local Barnardos project - and that consequently held information relevant to the identification of Child A.

2.10.79. The Inquiry accepts that in the ordinary course of events, it is more routine for the local Social Work Team rather than members of An Garda Síochána to carry out network checks that encompass a broader range of professionals such as those working with Barnardos. However, in light of the value of enhanced preliminary enquiries in cases where young children's identities may be in doubt, the Inquiry believes that it would be beneficial to contact a wider range of agencies – including non-governmental organisations providing services to a family - as part of the process. The Inquiry acknowledges that efforts were made in this case to make such contact but they were unsuccessful.

Impact on Child A's family

2.10.80. The events of 22-23 October had a serious impact on Child A and his family.

- 2.10.81. The Inquiry recalls that in order to advance the Garda enquiries relating to Child A, Garda J invited Child A's parents to accompany him to Athlone Garda Station on the evening of 22 October 2013. The Inquiry notes that Child A and his family spent over three hours in the Garda station, from 7.30pm to approximately 10.45pm.
- 2.10.82. The Inquiry queried whether it was necessary for An Garda Síochána to have Child A and his parents in the station in order to undertake additional enquiries. The members of An Garda Síochána involved in the case indicated that it was not unusual to invite individuals to come to the Garda station voluntarily and that it would be easier to advance those enquiries from the station. The Inquiry notes that the specific enquiries undertaken by the Gardaí while Child A and his parents were in the station on the evening of 22 October were calls to Portiuncula Hospital, the HSE Social Work Team and the Project Leader from Barnardos.
- 2.10.83. The Inquiry is not persuaded that it was necessary – as distinct from convenient – for Child A and his parents to be in Athlone Garda Station while the relevant enquiries were being undertaken. The Inquiry notes in this regard that contacts with a maternity hospital and with the HSE were undertaken in relation to Child T in Tallaght while Child T was still in her home with her family.
- 2.10.84. Moreover, the Inquiry believes that having Child A's parents and their two-year-old son in the station for over three hours without representation or support of any kind was not necessary or justified.
- 2.10.85. The Inquiry appreciates that the Gardaí did not intend to invoke section 12 of the 1991 Act with respect to Child A at the time he and his parents came to Athlone Garda Station. In addition, the Inquiry is mindful of the fact that as far as An Garda Síochána was concerned, Child A's parents were not being interviewed in a formal sense.

2.10.86. However, the Inquiry believes that whatever value there may be in general terms to undertaking informal enquiries, An Garda Síochána must be sensitive to the fact that a visit by a member to a family's home – or an invitation to accompany a member to the local Garda station – may not have the same quality of informality to the family in question. This is especially so where a family may, for various reasons, feel a pressure to comply with the request from An Garda Síochána to come to the station, notwithstanding the voluntary nature of the request.

2.10.87. The Inquiry notes in this connection that Superintendent N asked Sergeant M on the evening of 22 October whether Child A's parents needed an interpreter; Sergeant M replied that Child A's father had a sufficient command of English that an interpreter was not necessary.

2.10.88. Having met with Child A's parents on two occasions, the Inquiry doubts the wisdom of this decision. The internal Garda Report into Child A's case notes that Child A's mother has a good understanding of English and describes Child A's father as being a fluent English speaker. The Inquiry does not share this view of their level of English.

2.10.89. In the event, all of the discrepancies identified in relation to Child A and his sister's birth documentation - which weighed so heavily in the balance as far as An Garda Síochána was concerned - were fully explicable. Child A's parents had no reason whatever to conceal these explanations, particularly once the seriousness of the situation was made clear to them by the Gardaí in Athlone Garda Station. The Inquiry must therefore conclude that the failure to explain these matters fully to An Garda Síochána was attributable to communication deficits and that Sergeant M had underestimated the usefulness of an interpreter.

2.10.90. The Inquiry notes in this regard that a perception of linguistic proficiency on the part of an individual Garda should not necessarily be decisive in determining whether an interpreter should be sought. It is perfectly possible for an individual's fluency to be limited to certain domains. In addition, the effects on communication of being placed in a stressful situation should not be underestimated. For very serious matters –which certainly include the removal of a child from his parents' care– there is a compelling need to ensure that as far as possible, neither limited fluency nor the stress felt at the time of the relevant Garda enquiries will inhibit full communication. In the case of Child A, the Inquiry believes that the possibility of seeking an interpreter should have been put to Child A's parents.

2.10.91. In terms of the impact of the events of 22-23 October 2013 on Child A himself, the Inquiry recalls the account of the foster parents with whom he was placed. The Inquiry believes that Child A's reaction was to be expected given the circumstances.

2.10.92. The Inquiry also recalls that when Child A's parents arrived at the local Health Office very early on the morning of 23 October, they were described by the HSE staff as being extremely upset. Again, the Inquiry believes that this is a readily understandable reaction of parents who had had their two-year-old son removed from their care. In addition to the act of removal, the Inquiry notes that Child A's parentage had effectively been called into question by the actions of An Garda Síochána, with the attendant distress that this would cause to his parents.

2.10.93. Finally, the Inquiry recalls that Child A's parents consented to DNA testing in order to establish their genetic relationship. The Inquiry is of the view that the use of DNA testing in this case represented a disproportionate interference with the family members' private life. The Inquiry does not believe in general terms that DNA testing is a proportionate measure to employ in circumstances where there is a significant amount of alternative information that could attest to the relationship between a child and his or her parents. Information gleaned from DNA tests is of a

highly sensitive and private nature; gathering that data is enormously intrusive, no matter how physically non-invasive the test itself may appear.

Confidentiality of information

2.10.94. The Inquiry recalls that the story relating to Child A broke shortly before he was returned to the care of his parents on the morning of 23 October 2013 and that there was a media presence at the family's home.

2.10.95. Although Child A's parents subsequently engaged with the media, the Inquiry is satisfied from its review of the media coverage that morning and from its engagement with Child A's family that they did not instigate that contact.

2.10.96. As regards other possible sources of information, the Inquiry notes that by the time Child A's story broke in the media, both the HSE and An Garda Síochána were in possession of all the relevant facts. Given that the Inquiry is of the view that the media did not initially receive information from Child A's family, the Inquiry believes it reasonable to conclude that the information was furnished by one of the statutory authorities involved in the case. However, the Inquiry is not in a position to draw conclusions with greater precision as to the path by which the information came to the media on 23 October 2013.

PART 3

3. The Case of Child T in Tallaght, County Dublin

The Special Inquiry was tasked with investigating the exercise by An Garda Síochána of powers under section 12 of the Child Care Act 1991, as amended, in respect of a seven year old child ("Child T") in Tallaght, Dublin on 21 October 2013.

3.1. Communication that prompted action by An Garda Síochána

- 3.1.1. At 11.10am on Monday 21 October 2013, a TV journalist sent an email to the Press Office of An Garda Síochána containing a message that had been left by a member of the public on what was described as his 'show page' on Facebook. The message read as follows:

Hi [Name of Journalist]

Today was on the news the blond child found in Roma Camp in Greece. There is also little girl living in Roma house in Tallaght and she is blond and blue eyes. Her name is [Child T] and the address is [Child T's address]. I am from [country in Eastern Europe] myself and it's a big problem there missing kids. The Romas robing [sic] them to get child benefit in Europe.

- 3.1.2. The Inquiry notes that the member of the public was not from Estonia, as was reported in the media coverage of the case and in the District Court proceedings relating to the emergency care order that the HSE sought for Child T.
- 3.1.3. The email from the journalist was forwarded by the Garda Press Office to the District Office in Tallaght at 11.13am and then to Sergeant A at 11.36am. Sergeant A read the email at approximately 2pm, as he was engaged with other duties prior

to that. Upon reading the communication, Sergeant A undertook a number of preliminary enquiries in relation to Child T.

3.2. Preliminary enquiries undertaken by An Garda Síochána

- 3.2.1. Sergeant A consulted his own records to establish whether there were any child protection concerns in relation to Child T or her family. There were no child protection records relating to Child T. There were two child protection records relating to her older sisters dating back a number of years. Those cases had been closed and had no connection with child abduction.
- 3.2.2. Sergeant A spoke with his colleague, Garda B, who knew the family in question by virtue of his appointment as case manager for one of Child T's sisters. Garda B indicated that he was aware of a child of Child T's name at the house in question but did not have any further details in relation to her.
- 3.2.3. Sergeant A then contacted the Principal of a local national school to establish whether Child T was a student there. He indicated that there was a concern about the identity of the child's parents and asked the Principal what her view was in relation to that.
- 3.2.4. The Principal indicated that Child T did attend her school and was a member of the Roma community, but that Child T was the name she preferred to go by; she was in fact registered under a different first name ("U"). The Principal said Child T had been in the school for over three years - since Junior Infants - and that as far as she knew or could vouch for, Child T was the child of her parents. The school had no child protection or welfare concerns with respect to Child T, nor were there any difficulties with school attendance.

- 3.2.5. Sergeant A asked two of his colleagues, Garda C and Garda D, to find out whether the Department of Social Protection had information relating to Child T and her family. The Department confirmed that they had details in relation to a number of children in that household but that there was no child by the name of Child T; they did, however, have a record of a child named “U”.
- 3.2.6. Sergeant A then contacted the local Health Service Executive Social Work Team to ascertain whether they had any relevant records. The social worker with whom he spoke, Social Worker E, indicated that there had been previous child protection referrals in relation to children in the family a number of years previously; she confirmed that none was active at that time. During the initial contact with Sergeant A, Social Worker E indicated that there was no record of any child protection concerns in relation to Child T.
- 3.2.7. Sergeant A and Garda C also contacted the journalist who had forwarded the concern expressed by the member of the public to see if he could obtain contact details for that individual. The journalist indicated that he did not yet have contact details but would pass them on. The Gardaí did not receive these details until 10.53pm that evening.

3.3. Enquiries undertaken at Child T’s home

- 3.3.1. Having carried out these preliminary enquiries between 2.00pm and 3.30pm, Sergeant A determined that it was necessary to call to Child T’s home to further those enquiries. Garda C and Garda D accompanied him. All of the Gardaí were in plain clothes and they arrived in an unmarked car; this is standard practice for members of the Child Protection Unit in Tallaght Garda Station.

- 3.3.2. When they arrived at Child T's house, they asked to come in. They were invited to do so by Child T's mother. Sergeant A indicated that they were calling to make enquiries regarding the children's identities as a follow up to previous child protection concerns. Child T's family indicated to the Inquiry that they were initially under the impression that Sergeant A's call to the house that afternoon related in some way to issues related to Child T's educational progress.
- 3.3.3. Sergeant A's report on this case indicated that he noted the presence of a young girl, about seven years of age, who had blonde hair and blue eyes and whom he said was strikingly different in appearance from the rest of her family.
- 3.3.4. Sergeant A requested identity documents and birth certificates for the children. Child T's mother retrieved the requested documentation for some of her children but not for Child T. Child T's mother indicated that those documents were in a room upstairs in which children were sleeping and she did not wish to disturb them. Child T's mother indicated that Child T was born in the Coombe Hospital.
- 3.3.5. Sergeant A then went outside to his car to continue his enquiries. He contacted the Coombe Hospital at 4.10pm to confirm the information given to him by the family regarding Child T's birth. The Coombe Hospital undertook its own check to verify Sergeant A's identity before releasing such information to him. The Hospital contacted Sergeant A at 4.45pm indicating that they had no record of the birth of a child with details matching those provided for Child T.
- 3.3.6. Sergeant A then contacted Tallaght Hospital to seek an informal opinion from a doctor regarding the possibility or likelihood of parents with dark hair and dark eyes having a child with blonde hair and blue eyes. The consultant with whom Sergeant A spoke indicated that such a situation would be very unusual but not impossible. As it was an informal opinion, the details for the consultant in question

were not recorded and it was not possible for the Inquiry to establish his or her precise area of practice.

- 3.3.7. As Sergeant A was undertaking his enquiries, Garda C and Garda D remained inside talking casually with the family. They indicated to the Inquiry that on a number of occasions, Child T's family was informed that it was very important that the Gardaí see the documents requested.
- 3.3.8. Child T's older sister asked Garda C what was going on; she explained that Sergeant A was outside making enquiries to make sure that the documentation was in order.
- 3.3.9. Child T's mother then produced PPS numbers for all of her children, including Child T, though she was listed under the name "U". Garda C brought this information out to Sergeant A, who was still carrying out his enquiries.
- 3.3.10. Sergeant A spoke with Social Worker E again. He indicated that section 12 of the 1991 Act may be invoked because of the concerns that he had in relation to Child T's identity. This contact allowed the HSE to make the relevant preparations for a foster care placement, if such a placement were ultimately deemed necessary. At this stage, Social Worker E spoke with her colleague, Social Worker F, as the latter would have responsibility for the matter should a foster care placement be required.
- 3.3.11. Social Worker E then checked the HSE's internal records once again to confirm that no details were recorded for Child T. On this occasion, she found that Child T was listed as a sibling on a record relating to one of Child T's older sisters; however, Child T's name was recorded as "U". Social Worker E indicated to the Inquiry that

she conveyed this information to Sergeant A prior to his invoking of section 12 of the 1991 Act in respect of Child T.

3.4. Decision to invoke section 12 of the Child Care Act 1991

- 3.4.1. Sergeant A described to the Inquiry how he felt the situation in the house became more emotional and tense as more people – largely members of Child T’s extended family and friends of the family – began to arrive at Child T’s home during the hour and a half that the Gardaí were present. Garda C indicated to the Inquiry that although more people had arrived in the house, the situation remained reasonably calm.
- 3.4.2. Sergeant A asked three of his colleagues who were community Gardaí to join him, as he felt that this would ease the situation should section 12 of the 1991 Act be invoked and Child T be taken into care. A further three members of An Garda Síochána also came to the house, though Sergeant A had not requested them to do so. This included an Inspector, a Detective Sergeant and another Sergeant. There were nine Gardaí there by the end, some of whom were in uniform.
- 3.4.3. Sergeant A felt that there were grounds to invoke section 12 of the 1991 Act on the basis that:
- Child T did not resemble the rest of her family;
 - the Coombe Hospital had informed him that there was no record for her birth;
 - no birth certificate or passport had been produced in respect of Child T;
 - the consultant in Tallaght Hospital with whom Sergeant A spoke indicated that it would be highly unusual for a child with blonde hair and blue eyes to have two parents with dark hair and dark eyes;

- Child T went by another name, “U”, which was the official name recorded in her school and on the Department of Social Protection’s records;
- Members of Child T’s family had come to the attention of An Garda Síochána in the past for both children protection and criminal matters;
- Sergeant A felt that in the event that Child T was not in fact the child of the people in whose care she was at that time, Child T might be removed from the jurisdiction. Sergeant A indicated that his concern regarding the flight risk arose because:
 - Sergeant A had been informed that Child T’s older sister had outstanding warrants in relation to low-level criminality and was currently residing in Romania with her grandmother;
 - Sergeant A was of the view that Child T’s father travelled to the UK and Continental Europe on a regular basis;
 - Sergeant A was aware of other cases in which children had come to the attention of the HSE and An Garda Síochána for child protection reasons and had subsequently been removed from the jurisdiction.

3.4.4. Sergeant A explained to the Inquiry that none of the factors listed above would justify invoking section 12 of the 1991 Act in isolation but that, taken as a whole, they provided reasonable grounds for believing that a serious and immediate risk existed requiring immediate action to safeguard Child T’s welfare. Sergeant A also considered that it was not possible to gather further information at that time in order to advance his enquiries.

3.4.5. At 5pm, Sergeant A explained to Child T’s parents that he was going to invoke section 12 of the 1991 Act. Immediately after he did so, the family retrieved a birth certificate and an old passport for Child T. In light of the lack of corroboration from the Coombe Hospital, Sergeant A did not believe at that time that the birth certificate was genuine. The passport for Child T was issued when she was 11 months old and, as a result, the photograph was not useful for the purposes of visually identifying Child T.

- 3.4.6. Sergeant A also drew a negative inference from the fact that Child T's birth certificate and passport were produced an hour and a half after they were initially requested.
- 3.4.7. Sergeant A indicated that he kept local Garda management – a Superintendent and an Inspector – informed of the developments during the course of the afternoon.

3.5. Delivering Child T up to the custody of the Health Service Executive

- 3.5.1. Shortly after section 12 of the 1991 Act was invoked, Child T was brought to the HSE's offices at Chamber House; she was accompanied by her older sister. The HSE staff interviewed by the Inquiry commented that her sister's presence was a great comfort to Child T.
- 3.5.2. At 5.45pm, Child T was placed in the custody of the HSE by the Gardaí. From that point on, the responsibility for Child T – including the decision to apply for an Emergency Care Order or to return her home – rested with the HSE. However, as was the case with Child A in Athlone, what happened after Child T was delivered up to the custody of the HSE is relevant for the purposes of the Special Inquiry.²⁶
- 3.5.3. When the time came for Child T to be brought to her foster placement, Social Worker F indicated that she explained the situation to Child T and that Child T became very upset, that she was crying, that she kept saying she wanted to go home and that she wanted to stay with her parents.

²⁶ See comments above at paragraph 2.6.2

3.5.4. Social Worker F explained that although Child T calmed down somewhat, she remained distressed. While on the journey to her foster placement, Social Worker F reported to the Inquiry that she was talking further with Child T about the situation and that Child T said she thought the Gardaí removed her because she looked different from her family, but Child T then said that she did look like her brother. The Inquiry understands that this was a reference to Child T's younger brother, who also has blue eyes.

3.5.5. Child T arrived in her foster placement at approximately 7pm. The foster parents were very experienced and had looked after many children in the context of emergency care placements. The Inquiry notes the high degree of sensitivity and care demonstrated by the foster parents with whom Child T was placed.

3.6. Subsequent interaction with the Health Service Executive

3.6.1. At some time between 8pm and 9pm on 21 October, the Coombe Hospital contacted Sergeant A and indicated that the information they had given earlier that afternoon was incorrect. There was in fact a record for Child T's birth on the date indicated on her birth certificate. Sergeant A reported to the Inquiry that he informed the HSE of this correction on the evening of 21 October but he still believed there were sufficient grounds for concern regarding Child T's identity.

3.6.2. On the morning of 22 October 2013, Sergeant A met with HSE staff and their legal representatives in the context of preparing an application for an emergency care order under section 13 of the 1991 Act.

3.6.3. Social Worker F undertook a number of preliminary enquiries that morning and made preparations relating to Child T's foster placement. She contacted Child T's

school to explain the situation and the arrangements that were put in place for Child T attending school during her placement.

- 3.6.4. Social Worker F also contacted one of her social work colleagues working in the area of primary care, who indicated that Child T's family had been in touch and were very upset regarding the removal of Child T from their care.
- 3.6.5. Social Worker F then contacted the Coombe Hospital to confirm the details for Child T's birth; she did not receive a response at that time and the confirmation from the Coombe Hospital was only sent to the HSE later that day. The Inquiry notes that the Coombe Hospital had already provided confirmation of Child T's birth details to An Garda Síochána the previous evening. Although the information provided to the Inquiry indicates that this confirmation was in turn passed to the HSE, it is clear that this information was not known to Social Worker F and her colleagues until the morning of 22 October.
- 3.6.6. The HSE decided to proceed with an application for an emergency care order for Child T on the basis that they could not carry out a thorough assessment that could allay the concerns expressed by An Garda Síochána in the time permitted; the HSE was informed that they had to be in Court by 12pm that day, which involved travelling from Tallaght to Dublin city centre.
- 3.6.7. The HSE indicated that they accepted the concerns expressed by An Garda Síochána regarding the veracity of the birth information and documentation provided for Child T. The HSE was also concerned regarding the possibility of flight should Child T be returned to her family prior to having conclusive proof of their relationship.

- 3.6.8. Because of the demands placed on the HSE team by preparations for the Emergency Care Order application on the afternoon of 22 October, the HSE indicated that it was not in a position to carry out network checks that day in order to establish what information was available from other agencies or bodies that had knowledge of Child T and her family.
- 3.6.9. The proceedings in the District Court on 22 October concluded with the granting of an Emergency Care Order for 24 hours to enable a DNA test to be carried out. It was also agreed that Child T's parents would be able to have access to her on the afternoon of 23 October 2013. The Inquiry notes that this relatively rapid DNA test was made possible because An Garda Síochána could facilitate it through the Forensic Science Laboratory. The HSE indicated that if it had to organise the DNA test, it could have taken up to eight days.
- 3.6.10. The Inquiry understands that Child T's parents had legal representation during the proceedings and initially contested the emergency care order. However, after it had been arranged to have DNA proof within a day that would settle the matter conclusively, the Inquiry understands that Child T's parents did not oppose – but also did not consent to – an emergency care order being made for a day.

3.7. Return of Child T to her family

- 3.7.1. On the morning of 23 October, Social Worker F accessed the records relating to Child T held by the Public Health Nursing Team on the Child Health Information System (CHIS).²⁷ The relevant records indicated that Child T was born in the

²⁷ The Inquiry understands that in each Local Health Office in the Dublin, Kildare and Wicklow areas, there are two systems in operation for recording child health information: the Child Health Information System (CHIS) and the Child Health Record (CHR). The CHIS is an electronic system used mainly for recording birth notifications and immunisation uptake. It is updated in the local Immunisation Office as an infant presents to the local clinic and to the General Practitioner for immunisations; it is subsequently updated when the child has immunisations in school. The CHR is a physical record containing information on a child's health and

Coombe Hospital and that she was fully up to date with her immunisations. The electronic CHIS record also contains details on Child T's mother and her General Practitioner (GP).

- 3.7.2. Social Worker F then made contact with the Public Health Nurse (PHN) who had responsibility for Child T before being discharged from the Public Health Nursing service when she started school. The PHN indicated there were no child protection concerns in relation to Child T. The social work file indicates that the PHN in question did not remember exactly what Child T looked like.
- 3.7.3. Social Worker F then made contact with the General Practitioner who had seen Child T in March 2013 as part of her work with the Roma Health Unit. The GP had no concerns in relation to Child T's welfare.
- 3.7.4. Social Worker F contacted the Principal Social Worker from the Coombe Hospital. She confirmed to Social Worker F that there were no concerns in relation to Child T and that the records indicated she was born to the couple claiming to be her parents.
- 3.7.5. A professional working with a local ISPC project also contacted a HSE Primary Healthcare Social Worker on 22 October following the media coverage of Child T's case. She indicated that she had worked with Child T's older sister three years before and had noticed that she had a young sister with blonde hair and blue eyes.
- 3.7.6. From the evening of Monday 21 October to the afternoon of Wednesday 23 October, Child T was in foster care. The foster parents described Child T as quiet and withdrawn when she first arrived in their care and they indicated that she only

developmental assessments from birth to preschool. The CHR is typically archived when a child is discharged from the PHN service. Unlike the CHR, the CHIS is electronic and can be made available for viewing by the PHN team even when the corresponding CHR paper file has been archived.

spoke to question when she was going home to her family. On the evening of 21 October, the foster mother tried to coax Child T to put on a pair of pyjamas but she refused to take off her clothes or shoes. She lay on top of the bed, refusing to get under the covers. The foster parents explained that Child T was upset and that she continued to cry until approximately 10pm, when the foster parents reported that she became so tired that she fell asleep.

- 3.7.7. The following day (22 October), Child T again asked about going home and asked when she was going to see her family. The foster parents tried to encourage her to eat but she would only eat a small piece of a cereal bar. Throughout her two day stay with the foster parents they said that she ate virtually nothing. Child T did, however, eat while she was at school.
- 3.7.8. The foster parents, of their own volition, liaised with Child T's school to establish whether there was a media presence outside the school and to organise for Child T to be brought to the school at 9.30am. They then organised to collect Child T half an hour before the school closed, in an effort to shield her from any media attention. In the event, there was no media presence outside the school. The foster mother also described to the Inquiry how she wanted to protect Child T from the news coverage of the case by ensuring that no radio or television was on in the house throughout Child T's stay.
- 3.7.9. For the remainder of Child T's time in foster care, her foster parents described her as remaining withdrawn and quiet. While awaiting the outcome of the District Court proceedings relating to the Emergency Care Order for Child T, the foster parents described her as anxious and upset but they reported that her mood improved on hearing that she would see her parents, with whom access had been arranged for the afternoon of the following day (23 October).

- 3.7.10. The second night Child T spent in foster care, she refused once again to put on pyjamas or to get under the covers. When the foster parents went to bed, they discovered Child T had moved from the bedroom she was in to their bed and she was asleep. They brought child T back to her bedroom where she slept through the night.
- 3.7.11. The next morning (23 October), Child T agreed to change her clothes and was described as being in better form because she was going to see her parents. Later that day, Child T was brought to see her parents in the Local Health Office by the foster parents. The foster parents described Child T's behaviour as vastly different when she saw her parents; they informed the Inquiry that Child T was happy, chatty, smiling and dancing. The foster mother reported to the Inquiry that the contrast in Child T's behaviour made her realise how traumatised the child was by being separated from her family.
- 3.7.12. Shortly after 6pm on 23 October, the results of the DNA tests came in as proceedings in the District Court were ongoing. They showed that Child T was indeed the child of the people in whose care she was found by An Garda Síochána on 21 October 2013. Child T was returned to her family immediately.

3.8. Maintaining confidentiality of information

- 3.8.1. The Inquiry has already outlined the internal Garda guidance and statutory provisions governing the maintenance of confidentiality with respect to cases such as that of Child T.²⁸
- 3.8.2. The media coverage of Child T's case began less than twenty four hours after she was delivered up to the custody of the HSE and before the proceedings relating to

²⁸ See section 2.9 above.

the HSE's application for an emergency care order commenced on 22 October.²⁹

The Inquiry notes that all the parties immediately involved in the case regarded this development as deeply troubling and highly regrettable. From the family's perspective, this drew significant and unwanted attention, with the suggestion that Child T was not related to them underpinning an entirely unwarranted notoriety within their own community. From the Garda and HSE perspective, the media attention made the job of those working on the ground distinctly more difficult.

3.8.3. From the information available to the Inquiry, it appears that the first published story relating to the case was released into the public domain shortly before midday on 22 October. The article included some of the main details of the case, including:

- Details about who was in the house when the Gardaí went to Child T's home;
- A physical description of Child T;
- Details of the child's birth date and the hospital where she was born;
- Details relating to the fact that the family was asked by An Garda Síochána to produce a birth certificate but could not find one;
- The details of contact made between An Garda Síochána and a hospital consultant regarding the question of whether it was possible for a member of the Roma community to have a child with blonde hair, including a detailed answer given by the consultant indicating that this would be highly unusual;
- A detailed account of the time taken for the family to produce a birth certificate and passport to An Garda Síochána;
- Detailed information about the photograph in Child T's passport given to An Garda Síochána, which was taken when she was 11 months old;
- Details of contact made by An Garda Síochána with the Coombe Hospital, which stated incorrectly that it had no record of the child being born on the date provided by the parents;

²⁹ Given that the disclosure of information preceded the initiation of proceedings under section 13 of the 1991 Act, it is unclear to what extent sections 29 and 31 of the 1991 Act were relevant to the media reporting on 22 October 2013.

- The fact that An Garda Síochána had indicated that they may seek to take DNA samples in order to confirm the child’s identity.

3.9. Conclusions

Basis for invoking section 12 of the 1991 Act

Communication from the member of the public

3.9.1. The concern expressed by the member of the public regarding Child T’s identity in the message that was forwarded by the Press Office to Sergeant A rested exclusively on:

- The fact that the member of the public had seen media coverage of the case of “Maria” in Greece;
- The fact that Child T had blonde hair and blue eyes, and that she was living in a Roma household; and
- The view - based on the member of the public’s experience in her home country - that there is a problem in Europe of Roma people abducting children in order to obtain social welfare benefits.

3.9.2. There is no information available to the Inquiry to suggest that the source and nature of the concern expressed by the member of the public was evaluated by An Garda Síochána as part of their assessment of the case. The Inquiry notes in this regard that, unlike the report on the case of Child A in Athlone, the full contents of the message from the member of the public that prompted the Garda actions with respect to Child T was not included in the internal Garda report on the case, nor were its exact contents made known during the District Court proceedings relating to Child T on 22 October. Specifically, the reference to there being a problem in

Europe of Roma people abducting children in order to obtain social welfare benefits was omitted from the internal Garda reports and from the information provided to the District Court.

- 3.9.3. The Inquiry accepts that Sergeant A made efforts to obtain the contact details for the member of the public but that these details were not provided until after Child T had been placed in care and the matter became the responsibility of the HSE.
- 3.9.4. Nonetheless, the Inquiry believes that there are a number of important aspects of the initial communication that should have been given consideration even without making contact with the individual who sent it.
- 3.9.5. The first is that the member of the public who wrote the message did not indicate what the nature of her knowledge of Child T's family was. This could have included, for example: whether she was a neighbour; whether she had known the family for a significant period of time; and whether she had observed any unusual behaviours or events that would lead her to suspect that Child T had been abducted.
- 3.9.6. It is clear from the communication sent by the member of the public in this case that she believed it was significant that Child T had blonde hair and blue eyes. The Inquiry is firmly of the view that physical dissimilarity between parents and their child is not a reasonable basis for forming a view that the child may have been abducted, absent any further information that would suggest such a conclusion. The Inquiry recalls its conclusions with respect to the case of Child A in Athlone, Westmeath in this regard.
- 3.9.7. Of greater significance in the communication from the member of the public was the connection drawn with the case of "Maria" in Greece and the view that there is

a problem in Europe with Roma people abducting children in order to obtain benefits.

3.9.8. The media coverage of the case in Greece was influenced by - and indeed fed – unfounded and deeply prejudiced myths regarding members of the Roma community abducting children.³⁰

3.9.9. The member of the public who raised concerns regarding Child T clearly shared those deeply prejudiced opinions. Indeed, the Inquiry believes that it is unambiguously racist to assert that members of the Roma “rob” children as a means of accessing social welfare benefits.

3.9.10. The Inquiry accepts that An Garda Síochána cannot ignore concerns that are brought to its attention, in whatever manner those concerns are expressed. However, the Inquiry believes that it is necessary and appropriate to evaluate the source and nature of such concerns. In this case, the Inquiry does not believe that An Garda Síochána was in fact presented with any information that would suggest or support a conclusion of child abduction with respect to Child T. All that had been conveyed to An Garda Síochána was a suggestion, based on an erroneous view of the case of “Maria” in Greece and an explicitly prejudiced view of the Roma community, that Child T was abducted because she was blonde and had blue eyes.

3.9.11. The Inquiry is not suggesting that the Gardaí in Tallaght should have refrained from carrying out enquiries of any kind in response to the communication forwarded by the Garda Press Office. However, the Inquiry is of the view that the concerns set out in that communication should have been evaluated far more critically by An

³⁰ See statement made by the Council of Europe Commissioner for Human Rights, Mr Nils Muižnieks, *Irresponsible media reporting on Roma propagates negative myths* (Strasbourg, 24/10/13).

Garda Síochána and that this should in turn have tempered the suspicions held by the Gardaí in relation to Child T to a very significant degree.

Prior knowledge of Child T's family

- 3.9.12. The Inquiry notes that one of the bases for invoking section 12 of the 1991 Act in respect of Child T was the fact that her family was known to An Garda Síochána as a result of child protection and criminal matters.
- 3.9.13. With respect to the child protection concerns, it is clear from the information provided to the Inquiry that there were no ongoing child protection concerns in relation to Child T or any of her family members. The previous concerns would have been clearly relevant to a consideration of Child T's welfare had similar or related concerns been expressed in relation to her. In the event, the concern that had been raised - that she may not be the child of the parents with whom she was living and may have been abducted – was unrelated to the child protection issues previously examined some years before by both An Garda Síochána and the HSE in relation to members of Child T's family.
- 3.9.14. The existence of prior child protection concerns is clearly a matter to which An Garda Síochána must have regard when carrying out its enquiries. However, the Inquiry believes that when there is such a qualitative difference between a suggestion of abduction and the previous concerns raised with respect to Child T's family, the weight accorded to the existence of those previous concerns should be correspondingly diminished.

Birth certificate and passport

- 3.9.15. It is clear from the internal Garda report on the case of Child T and from the Inquiry's interviews that the delay in providing a birth certificate and passport for Child T caused the Gardaí to draw a negative inference regarding their authenticity.
- 3.9.16. The Inquiry raised this issue with Child T's family in the course of its work. Child T's mother explained that the reason she did not immediately retrieve Child T's birth certificate and that of her brother was that the documents were in a room in which children were sleeping, and she did not wish to disturb them. In addition, the family was very clear that the gravity of the situation was not at all apparent to them; they were aware that the Gardaí wished to see the documents in question but there was no indication that the Garda enquiries could ultimately lead to Child T being removed from the care of her parents, or that the Gardaí had significant doubts regarding Child T's relationship with her family.
- 3.9.17. The Inquiry notes in this regard that as soon as Sergeant A explained that he was going to invoke section 12 of the 1991 Act and that he proposed to take Child T into the care of the HSE, the birth certificate and the old passport were produced immediately.
- 3.9.18. Given that the situation was not fully explained to Child T's family until that point, the Inquiry does not believe it was fair to draw such a negative inference from the failure to produce documents immediately on request. The Inquiry recalls that An Garda Síochána was not carrying out a formal investigation when they arrived at Child T's house; indeed, it is clear to the Inquiry that the exercise of powers under section 12 of the 1991 Act was not immediately contemplated by the Gardaí at that stage. In light of this, the Inquiry regards the position of the family on the question of delay as being reasonable. The Inquiry has no doubt that if the Gardaí had

explained the full nature of their concerns regarding Child T at an earlier stage, the documents would have been produced immediately.

- 3.9.19. Child T's passport was issued when she was a baby and, as a result, the photograph contained in the document was not useful for the purposes of visually identifying Child T. However, the Inquiry notes that there was nonetheless an official travel document provided for Child T (under the name recorded on her birth certificate, "U") with the details that matched the details provided on the record of her birth.
- 3.9.20. The birth certificate produced for Child T confirmed the details provided initially by the Child T's family regarding the location and the date of her birth. However, Sergeant A did not believe that the birth certificate was genuine because the Coombe Hospital had undertaken a search of its records and didn't find an entry to match the details provided for Child T.
- 3.9.21. This error on the part of the Coombe Hospital was highly unfortunate. The Inquiry believes that, having received this inaccurate information, it was reasonable for Sergeant A to have a doubt regarding the authenticity of the birth certificate produced for Child T. The Inquiry notes further that this error on the part of the Coombe Hospital was only corrected later on the evening of 21 October, after Child T had been placed in the care of the HSE.
- 3.9.22. In light of this, the Inquiry believes that at the time section 12 was invoked with respect to Child T, the inconsistency between the information provided by the Coombe Hospital and the documentation supplied by Child T's family constituted a reasonable ground for having a concern regarding Child T's welfare. However, for reasons outlined below, the Inquiry believes that this source of concern could have

been eliminated by undertaking more extensive preliminary enquiries prior to calling to Child T's home.³¹

- 3.9.23. In addition, the Inquiry recalls that even when Child T's birth details were confirmed by the Coombe Hospital, both An Garda Síochána and the HSE continued to have doubts regarding Child T's birth certificate. This suggests that Sergeant A would have invoked section 12 of the Child Care Act 1991 even if the Coombe Hospital had confirmed the details provided for Child T's birth.
- 3.9.24. Once the confirmation regarding Child T's birth details was produced, the Inquiry believes that it was unreasonable to have any doubts regarding the authenticity of the birth certificate provided to the Gardaí by Child T's family. The only question that remained was whether the birth certificate actually related to Child T, rather than a different child named "U".
- 3.9.25. Maintaining this hypothesis would require a belief in the existence of another child of the same age as Child T born to her parents, but who was unaccounted for. The Inquiry believes this to be an improbable scenario, especially given the absence of other information that would support such a conclusion.

The use of different names

- 3.9.26. The fact that Child T was registered for official purposes – on her birth certificate, with the Department of Social Protection and in her school – under the name "U" occasioned doubt on the part of An Garda Síochána regarding her identity. When viewed in light of the doubts cast on the authenticity of Child T's birth certificate,

³¹ See section 3.9.33 – 3.9.37 below

the use of different names suggested to the Gardaí that “U” was in fact a different child, whose details were being used for Child T.

3.9.27. Again, the Inquiry believes that the inference drawn from the use of a name other than that officially recorded at birth – and consequently for official purposes – was too strong. The Inquiry is satisfied that such a practice is not uncommon among members of the Roma community, though this was not known to Sergeant A or his colleagues at the time. However, the Inquiry notes that the practice of being called by a name other than name recorded officially on one’s birth certificate is not unheard of among Irish families.

3.9.28. Moreover, the Inquiry recalls that the Principal of Child T’s school had explained to Sergeant A that Child T was the name the child preferred to go by and that “U” was the name used for official purposes. This had not aroused any suspicion among the school authorities over the course of Child T’s three years in the school.

The flight risk

3.9.29. The possibility that Child T might be removed from the jurisdiction if she were not delivered up to the custody of the HSE on the evening of 21 October was an integral component of Sergeant A’s assessment of immediacy for the purposes of invoking section 12 of the 1991 Act.

3.9.30. As noted above, Sergeant A indicated that there were three principal reasons for believing that there was a risk of flight: the fact that Child T’s sister was in Romania at that time, when there were outstanding warrants for low-level criminal acts in relation to her; the view that Child T’s father travelled frequently to Continental Europe and the United Kingdom; and that fact that Sergeant A was aware of other cases of children that had come to the attention of An Garda Síochána on foot of

child protection concerns and had subsequently been removed from the jurisdiction.

3.9.31. As noted above with respect to Child A, if a family wished to remove a child from this country, the existence of family networks extending to other jurisdictions would be able to facilitate that. The Inquiry recalls further that this holds true for any family – including Irish families – that have such international family networks.

3.9.32. However, the Inquiry believes that a more fundamental point is that whatever flight risk may have existed was largely created by the arrival of the Gardaí at Child T's house.

3.9.33. It was known to the Gardaí that Child T had been at school for over three years and that there were no concerns regarding her attendance; there was no information suggesting a pattern of absence from the country.

3.9.34. In light of this and fact that the concerns held by the Gardaí related to Child T's identity rather than her being ill-treated, the Inquiry believes that it would have been possible to avoid the creation of a flight risk by carrying out more extensive enquiries prior to visiting Child T's home. In addition to liaising with HSE Social Work Teams, this would involve communication with the relevant Public Health Nursing Team, medical professionals and others providing support services to the families in question.

3.9.35. The Inquiry appreciates that An Garda Síochána must respond rapidly in cases of concern and that calling to Child T's house on the afternoon of 21 October did not represent a deviation from normal Garda practice. However, for the reasons outlined above, the Inquiry does not believe that there were strong reasons to

believe that the concern regarding Child T's identity was well-founded, nor were there any indications that she was being ill-treated or that she was going to leave the Tallaght area.

3.9.36. The Inquiry recalls its comments above with respect to the possibility of carrying out more extensive discreet enquiries in advance of members of An Garda Síochána calling to a family's home.

3.9.37. The Inquiry acknowledges that Sergeant A did undertake a range of enquiries prior to calling to Child T's home. However, the Inquiry believes that the lack of any indication that Child T was in danger – and the confirmation from her school that there were no concerns relating to attendance or to her welfare – afforded the opportunity for more extensive checks, including with Public Health Nurses and other medical practitioners. The Inquiry believes it would have been possible to undertake these additional checks on the afternoon of 21 October or on 22 October.

Child T's appearance and ethnic background

3.9.38. Although the existence of a potential flight risk played an important role in An Garda Síochána's determination that immediate action was necessary, it was obviously irrelevant to the question of whether there were reasonable grounds for doubting Child T's identity.

3.9.39. It appears to the Inquiry that the decisive factor in persuading An Garda Síochána that there was a doubt regarding Child T's identity was her appearance. The other factors cited by the Gardaí for invoking section 12 of the 1991 Act - the initial communication from the member of the public, the delay in producing documentation, the use of a different first name and the previous interactions

between Child T's family and the Gardaí - were incidental and did not relate to the question of identity in the way that Child T's appearance did.

3.9.40. The Inquiry believes it is important to highlight that neither the HSE nor An Garda Síochána doubted that Child T had been part of her household for a number of years; the information provided by Child T's school proved that. The concern held by the Gardaí - and accepted by the HSE – was that Child T may have been abducted prior to starting school.

3.9.41. The Inquiry has already set out its firm view that physical dissimilarities between parents and their children do not constitute a reasonable basis for suspecting that such children have been abducted. The Inquiry therefore believes that drawing strong inferences regarding a child's identity and parentage on that basis alone would be manifestly unreasonable.

3.9.42. For the reasons set out above, the Inquiry also does not believe that the other factors giving rise to concerns regarding Child T's identity warranted the level of suspicion that the Gardaí evidently had in relation to Child T's identity and parentage, with the exception of the inaccurate information from the Coombe Hospital.

3.9.43. The information from the maternity hospital indicating that Child T had not been born in the hospital on that day contributed significantly to Sergeant A's doubts regarding Child T's parentage. In particular, this elevated Sergeant A's suspicion regarding the failure to provide documentation, the use of a different name and also the physical dissimilarity between Child T and her family.

- 3.9.44. The Inquiry recalls its view that more substantial enquiries could have been undertaken regarding Child T's identity prior to any contact being made with her family. This would have prevented a situation arising in which members of An Garda Síochána were already at the child's home when the inaccurate information arrived from the Coombe Hospital and in which they were prompted to take immediate action as a result.
- 3.9.45. Notwithstanding this fact, the Inquiry accepts that at the time section 12 of the 1991 Act was invoked, there was a reasonable concern - distinct from Child T's appearance – arising from the deeply unfortunate error on the part of the Coombe Hospital that caused members of An Garda Síochána to doubt Child T's identity. As it was coming close to the end of the working day, the opportunity for Sergeant A to carry out any further enquiries was also limited at that stage.
- 3.9.46. However, the Inquiry recalls that the Gardaí still had concerns regarding Child T's identity after the Coombe Hospital had corrected its error, though at that point the legal responsibility for Child T had passed to the HSE. The Inquiry does not believe that it was reasonable to doubt the authenticity of the birth certificate following this confirmation from the Coombe hospital.
- 3.9.47. As the Inquiry does not believe that the information available on the evening of 21 October could reasonably sustain the level of suspicion held in relation to Child T's identity, the Inquiry must conclude that an additional element is required to explain it.
- 3.9.48. The Inquiry is of the view that there was a readiness to believe that the child may have been abducted, which cast the other causes of concern to the Gardaí in a particular light and elevated their importance and urgency. The Inquiry believes that this was not simply a reflection of the fact that Child T did not resemble other

members of her family; it stemmed from a perception of the particular family that she did not resemble. It is in this connection that the Inquiry believes that Child T's ethnic background was relevant and it recalls its discussion above regarding the role of ethnicity in the decision-making of An Garda Síochána in relation to the case of Child A in Athlone.

- 3.9.49. The Inquiry recalls that the Gardaí involved in the case of Child T were conscious of the events unfolding in Greece regarding the Roma child known as "Maria". The Inquiry recalls that much of the international media coverage of that case perpetuated negative myths regarding the Roma community. In particular, the readiness to believe that "Maria" had been abducted was fed by a widespread and long-standing belief that the Roma are "child-abductors".
- 3.9.50. The Inquiry also recalls that one of the reasons cited by Sergeant A for invoking section 12 of the 1991 Act with respect to Child T was that the Gardaí and HSE in the Tallaght area had direct experience of previous cases in which An Garda Síochána undertook enquiries on foot of child protection concerns and in which the children were not immediately taken into care and were subsequently removed from the jurisdiction. This included children from Roma families and other new communities. This was regarded as being of particular relevance to the consideration of a flight risk in the case of Child T.
- 3.9.51. The Inquiry accepts that prior experience of this kind can reasonably be expected to inform decisions made by a member of An Garda Síochána, particularly in rapidly evolving situations. However, the Inquiry believes that analogies must be very carefully drawn; the relevance of previous cases must be assessed solely by reference to the presence of common elements. In particular, when there is a possibility that ethnicity may be a factor in deciding on a particular course of action, Gardaí must ensure that their actions are based strictly on individual behaviours

and/or accumulated intelligence.³² An Garda Síochána must be mindful of the potential conjunction between previous experience and generalisations about minorities.

- 3.9.52. The Inquiry believes that in the case of Child T, the decision to invoke section 12 of the *Child Care Act 1991* was driven primarily by a combination of: the inaccurate information from the Coombe Hospital; the past experience of An Garda Síochána in which children about whom child protection concerns had been raised were removed from the jurisdiction; and a readiness to believe that Child T may have been abducted because she was a blonde, blue-eyed child living with a Roma family.
- 3.9.53. It is not possible for the Inquiry to determine which of these factors was predominant. However, the Inquiry is satisfied that if Child T's ethnic background and appearance had not played a role in the decision to invoke section 12 of the 1991 Act, the provision of accurate birth information from the Coombe Hospital - which meant there was no reason to doubt the authenticity of the birth certificate - would have attenuated the concerns held by the Gardaí to a significant degree. In the event, those concerns remained, although by the time that confirmation was obtained Child T was already in foster care and responsibility for her had passed to the HSE.
- 3.9.54. In view of the extensive community policing work undertaken by the members of An Garda Síochána in question and their voluntary engagement with minority communities, the Inquiry does not believe that their actions with respect to Child T were animated by consciously held prejudicial beliefs regarding the Roma community.

³² ECRI, General Policy Recommendation No. 11, at para. 29

- 3.9.55. The Inquiry believes that wherever there is a possibility that decision-making in relation to a marginalised community such as the Roma may be affected by negative stereotypes, An Garda Síochána must be especially vigilant to ensure that those stereotypes are identified, challenged and corrected. The Inquiry believes that in this case, Garda decision-making was not sufficiently sensitive to the possibility that stereotypes could play a role in that decision-making, and consequently cause other facts to be seen in such a way as to confirm and conform to those stereotypes.
- 3.9.56. The Inquiry wishes to stress that it does not believe on balance that Child T's ethnic background was the only or indeed primary reason for invoking section 12 of the 1991 Act in relation to Child T on the afternoon of 21 October. However, given that the Inquiry believes that Child T's ethnicity and appearance played a role in the decision by An Garda Síochána to invoke section 12 of the 1991 Act, the Inquiry concludes that the actions of the Garda Síochána in this case conformed to the definition of ethnic profiling.
- 3.9.57. The Inquiry must acknowledge that in the course of presenting its preliminary findings on this point to the relevant member of An Garda Síochána, the member in question disagreed strongly with the contention that ethnicity played a role in his decision, citing the other grounds for concern in relation to Child T outlined above.
- 3.9.58. The Inquiry understands that the members of An Garda Síochána involved in Child T's case have not received specific training - nor have they participated in any awareness-raising activities – related to the Roma community. The Inquiry believes that this may have contributed to the absence of any consideration of the possibility that prevailing stereotypes regarding the Roma community may have played a role in their own decision-making.

- 3.9.59. The Inquiry believes it is important to note that the member of An Garda Síochána who invoked section 12 of the 1991 Act with respect to Child T is widely regarded by professionals outside An Garda Síochána with whom he works as being exceptionally committed and significantly experienced in the field of child protection. This is echoed in the internal Garda reports and the Inquiry has no reason to doubt that this is the case.
- 3.9.60. The Inquiry believes that the case of Child T involved an experienced officer who, acting under significant pressure, believed his action was taken in the best interests of the child by invoking section 12 of the 1991 Act.

Garda-HSE interaction and access to information

- 3.9.61. The Special Inquiry was tasked with considering the nature of An Garda Síochána's interaction with the HSE and with other organisations in possession of information relevant to Child T's case.
- 3.9.62. It is beyond the scope of the Inquiry to evaluate Garda-HSE cooperation in a general sense. However, the particular circumstances of this case do give rise to a number of conclusions regarding this very important relationship.

Social Work Team

- 3.9.63. It is evident to the Inquiry that there was a strong professional relationship between the Garda Child Protection Unit and the HSE Social Work Team in the Tallaght area. Sergeant A contacted Social Workers E a number of times prior to delivering Child T up to the care of the HSE, both to seek information relating to the child and to make preparations for her foster care placement.

- 3.9.64. As Sergeant A's interactions with the HSE Social Work Team took place during business hours, the limited information held by the HSE Social Work Team on Child T was conveyed to him prior to his invoking of section 12 of the 1991 Act. Difficulties that can emerge in accessing information "out of hours" therefore did not arise in this case.
- 3.9.65. Although the information from the HSE Social Work Team included confirmation that there was child of the name "U" in Child T's household, the Inquiry notes this information was not sufficient to assuage Sergeant A's concerns regarding Child T's identity.
- 3.9.66. The HSE Social Work Team's subsequent interaction with An Garda Síochána took place in the context of preparations for the application to the District Court for an emergency care order in respect of Child T. The Inquiry notes that by this time, responsibility for Child T's care – including the decision regarding whether Child T should be returned home – had passed to the HSE.
- 3.9.67. The Inquiry recalls its comments above in relation to the possibility that in unusual cases such as that of Child T, more extensive preliminary enquiries should be undertaken before An Garda Síochána calls to a child's home. The Inquiry believes that the local Social Work Team should clearly be party to that preliminary enquiry process. However, in situations where no specific child protection concerns are raised in relation to a child, the Inquiry notes that the potential role of local social workers may be limited; unless the child in respect of whom a concern regarding identity has been raised has also come to the attention of social workers in the past, there is no reason why they would have information that could advance the Gardaí's preliminary enquiries.

- 3.9.68. This may be contrasted with local Public Health Nursing Teams, which hold records regarding every child born in the jurisdiction that has engaged with their service.

Public Health Nursing Team

- 3.9.69. The Inquiry recalls the information held by the local Public Health Nursing Team in respect of Child T, including records indicating that Child T was born in the Coombe Hospital, details of her immunisations, details relating Child T's mother and also her General Practitioner (GP).
- 3.9.70. This information was not accessed by An Garda Síochána on 21 October 2013. It was not accessed by the HSE Social Work Team until the morning of 23 October.
- 3.9.71. The Inquiry recalls its comments above in relation to the absence of a formal protocol to underpin access by An Garda Síochána to information held by local Public Health Nursing Teams.
- 3.9.72. The Inquiry recalls its firm belief that there is a compelling need for a more formal and direct channel of communication between An Garda Síochána and Public Health Nurses in cases such as that of Child T.
- 3.9.73. The Inquiry notes in this regard that Sergeant A's initial enquiries regarding Child T were undertaken during business hours on 21 October 2013 when it would in principle have been possible to access the electronic records held by the local Public Health Nursing Team.

Other services

- 3.9.74. The Inquiry recalls the other services that had provided support to Child T and to her family – such as a General Practitioner with the Roma Health Unit and a professional working with an ISPCC project - and that consequently held information relevant to the identification of Child T.
- 3.9.75. The Inquiry accepts that in the ordinary course of events, it is more routine for the local Social Work Team rather than members of An Garda Síochána to carry out network checks that encompass a broader range of professionals. However, in light of the value of enhanced preliminary enquiries in cases where young children's identities may be in doubt, the Inquiry believes that it would be beneficial to contact a wider range of agencies – including General Practitioners and non-governmental organisations providing services to a family - as part of the process.

Impact on Child T and her family

- 3.9.76. The events of 21-23 October 2013 had a serious impact on Child T and her family.
- 3.9.77. The Inquiry recalls the account of Child T's foster parents and their description of Child T as being withdrawn, quiet, anxious and upset during the two-day period in foster care. This is a readily understandable and predictable outcome of a child being separated from her family. The Inquiry also learned from its direct engagement with Child T and her family that, at her own request, Child T has changed her hair colour on foot of the events of October 2013. Child T explained to the Inquiry that although she does not like having hair that colour, she wished to take this step in order to prevent her being taken from her family again.
- 3.9.78. The Inquiry notes further that the media coverage of the case had a significant impact on Child T and her family. The Inquiry recalls that the suspicions relating to

Child T's identity generated an entirely unwarranted and distressing notoriety for Child T's family within their own community, arising from the doubt regarding Child T's parentage.

3.9.79. In addition, the Inquiry understands that the media presence outside Child T's home on 23 October prevented the child from returning home once she was reunited with her parents. The Inquiry believes that this action showed a total lack of consideration for Child T and her family and the Inquiry believes that members of the media responding to cases such as that of Child T in future should consider more fully their obligations under the Code of Practice for Newspaper and Periodicals in relation to children, privacy, fairness and honesty.³³

3.9.80. The Inquiry must also note the international context of the media coverage of Child T's case. It is evident that this case resonated with the international news reports relating to the child called "Maria" in Greece. Unfortunately, the resonance in Ireland also included the negative tones associated with the Greek case, namely the mistaken view that the Roma community does not include individuals with fair hair and features, combined with an immediately heightened suspicion that the presence of such children with Roma families would be readily explained by abduction.

3.9.81. The Inquiry recalls the European Commission against Racism and Intolerance's (ECRI) General Policy Recommendation No. 13 on Combating Anti-Gypsyism and Discrimination Against the Roma, which contains a range of recommendations to

³³ See in particular Principles 3,4,5, 9 of the Code of Practice for Newspapers and Periodicals, which are overseen by the Press Council of Ireland and the Press Ombudsman.

Member States of the Council of Europe relating to the media's role in combating discrimination in this area.³⁴

3.9.82. The Inquiry also recalls that Child T and her parents underwent DNA testing, with consent, in order to establish their genetic relationship. The Inquiry is of the view that the use of DNA testing in this case represented a disproportionate interference with the family members' private life. The Inquiry recalls that it does not believe that DNA testing is a proportionate measure to employ in circumstances where there is a significant amount of alternative information that could attest to the relationship between a child and his or her parents. Information gleaned from DNA tests is of a highly sensitive and private nature; gathering that data is enormously intrusive, no matter how physically non-invasive the test may be.

Confidentiality of information

3.9.83. The Inquiry recalls the various provisions, legislative and otherwise, that prohibit the inappropriate disclosure of sensitive personal information by members of An Garda Síochána.³⁵

3.9.84. The Inquiry believes that the statutory and non-statutory requirements in this domain are robust and that if members of An Garda Síochána were to disclose sensitive personal information inappropriately to third parties, this would not occur due to a lack of legislation or guidance proscribing such an action. The Inquiry is satisfied that the panoply of provisions set out above clearly prohibited the inappropriate disclosure of information regarding Child T by members of An Garda Síochána to third parties, including the media.

³⁴ European Commission Against Racism and Intolerance, *General Policy Recommendation No. 13 on Combating Anti-Gypsyism and Discrimination Against the Roma* (Strasbourg: Council of Europe, 2011), Recommendation 10.

³⁵ See section 2.9 above.

- 3.9.85. Nonetheless, the fact remains that such sensitive information did enter the public domain inappropriately on the morning of 22 October. The Inquiry believes that it is important to emphasise that the dissemination of such information to the media and its subsequent publication was a very serious infringement of Child T's privacy and also that of her family.
- 3.9.86. The Inquiry has not sought to determine precisely where or how the breach occurred. However, the Inquiry is satisfied that this level of detailed information – including information relating to Garda enquiries that were not made known to Child T's family until the proceedings in the District Court were underway - was available only to the State authorities involved at that time, namely An Garda Síochána and the HSE.
- 3.9.87. The Inquiry has also had regard to the existence of written reports prepared internally within An Garda Síochána and the HSE which may have acted as source material for an article published on the morning of 22 October.
- 3.9.88. The Inquiry notes in this regard that there were no written HSE reports in existence on the evening of 21 October or on the morning of 22 October that could have acted as a source for the initial article published regarding the case of Child T.
- 3.9.89. The Inquiry notes further that there were striking similarities between the text, form and content of the information found in the article published on the morning of 22 October and the only written report prepared within An Garda Síochána on 21 October.

3.9.90. The Inquiry can rule out Child T's family as a possible source of the information provided to the media; the article included information that was unknown to them at the time of its publication. The HSE was in possession of the relevant facts at the time the article was published, and as a result the Inquiry cannot categorically exclude the possibility that the HSE was the source of the information leaked to the media in relation to Child T. However, the level of detail contained in the published article and, in particular, the article's resemblance to the only written Garda report that existed on the evening of 21 October 2013 leads the Inquiry to believe on the balance of probabilities that the information in question came from someone within An Garda Síochána with access to the written report prepared on 21 October 2013.

3.9.91. As the Inquiry has already noted, the systems and policies for maintaining confidentiality within An Garda Síochána are fundamentally sound. It appears to the Inquiry that what may have transpired in the case of Child T was that these requirements were simply not respected. The Inquiry therefore believes that the release of details regarding Child T into the public domain may have been the result of a breach of discipline and/or an offence.

PART 4

4. Recommendations

The following recommendations have been made by the Inquiry in order to address the immediate consequences of An Garda Síochána's actions in these cases and to guard against similar situations arising in future.

Although the Inquiry must address these recommendations to the Minister for Justice and Equality, the Inquiry is mindful of the fact that the implementation of the recommendations will require coordination with a number of different agencies and bodies.

Children and Families

- 4.1. Efforts should be made to acknowledge the distress caused to the families by these events and to alleviate the residual concerns experienced by the children and families. The Inquiry believes this should include an apology to the families in question and the provision of appropriate support in order to address the consequences of An Garda Síochána's actions in these cases.**
- 4.1.1. The Inquiry believes that in light of the impact of the events in question on the family and its findings with respect to the reasonableness and proportionality of State actions, the families are owed an official apology for the upset caused to them by removing their children from their care. The Inquiry notes further that these events have undermined an already fragile trust between the Roma community and State agencies. In light of these considerations and in the interests of rebuilding trust with the Roma community, the Inquiry believes that it would be appropriate for the apology to the families of Child A and Child T to come from the Minister for Justice and Equality.

- 4.1.2. Both families described feelings of shame and humiliation because of the publicity surrounding the cases and the calling into question of their parentage. They also expressed concern for their position within their own communities.
- 4.1.3. The Inquiry understands that Child A's family are availing of support through the local Public Health Nursing team, with whom they have a well-established and trusted relationship. Links with trusted advocacy organisations like Barnardos should continue and liaison between the local Public Health Nursing team and Barnardos should include a review at regular intervals to provide any further on-going support required by the family.
- 4.1.4. The Inquiry understands that Child T's family were offered support by the HSE through their legal representative but that this support was declined by the family because of an understandable lack of trust. It is important that a trusted agency is found by the HSE without delay to assess and provide appropriate support for the family.
- 4.1.5. Separately, a psychological assessment of Child T's needs should be offered and any appropriate support should be provided.

Roma Community

- 4.2. **Concrete steps must be taken to build trust with the Roma community and to ensure that State agencies' interactions with the Roma community are characterised by respect and effective communication. The Inquiry believes that three key areas require particular attention in this regard: the Government must, in consultation with relevant civil society organisations, develop support and advocacy services to mediate between members of the Roma community and**

State agencies; State agencies need to develop their cultural competence; and the Irish Press Council should give consideration to how ethical reporting regarding minority communities including the Roma community can best be promoted.

- 4.2.1. The Inquiry is in no doubt that the Roma community in Ireland has been negatively affected by the actions of the State in the cases of Child T and Child A. In addition to the immediate impact on the families in question, it is clear that these events have generated further fear amongst the Roma community more generally towards Irish authorities; this is illustrated by the situation in Tallaght, where the Inquiry understands that Child T's school has been approached separately by twelve parents from the Roma community seeking advice on how to protect their children from being taken into State care.
- 4.2.2. The Roma population in Ireland is estimated at between 3,000 and 6,000.³⁶ Given that the population is so small, there is no legitimate reason why the Irish State cannot improve the means by which it interacts with the Roma community in this jurisdiction.
- 4.2.3. An up to date assessment of need regarding support provided by the State to the Roma community should be undertaken by a nominated Government Department to establish how best to improve State agencies' interaction with the Roma community. This should include consultation with relevant State agencies and civil society organisations working with and on behalf of the Roma community.
- 4.2.4. The Inquiry experienced very significant difficulties in sourcing a trained and independent Roma cultural mediator in Ireland. Interpretation, translation, cultural

³⁶ Drew, E. and Keaney, A. *Ireland FRANET National Focal Point Social Thematic Study: The situation of Roma* (2012) made available by the European Union Agency for Fundamental Rights at <http://fra.europa.eu/sites/default/files/situation-of-roma-2012-ie.pdf> (last accessed on 25 March 2014), p. 7. The Inquiry contacted the Central Statistics Office (CSO) to ascertain the size and distribution of the Roma community in Ireland. Due to the nature of the demographic information gathered by the CSO, there are no exact figures available.

mediation and advocacy services need to be enhanced in this jurisdiction. The Government should commit to resourcing an enhanced and comprehensive advocacy service for the Roma community.

- 4.2.5. The Council of Europe has developed a specific programme of Roma mediators, which is active in many countries but not in Ireland. The Irish government should commit the requisite resources and actively engage with the Council of Europe on this programme. The Inquiry met with Mr Jeroen Schokkenbroek, Special Representative of the Secretary General of the Council of Europe on Roma issues, and his office indicated that it stands ready to assist Ireland with the development of a mediation programme in Ireland. The Inquiry recalls in this regard the Recommendation made by the Committee of Ministers of the Council of Europe on mediation as an effective tool for promoting respect for human rights and social inclusion of Roma.³⁷
- 4.2.6. The Inquiry also believes that immediate support should be provided in the form of a Roma cultural mediator to liaise between State agencies and Roma families living in the Tallaght region to alleviate immediate concerns.
- 4.2.7. The existing deficit in cultural competence needs to be addressed across State agencies interacting with minority communities, including the Roma community. Training should be provided across public services to ensure that when engaging with minority communities, including Roma, all staff are culturally competent and informed about the communities they serve.
- 4.2.8. The Roma have been collectively stigmatised as criminals by both international and domestic media; anti-Gypsy stereotypes continue to be spread and perpetuated

³⁷ Committee of Ministers of the Council of Europe, *Recommendation CM/Rec(2012)9 on mediation as an effective tool for promoting respect for human rights and social inclusion of Roma*, adopted on 12 September 2012

across Europe, including in Ireland. The Inquiry notes in this regard that a number of media outlets report on Roma and Travellers only in the context of social problems and crime.

- 4.2.9. In the cases of both Child T and Child A in Ireland, there was a categorical link to the reporting of the case of 'Maria' in Greece. The media coverage of the case in Greece was influenced by, and indeed fed, unfounded and deeply prejudiced myths regarding members of the Roma community abducting children. Sadly, it is clear to the Inquiry that some people living in Ireland share those deeply prejudiced and racist opinions, asserting that members of the Roma 'rob' children as a means of accessing social welfare benefits.
- 4.2.10. The Inquiry wishes to emphasise the important role the media play in terms of public education and cautions against taking our lead from some of the anti-Gypsy stereotyping observed in Europe.
- 4.2.11. Given the crucial role the media play in this regard, the Inquiry believes that the Press Council should give consideration to how ethical reporting regarding the Roma community can best be promoted. The Inquiry recalls its comments above with respect to the European Commission against Racism and Intolerance's (ECRI) General Policy Recommendation No. 13 on Combating anti-Gypsyism and Discrimination Against the Roma, which contains a range of recommendations to Member States of the Council of Europe relating to the media's role in combating discrimination in this area.
- 4.2.12. Finally, the Inquiry recommends that in publishing this report, specific efforts should be made to communicate directly with the Roma community regarding its findings and any follow-up action taken by the Government.

Cultural competence within An Garda Síochána

4.3. Cultural competence within An Garda Síochána with respect to the Roma community must be enhanced. To this end, the Inquiry believes that future steps taken by An Garda Síochána to improve its capacity in this area – including the adoption and implementation of An Garda Síochána’s forthcoming Diversity Strategy 2014-2016 – must include consultation with the Roma community. An Garda Síochána must ensure that its policy on interpretation and language supports, diversity training for staff and community engagement conform to the highest standards.

4.3.1. The Inquiry found that in the case of both Child T and Child A, members of An Garda Síochána were working in communities where there is a requirement for a high degree of cultural competence to respond to the diverse needs of the communities they serve. In Athlone, the Inquiry met with an ethnic liaison officer in Athlone Garda Station; in Tallaght, the Gardaí reported that there was an expectation that every member of An Garda Síochána would assume a responsibility for effective liaison with ethnic minorities. However, in both cases, members of An Garda Síochána had not received any specific training to assure their cultural competence with respect to the Roma community. In reality, this meant that stereotypes and generalisations about the Roma community were left unchallenged.

4.3.2. In the case of Child A, they had not developed some very basic sensitivities with respect to the Roma community including lack of sensitivity to: the family’s extreme marginalisation and poverty; the lack of formal education, leading to low literacy levels; and their fear of authority, leading to inappropriately acquiescent behaviours. Generalisations appeared to be made regarding the transient nature of the Roma community which contributed to an exaggerated concern of a flight risk.

- 4.3.3. The Inquiry believes that in both cases, a more informed police service would have known that it is not uncommon for Roma parents to have children with fair hair and blue eyes and that it is not uncommon amongst the Roma community to call a child by a name not registered on a birth certificate. Equally, the Inquiry believes that had An Garda Síochána been better informed with respect to the Roma community, members would have been able to put the international media coverage of the case of “Maria” in Greece – which played such a crucial role in triggering Garda action in the cases of Child T and Child A – in its proper context.
- 4.3.4. The Inquiry notes in this regard that An Garda Síochána’s last Diversity Strategy for the period 2009-2012 had many strong elements. The Strategy included key areas for further development, some of which were of direct relevance to the work of the Inquiry, including:
- A commitment to address language and communication barriers through developing a policy on translation, interpretation and communication supports;
 - A commitment for An Garda Síochána to consult widely with diverse and minority groups to inform future diversity awareness raising, training and policy initiatives;
 - Quality assurance of all future diversity training programmes; and
 - Continuation of training to all staff in the organisation.
- 4.3.5. The Inquiry believes that the cases of Child T and Child A underline the need for significantly more work in these areas and the Inquiry is strongly of the view that future Diversity Strategies need to be implemented in full.
- 4.3.6. The Inquiry notes in this regard that the Council of Europe has developed expertise on anti-discrimination activities undertaken by police forces and recommends that the Government engage with the Council of Europe to learn from good practice

across the continent. The Inquiry understands from its interaction with the Council of Europe that a particularly strong example of anti-discrimination training for police may be found in Spain.

An Garda Síochána protocol on the exercise of powers under section 12 of the *Child Care Act 1991*

- 4.4. An Garda Síochána should develop a protocol on the exercise of powers under section 12 of the *Child Care Act 1991*. In addition to providing more detailed instruction for members of An Garda Síochána in dealing with the situations in which section 12 of the 1991 Act is most commonly invoked, the protocol should include specific guidance on the more unusual situations in which the identity of children is in doubt.**

4.4.1. The powers provided by section 12 of the *Child Care Act 1991* are significant; placing an onerous obligation on members of An Garda Síochána. The guidance provided to Gardaí in the H.Q. Directive 48/2013 and the *Garda Síochána Policy on the Investigation of Sexual Crime, Crimes against Children and Child Welfare (2013)* represents an improvement on the previous guidance set out in HQ Directive 141/95 (1995), which merely set out the relevant legislative provisions. The Inquiry is also aware that the Garda decision-making model provides a sound framework that is applicable to invoking section 12 of the 1991 Act. The Inquiry notes in this regard that the decision-making model emphasises the need to establish, validate and develop information, as well as the need for Garda responses to be necessary and proportionate.³⁸

4.4.2. However, the Inquiry is of the view that in light of the seriousness of the power in question and the necessarily subjective nature of a Garda's perception of immediate and serious risk to a child, the guidance made available to members of

³⁸ An Garda Síochána, *Guidance on the Recording, Investigation and Management of Missing Persons (2012)*, Chapter 15

An Garda Síochána – any of whom could be called on to invoke section 12 of the 1991 Act in the course of their duties – should include significantly more detail. The lack of such detailed guidance on the implementation of section 12 of the 1991 Act since its commencement in 1995 is unacceptable.

- 4.4.3. With specific reference to situations in which children's identities are called into question, a Garda protocol on the use of powers under section 12 of the 1991 Act should include: clear guidance on what factors should be considered by members in forming a reasonable suspicion that a child may be abducted; guidance on undertaking discrete enquiries and when it is appropriate to call to the child's home; and the possibility of case conferences with the Child and Family Agency where there is no indication of an immediate risk to a child but where the Gardaí must nonetheless investigate a concern.
- 4.4.4. The Inquiry believes further that such a Garda protocol should be placed in the public domain. The Inquiry notes in this regard that certain Garda policy documents relevant to child protection are published while others are available only on the Garda Portal, and listed to the Inquiry as being 'for internal use only.' Transparency in relation to child protection policy plays a critical role in enhancing public confidence in An Garda Síochána. Having had access to the internal policy documents relevant to child protection, the Inquiry is of the view that such guidance should be published.
- 4.4.5. The internal report by the Garda Commissioner into the cases of Child T and Child A indicates that under the auspices of the Strategic Liaison Committee between the Gardaí and the Child and Family Agency, consideration is being given to developing a national protocol between the Child and Family Agency and An Garda Síochána in respect of section 12 of the 1991 Act to ensure uniformity of approach nationally.

- 4.4.6. The Inquiry believes that the cases of Child T and Child A illustrate that in addition to a protocol addressing inter-agency cooperation in relation to section 12, An Garda Síochána needs to develop its own internal protocol on the implementation of section 12 of the *Child Care Act 1991* along the lines set out above.

Public accountability for the use of section 12 of the *Child Care Act 1991*

- 4.5. **Given the significant powers afforded to An Garda Síochána in exercising section 12 of the *Child Care Act 1991* and the frequency with which it is invoked - more than 750 occasions annually – the Inquiry believes that details regarding its use should be included in the Garda Commissioner’s Annual Report to the Minister for Justice and Equality. The Inquiry believes that consideration should also be given to establishing independent oversight for the use of this significant policing power.**
- 4.5.1. The exercise by An Garda Síochána of section 12 of the *Child Care Act 1991* is an issue of significant public concern, as illustrated by the public debate occasioned by the cases of Child T and Child A.
- 4.5.2. The Child Protection Unit in Tallaght, the first of its kind in Ireland, was established in 2007. The Inquiry used the milestone of the establishment of the first Child Protection Unit as a marker to review public accountability for child protection and reporting of the exercise of section 12 by An Garda Síochána.
- 4.5.3. Section 46 of An Garda Síochána Act 2005 provides that the Garda Commissioner shall submit an annual report to the Minister for Justice and Equality. Section 46(2)(e) provides that the Garda Commissioner may include ‘any other matter that the Garda Commissioner thinks fit.’

- 4.5.4. The 2007 and 2008 Annual Reports of An Garda Síochána make no reference to the establishment of the first Child Protection Unit in Ireland or the exercise by An Garda Síochána of powers under section 12 of the Child Care Act 1991. The 2009 report makes reference to child protection in the strategic goals under the section on crime. The report also indicated that the Commissioner had directed a review of the policy methodologies utilised by members of An Garda Síochána, with a view to preparing a comprehensive policy document. There is no reference or analysis of the exercise by An Garda Síochána of section 12 of the Child Care Act 1991.
- 4.5.5. Subsequent Annual Reports refer to issues relating to child protection in the context of domestic violence, sexual abuse, child pornography and inter-agency cooperation with the Health Service Executive; there is no reference to the frequency or nature of the cases in which section 12 of the 1991 was invoked.
- 4.5.6. The Inquiry believes that this lacuna in accounting for the use of a serious power by An Garda Síochána should be addressed. In addition, the Inquiry believes that consideration should be given to providing for independent oversight of the use of section 12 of the 1991 Act in order to further enhance transparency and accountability in this area.

Audit of the use of section 12 of the *Child Care Act 1991*

- 4.6. **The Inquiry believes that there should be an independent audit of the exercise by An Garda Síochána of section 12 of the *Child Care Act 1991*. The Inquiry believes that this audit should include: a breakdown of the reasons cited for invoking section 12; a comparison with the number of successful applications for emergency care orders in the District Courts; an examination of the length of time**

the child was deprived of his/her family environment; and the ethnic background of the children in respect of whom section 12 of the 1991 Act has been invoked.

- 4.6.1. The desirability of an audit of the use of powers under section 12 of the 1991 Act arises from the need to ensure public accountability and confidence.
- 4.6.2. The carrying out of such an audit was outside the Inquiry's Terms of Reference. However, the Inquiry requested data from An Garda Síochána on the breakdown of the cases in which section 12 of the 1991 Act by ethnic background in order to contextualise its work.
- 4.6.3. Although the operational data provided to the Inquiry was provisional and subject to change, it did suggest a number of issues that an independent audit of the use of section 12 would have to consider, including: how an accurate picture can be obtained of the use of section 12 of the 1991 Act in respect of Irish children whose parents are not Irish (the Inquiry was informed that the data included in Garda records is related to nationality rather than ethnic background); whether certain groups are over-represented in the figures when compared with the size of their communities and, if so, whether there is a reasonable basis for this; and whether there is a disparity between the representation of different groups in the figures for the use of section 12 of the 1991 Act as compared with the overall number of referrals to/from the Child and Family Agency for children.

Child Protection within An Garda Síochána

- 4.7. **The Inquiry believes that An Garda Síochána should develop a national model for child protection in order to build on the work already accomplished by the existing Child Protection Units.**
- 4.7.1. In undertaking its work, the Inquiry was conscious that the use of section 12 of the *Child Care Act 1991* takes place against the backdrop of a wider range of Garda

activities in the area of child protection. The Inquiry was also mindful that it was charged with considering all child protection considerations relevant to the cases of Child T and Child A.

- 4.7.2. The Inquiry therefore had regard to the wider strategic place of child protection work within An Garda Síochána. It was in this regard that the Inquiry learned that there is no overall strategy for developing An Garda Síochána's capacity in the area of child protection.
- 4.7.3. However, it was also clear to the Inquiry that members of An Garda Síochána whose chosen area of interest is child protection displayed a strong sense of duty, commitment and enthusiasm for their work; this even extended to a number of Gardaí undertaking relevant further education without any financial support from An Garda Síochána. The Inquiry was impressed with their commitment, openness and clear desire for continuous improvement in their field of work.
- 4.7.4. The Inquiry has already noted that section 12 of the *Child Care Act 1991* places an onerous but necessary burden on members of An Garda Síochána. However, it is the Inquiry's view that the management approach and policy guidance in the area of child protection within An Garda Síochána are not commensurate with this very onerous responsibility borne by members of An Garda Síochána, a burden that is indeed acknowledged by the Garda Commissioner's report on the cases of Child T and Child A.
- 4.7.5. The Child Protection Unit in Tallaght, the first of its kind in Ireland, was established in 2007. The Inquiry was informed by An Garda Síochána that Child Protection Units are established on a Division by Division basis at the discretion of local management, predicated on demands for such facilities. The *ad hoc* manner in which child protection units have developed thus far, in the absence of any strategy or proper planning, is not consistent with good child protection practice. Neither is

a management structure that does not formally link the operational management of child protection to senior level management.

- 4.7.6. It is understood by the Inquiry that in any large organisation like An Garda Síochána, with thirteen thousand staff, it is not unusual for an informal hierarchy of importance to develop. However, the Inquiry was very concerned to learn that there is a perception within An Garda Síochána that members working in the area of child protection are referred to as ‘cardigan guards’, illustrating a lesser importance attached to their work than to other areas of law enforcement.
- 4.7.7. The Inquiry believes that at an operational level, there is a strong commitment to child protection. The Inquiry believes that this enthusiasm in the first instance needs to be recognised and developed to ensure a structured approach to the enhancement of child protection practice in An Garda Síochána.
- 4.7.8. In developing a model for child protection within An Garda Síochána, the Inquiry believes that it is essential to consult with the Gardaí already working within the existing Child Protection Units to harness best practice.

Interagency cooperation and access to information

- 4.8. **An Garda Síochána should have enhanced access to information held by both the Child and Family Agency and the Health Service Executive with respect to children whose identities are called into question. Specifically, the Inquiry believes that consideration should be given to allowing members of An Garda Síochána access to the Child and Family Agency’s National Child Care Information System and this should be complemented by the development of a national out of hours social work service. The Inquiry also believes that An Garda Síochána should develop a**

protocol for accessing information held by Public Health Nursing Teams in the context of concerns raised regarding the identity of young children.

- 4.8.1. In the cases of both Child T and Child A, a significant amount of information was held by agencies and services that had engaged with both children and their respective families. However, there were impediments to members of An Garda Síochána accessing that information. In the case of Child A, Gardaí in Athlone were undertaking enquiries after ordinary business hours and were therefore unable to make contact with staff members on the HSE Social Work Team. In the case of Child T, An Garda Síochána did make contact with the relevant Social Work Team but did not make contact with the local Public Health Nursing Team, which would have been in a position to provide detailed information regarding Child T's background; the Inquiry recalls in this regard that it is uncommon for members of An Garda Síochána to have direct contact with Public Health Nurses.
- 4.8.2. The Inquiry believes that providing An Garda Síochána with more ready access to these sources of information is critical. Indeed, the Inquiry believes that if such sources of information had been available to Gardaí in the cases of Child A and Child T, the Gardaí may well have refrained from precipitating the chain of events that led to the children being removed from the care of their parents.

APPENDICES

APPENDIX 1

Section 42 of the *Garda Síochána Act 2005*, as amended by the *Criminal Justice Act 2007*

42.— (1) The Minister, with respect to any matter considered by him or her to be of public concern, may by order appoint a person to—

(a) inquire into any aspect of administration, operation, practice or procedure of the Garda Síochána, or the conduct of its members, and

(b) make a report to the Minister on the conclusion of the inquiry.

(2) A person who, in the Minister's opinion, has the experience, qualifications, training or expertise appropriate for the inquiry may be appointed to conduct the inquiry.

(3) The Minister shall specify the terms of reference of the inquiry in the order under subsection (1) and may, by order, made at any time before the submission of the final report, amend those terms for the purpose of clarifying, limiting or extending the scope of the inquiry.

(4) For the purpose of the inquiry, the appointed person—

(a) may require a member of the Garda Síochána, or any other person, who possesses information or possesses or controls a document or thing that is relevant to the inquiry to provide the information, document or thing to the appointed person, and

(b) where appropriate, may require the member or other person to attend before the appointed person for that purpose.

(5) The member or other person shall co-operate with the inquiry and answer fully and truthfully any question put to him or her by the appointed person.

(6) Where the member or other person fails to comply with a requirement under subsection (4), the High Court may, on application by the appointed person and on notice to the member or other person—

(a) order the member or person to comply with the requirement, and

(b) include in the order any other provision it considers necessary to enable the order to have full effect.

(7) If the member or other person fails to comply with such an order, the Court may treat the failure for all purposes as if it were a contempt of the Court.

(8) A failure by the member to comply with a requirement under subsection (4) may be the subject of disciplinary action in accordance with the Disciplinary Regulations.

(9) Any information, document or thing provided by a person in accordance with a requirement under subsection (4) is not admissible in any criminal proceedings against the person, and this shall be explained to the person in ordinary language by the appointed person.

(10) The Minister may publish all or part of any report received under this section.

(11) This section applies even if the matter considered by the Minister to be of public concern arose before the passing of this Act.

(12) The power to order an inquiry under this Act is additional to any power conferred by this or another Act relating to inquiries or investigations.

(13) In this section—

‘ appointed person ’ means a person appointed under this section to conduct an inquiry;

‘criminal proceedings’ does not include disciplinary proceedings.

APPENDIX 2

Section 12 of the *Child Care Act 1991* and explanatory note

Section 12, as it read at the time of the events in question, provided as follows insofar as relevant:

“12.—(1) Where a member of the Garda Síochána has *reasonable grounds* for believing that—

(a) there is an *immediate and serious risk to the health or welfare of a child*, and

(b) it would not be sufficient for the protection of the child from such immediate and serious risk to *await the making of an application for an emergency care order by the Health Service Executive under section 13 ... the member, accompanied by such other persons as may be necessary*, may, without warrant, enter (if need be by force) any house or other place (including any building or part of a building, tent, caravan or other temporary or moveable structure, vehicle, vessel, aircraft or hovercraft) and remove the child to safety.

(2) The provisions of *subsection (1)* are without prejudice to any other powers exercisable by a member of the Garda Síochána.

(3) Where a child is removed by a member of the Garda Síochána in accordance with *subsection (1)*, the child shall as soon as possible be delivered up to the custody of the Health Service Executive.

(4) Where a child is delivered up to the custody of the Health Service Executive in accordance with *subsection (3)*, the Executive shall, unless it returns the child to the parent having custody of him or a person acting *in loco parentis* or an order referred to in section 35 has been made in respect of the child, make application for an emergency care order at the next sitting of the District Court held in the same district court district or, in the event that the next such sitting is not due to be held within three days of the date on which the child is delivered up to the custody of the Executive, at a sitting of the District Court, which has been specially arranged under *section 13(4)*, held within the said three days, and it shall be lawful for the Executive to retain custody of the child pending the hearing of that application.

(5) ...”³⁹ [*Emphasis added*]

S.12 is the only provision of the Child Care Act 1991 which allows removal without a prior court order. The power is vested in a member of An Garda Síochána, rather than a social

³⁹ Section 12 has since been revised to take account of the establishment of the Child and Family Agency. The references to the Health Service Executive have been replaced with references to the Child and Family Agency. See s.90 of the Child and Family Agency Act 2013 and Schedule 2, Part 4, para 8.

worker. This is a safeguard: it means that the social workers responsible for drawing up child protection plans have no special power to circumvent, for any period at all, the requirement to obtain a court order.⁴⁰ Only a member of An Garda Síochána can do so, and only in the strict circumstances set out in s.12.

However, s.12(1) specifically envisages that police officers may be accompanied by “such other persons as may be necessary” in entering premises. An obvious person to accompany a member of An Garda Síochána is a social worker. So while section 12 gives the power to the Garda Síochána, nothing in it prevents joint working with the Child and Family Agency. In fact, it is clearly permitted.

S.12 is far from uncommon by international standards. Many other jurisdictions afford police officers emergency powers to protect children. For example, in England and Wales an equivalent power is afforded to police constables under s.46 of the Children Act 1989.⁴¹ S.12 allows a child to be kept in a place of safety until an application is brought for an emergency care order before the District Court, which must occur (if the child is not returned) at the latest within three days. Similarly, s.46 of the Children Act 1989 allows a child to be kept in police protection for a maximum of 72 hours.⁴²

It is very hard to see how children could be properly protected in emergency situations without such a police power. As explained below, there are many occasions where it simply would not be safe to await obtaining a court order.

In order to exercise s.12, a Garda Síochána must have *reasonable grounds for believing* that—

(a) there is an *immediate and serious risk to the health or welfare of a child*, and

(b) it would not be sufficient for the protection of the child from such immediate and serious risk to *await the making of an application for an emergency care order by the Health Service Executive under section 13*

Each of these will be considered in turn. But first, in order to understand s.12, it is important to place it in its proper context.

Section 13 of the 1991 Act allows a court to make an emergency care order. An application for an emergency care order can be made on notice to a parent, guardian or person *in loco*

⁴⁰ However, social workers – like all people – can intervene to protect a child from immediate violence: “[A] social worker or a nurse is of course entitled to intervene if that is necessary to protect a baby from immediate violence at the hands of a parent. That is not, however, because they have any special power or privilege entitling them to intervene. It is merely an application of the wider principle that anyone who happens to be present is entitled, whether by restraining the assailant or by removing the defenceless victim from his assailant's reach, to intervene in order to prevent an actual or threatened criminal assault taking place before his very eyes ... any threat of immediate significant violence is enough, particularly if it involves a young child.” R (G) v Nottingham City Council [2008] EWHC 152

⁴¹ <http://www.legislation.gov.uk/ukpga/1989/41/section/46>.

⁴² S.46(6) of the Children Act 1989.

parentis, or *ex parte*, that is to say without notice, if the urgency of the matter so requires. An emergency care order may be made for up to eight days.

Section 17 of the 1991 Act allows a court to make an interim care order. An application for an interim care order is usually made on notice. An interim care order can be made for a maximum of 29 days, or longer if there is consent.

Section 18 of the 1991 Act allows a court to make a care order. If a judge makes a care order, he or she can place a child in care up to the age of 18 years, or for a shorter period.

Sometimes, the exercise of the power of a Garda Síochána under s.12 is the first step in a child's journey through care. Sometimes, the child goes on to be the subject of an emergency care order, then an interim care order and then a care order under section 18.

(a) Reasonable grounds for believing

It is important to note that the member of the Garda Síochána does not have to be able to prove that there is an immediate and serious risk to the health or welfare of the child. He or she must have *reasonable grounds for believing* that there is an immediate and serious risk to the health or welfare of a child.

In order to obtain a care order, certain issues must be proved which are set out in s.18 of the Child Care Act 1991 and are commonly known as the "threshold criteria". These include, for example, that a child has been sexually abused or that a child's health, development or welfare has been avoidably impaired. If none of these threshold criteria is proved, then a care order cannot be made.⁴³

Frequently, the Child and Family Agency will apply on several occasions to extend an interim care order until such time as a care order application is heard. During that time, social workers may gather information about the parents and children, and the parents may undergo assessments of their capacity. The threshold criteria for an interim care order are the same as for a care order, except that, in the case of an interim care order, the court must be satisfied that there is "reasonable cause to believe" that the threshold criteria are met.⁴⁴

In England, the statutory framework is similar with "reasonable cause to *believe*" being used for emergency protection orders and "reasonable grounds for believing" for interim care orders. In England, local authorities can also obtain child assessment orders to enable them to carry out assessments where they can meet the lesser standard of "reasonable cause to *suspect*".⁴⁵

In the House of Lords case *Re H (Minors) (Sexual Abuse: Standard of Proof)* Lord Lloyd commented on this as follows:

⁴³ S.18(1) of the Child Care Act 1991.

⁴⁴ S.17(1) of the Child Care Act 1991.

⁴⁵ S.43 of the Children Act 1989

“Under section 43 of the Act, a court may make an assessment order if it is satisfied that the local authority has "reasonable cause to suspect" that a child is likely to suffer significant harm. Under section 44 the court may make an emergency order if it is satisfied that there is "reasonable cause to believe" that the child is likely to suffer significant harm. Similarly, under section 38 it may make an interim care order if it is satisfied that there are "reasonable grounds for believing" that a child is likely to suffer significant harm. Finally, under section 31(2) the court may make a [care] order if it is satisfied that the child is likely to suffer significant harm.”

“These sections represent progressive stages on the road to the making of a care order, from "cause to suspect" through "ground for belief" to the substantive finding. *Little evidence suffices at the early stages. Much more evidence is required at the later stages.*”⁴⁶ [Emphasis added]

Lord Nicholls in the same case stated:

“The earlier stages are concerned with preliminary or interim steps or orders. Reasonable cause to believe or suspect provides the test. At those stages, as in my example of an application for an interlocutory injunction, there will usually not have been a full court hearing. But when the stage is reached of making a care order, with the far-reaching consequences this may have for the child and the parents, Parliament prescribed a different and higher test: "a court may only make a care order or supervision order if it is satisfied . . . that . . . the child . . . is suffering, or is likely to suffer, significant harm; . . .”

This is the language of proof, not suspicion. At this stage more is required than suspicion, however reasonably based.”

Lady Hale, commenting on the same issue in *Re B (Children) (Care proceedings: Standard of Proof)* stated:

“If Parliament had intended that a mere suspicion that a child had suffered harm could form the basis for making a [care] order, it would have used the same terminology of "reasonable grounds to suspect" or "reasonable grounds to believe" as it uses elsewhere in the Act. Instead, ... it speaks of what the child *is* suffering or *is likely* to suffer.”⁴⁷

And later:

“While the local authority may well take preliminary or preventive action based upon reasonable suspicions or beliefs, it is the court's task when authorising permanent intervention in the legal relationship between parent and child to decide whether those suspicions are well founded.”⁴⁸

⁴⁶[1996] 1 AC 563 at p.581. Lord Lloyd dissented in that case, but on unrelated issues.

⁴⁷ At para 54.

⁴⁸ At para 54.

A similar point was made by Lord Scott in *Kent County Council v. G* about interim care orders:

“As its name suggests an "interim" care order is a temporary order, applied for and granted in care proceedings as an interim measure until sufficient information can be obtained about the child, the child's family, the child's circumstances and the child's needs to enable a final decision in the care proceedings to be made.”⁴⁹

Of course, in s.12 the wording is reasonable grounds for *believing*, not reasonable cause to *suspect*.

Also, none of this means that s.12 can be used or that emergency care orders or interim care can be obtained simply because a Garda Síochána or a social worker believes that a child's situation should be assessed.⁵⁰ The conditions in the Act must be complied with.

(b) Immediate and serious risk to the health or welfare of a child

A member of the Garda Síochána must have reasonable grounds for believing that there is an immediate and serious risk to the health or welfare of the child.

The criterion of immediate risk also appears in Irish mental health legislation.⁵¹ In *MR v Byrne* O'Neill J stated –

“In my view the critical factor which must be given dominant weight in this regard is the propensity or tendency of the person concerned to do harm to themselves or others. If the clinicians dealing with a person concerned are satisfied to the standard of proof set out above that the propensity or tendency is there then in my view, having regard to the unpredictability of when the harm would be likely to occur, the likelihood of the harm occurring would have to be regarded as immediate.”⁵²

This is quite a wide definition of immediacy. Regarding “serious” he stated:

“[T]he infliction of any physical injury on another could only be regarded as serious harm ...”⁵³

However, s.12 is not just available in cases of physical harm. It is available wherever there is a serious and immediate risk not only to the health but also to the welfare of the child.

(c) It would not be sufficient ... to *await the making of an application for an emergency care order by the Health Service Executive under section 13*

⁴⁹ [2005] UKHL 68 at para 57(iv).

⁵⁰ *X Council v B* [2004] EWHC 2015.

⁵¹ S.3 of the Mental Health Act 2001.

⁵² At para 31.

⁵³ At para 34.

It must also be shown that it would not be sufficient for the protection of the child from such immediate and serious risk to await the making of an application for an emergency care order by the Child and Family Agency under section 13.

This is an important safeguard. It reflects the preference of the law for ensuring that issues of separating children from their parents are decided by judges, not police officers. An application for an emergency care order is normally made with two days notice to the parent having custody of the child or person acting *in loco parentis*.⁵⁴ However, the District Judge can decide to hear it on the same day *ex parte* – that is to say without the parent being notified – if the urgency of the matter so requires.⁵⁵ While the application is meant to be brought in the District Court area where the child is for the time being or resides, where a judge is not immediately available in that area, it can be brought in any District Court area.⁵⁶

Therefore, an emergency care orders can be sought quickly and, where the matter is urgent, without a parent being notified.

It is therefore only in exceptional cases that s.12 of the 1991 Act should be exercised. For example, this could be –

- where a parent is dangerously drunk or drugged causing an immediate risk to a child in his or her care;
- where a child is at immediate risk of being physically harmed or sexually abused.

However, it could also arise where a Garda Síochána reasonably believes that a child is being neglected or emotionally abused and also reasonably believes that the parents intend to flee the jurisdiction so that it would not be sufficient to await the making of an emergency care order.

(d) Implications of the European Convention on Human Rights Act 2003

The European Court of Human Rights has considered emergency care orders in a number of cases, frequently in the particularly sensitive context of post-birth removals.

Under s.2 of the European Convention on Human Rights Act 2003 (“the 2003 Act”), a court must insofar as possible and subject to Irish rules of statutory interpretation, interpret Irish law compatibly with the European Convention on Human Rights (“the Convention”). It should be noted that this is not an absolute duty to interpret the law compatibly with the Convention, but rather only insofar as possible and subject to Irish rules of statutory interpretation.

Section 3 of the 2003 Act provides that, subject to any statutory provision or rule of law, every organ of the State shall perform its functions in a manner compatible with the State’s

⁵⁴ Order 84 rule 5 of the District Court Rules.

⁵⁵ S.13(4) of the Child Care Act 1991 and Order 84 rule 5(2) of the District Court Rules.

⁵⁶ S.13(4) of the Child Care Act 1991.

obligations under the Convention. An Garda Síochána is an organ of the State within the meaning of the 2003 Act.

Article 8

The provision of the Convention of greatest relevance to the question of removing a child from the care of his or her parents for the child's protection is Article 8. Article 8 provides that:

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as 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 of disorder or crime, for the protection of health or morals, or the protection of the rights and freedoms of others.

An interference with the right to respect for family life may be justified, but the qualification to the rights protected by Article 8 must be narrowly interpreted,⁵⁷ and the need for an interference in a given case must be convincingly established.⁵⁸ The interference must be: in accordance with the law;⁵⁹ in pursuit of one of the legitimate aims set out in Article 8(2); and it must be necessary in a democratic society (that is, in pursuit of a pressing social need and proportionate to the aim pursued).⁶⁰ A measure will only be proportionate to the aim pursued if supported by sufficiently persuasive reasons and if the infringement of Article 8 goes not further than is necessary to achieve that end.

The European Court of Human Rights has held that the enforced separation of a family is an interference of a very serious order and must be supported by sound and weighty considerations in the interests of the child.⁶¹ Taking a child into care should normally be regarded as a temporary measure to be discontinued as soon as circumstances permit, and any measures implementing temporary care should be consistent with the ultimate aim of reuniting the natural parents and the child.⁶²

In determining whether an interference is necessary within the meaning of Article 8(2), the European Court of Human Rights does not confine its review to inquiring whether the respondent state has exercised its discretion reasonably, carefully and in good faith, but will

⁵⁷ *Klass v Germany* (1978) 2 E.H.R.R. 214(para. 42)

⁵⁸ *Funke v France* (1993) 46 E.H.R.R. 297 (para.55)

⁵⁹ *Malone v UK* (1985) 7 E.H.R.R. 14 (paras. 68 and 79)

⁶⁰ *Handyside v UK* (1976) 1 E.H.R.R. 737 (paras 48-50)

⁶¹ *R.M.S. v Spain*, App. No. 28775/12, judgement of 18 September 2013 (para.71). See also *Johansen v Norway* (1996) 23 E.H.R.R. 33(para.64)

⁶² *Ibid.* See also *K. and T. v. Finland* [GC], App. No. 25702/94 (para. 178)

determine whether the reasons adduced to justify the interferences at issue are “relevant and sufficient” in the context of the case as a whole.⁶³

The European Court of Human Rights has considered the lawfulness of emergency care orders on a number of occasions, mostly – but not always – in connection with the particularly difficult issue of the removal of a child at birth.⁶⁴

The Court has stressed that emergency measures must be based on an imminent danger that has been actually established:

“The Court observes moreover that, before public authorities have recourse to emergency measures in such delicate issues as care orders, the imminent danger should be actually established.”⁶⁵

On the other hand, the Court has accepted that early in the assessment process all information does not have to be gathered:

“Questions of emergency care are, by their nature, decided on a highly provisional basis and on an assessment of risk to the child reached on the basis of the information, inevitably incomplete, available at the time.”⁶⁶

The Court has accepted that parents and children may not be fully consulted before emergency action, but has been skeptical where this has not occurred and where the danger has existed for a long time:

“It is true that in obvious cases of danger no involvement of the parents is called for. However, if it is still possible to hear the parents of the children and to discuss with them the necessity of the measure, there should be no room for an emergency action, in particular when, like in the present case, the danger had already existed for a long period. There was therefore no urgency as to justify the District Court's interim injunction.”⁶⁷

The Court also appears to accept that flight risk is a valid concern. Thus in *P C and S v United Kingdom* it was accepted that it would be permissible to prevent a new born child being removed from a hospital:

“The local authority had to be able to take appropriate steps to ensure that no harm came to the baby and, at the very least, to obtain the legal power to prevent C. or any other relative from removing the baby with a view to foiling the local authority's actions, and thereby placing the baby at risk.”⁶⁸

⁶³ Olsson v Sweden (1988) 11 E.H.R.R. 259 (para.68)

⁶⁴ K. and T. v. Finland [GC], no. 25702/94, P., C. and S. v. the United Kingdom, Application. no. 5647/00, Haase v Germany 11057/02, Venema v Netherlands, Application no. 35731/97.

⁶⁵ See Haase v Germany at para 99.

⁶⁶ P, C and S v UK at para 128.

⁶⁷ Haase v Germany at para 99.

⁶⁸ P C and S v UK at para 30.

And in *K and T v Finland* the Court stated:

“The Court accepts that when an emergency care order has to be made, it may not always be possible, because of the urgency of the situation, to associate in the decision-making process those having custody of the child. Nor, as the Government point out, may it even be desirable, even if possible, to do so if those having custody of the child are seen as the source of an immediate threat to the child, since giving them prior warning would be liable to deprive the measure of its effectiveness.”⁶⁹

However, if there is to be abrupt removal, without prior contact or consultation the Court stated:

“In particular, it is for the respondent State to establish that a careful assessment of the impact of the proposed care measure on the applicants and the children, as well as of the possible alternatives to taking the children into public care, was carried out prior to the implementation of a care measure.”⁷⁰

Article 14

In addition to Article 8, the requirements of Article 14 of the Convention must be borne in mind when State agencies are carrying out functions such as those provided for under section 12 of the *Child Care Act 1991* in relation to children belonging to ethnic minorities.

Article 14 of the Convention provides that

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

According to the Court's well-established case-law, discrimination means treating persons in relevantly similar situations differently, without an objective and reasonable justification.⁷¹ Treatment is held to be without objective and reasonable justification when it does not pursue a legitimate aim or if there is no reasonable relationship of proportionality between the means employed and the aim sought to be realised.⁷²

Direct discrimination on the grounds of race could never be justifiable under Article 14.⁷³ Specifically, the European Court of Human Rights has held that:

“...no difference in treatment which is based exclusively or to a decisive extent on a person's ethnic origin is capable of being objectively justified in a contemporary

⁶⁹ At para 166.

⁷⁰ At para 168.

⁷¹ *Oršuš and others v Croatia*, Application no. 15766/03, judgment of 10 March 2010, para. 149

⁷² *Oršuš and others v Croatia* at para. 156

⁷³ *Timishev v Russia*, App.NOs. 55762/00 and 55974/00, judgment of 13 December 2005 (2007) 44 E.H.R.R 37 (para. 58)

democratic society built on the principles of pluralism and respect for different cultures.”⁷⁴

The Court has also held that in view of the fundamental importance of the prohibition of racial or ethnic discrimination, the right not be discriminated against on this ground cannot be validly waived.⁷⁵

With specific reference to the Roma community, the Court has commented that as a result of their history, the Roma have experienced a particular type of disadvantage and vulnerability, and therefore require special protection.⁷⁶

Conclusion

It seems that the Irish statutory framework is compatible with the Convention. Like Irish law, the Convention accepts that the authorities may have to act in emergency situations on incomplete information to safeguard the child. However, what emerges clearly from the caselaw of the Court is that care must be taken to consider alternatives to removal of the child. It is also relevant whether the danger concerned had existed for a long time.⁷⁷

Fundamentally, when powers such as those provided for in section 12 of the 1991 Act are exercised, organs of the State involved in exercising those powers must ensure that their actions comply with the requirements of necessity, proportionality and non-discrimination.

⁷⁴ Ibid.

⁷⁵ DH v Czech Republic, App. No.57325/00 judgment of 13 November 2007 para. 204

⁷⁶ Oršuš and others v Croatia, Application no. 15766/03, judgment of 10 March 2010, para. 147

⁷⁷ For the position on emergency care orders in England, see X Council v B [2004] EWHC 2015.

APPENDIX 3

Timeline for the Special Inquiry

December 2013

Emily Logan appointed by Minister for Justice and Equality to carry out the Special Inquiry (9 December).

Review of initial documentation from An Garda Síochána.

Meetings held with third parties, including the Council of Europe Commissioner for Human Rights, the Special Representative of the Secretary General of the Council of Europe for Roma Issues, and other experts in the area of human rights and child protection.

January 2014

Meetings with the families of Child T and Child A respectively.

Interviews with members of An Garda Síochána involved in the cases of Child T and Child A.

Interviews with staff from the Child and Family Agency (formerly the Health Service Executive).

Review of the information provided during the Inquiry's meetings.

February 2014

Inquiry issues requests for supplementary information from An Garda Síochána and the Child and Family Agency.

Follow-up interviews undertaken to clarify outstanding issues.

March 2014

Inquiry provides opportunity to key professionals involved in the cases of Child T and Child A to comment on preliminary findings.

Inquiry applies to the District Court for the lifting of the *in camera* rule with respect to proceedings relating to Child T;

oral and written submissions made and considered by the Court over a three week period.

April 2014

Court order made lifting the *in camera* rule to allow for the submission of the report to the Minister for Justice and Equality.

Report submitted to the Minister for Justice and Equality.

APPENDIX 4

Costs of the Special Inquiry

The total expenditure for the Special Inquiry amounted to €35,009 at the time of the Special Inquiry's submission to the Minister for Justice and Equality.

In order to support the Inquiry's work, it sought the assistance or engaged the services of:

- A Roma cultural mediator based in the United Kingdom who is a member of the Advisory Council for the Education of Romany and other Travellers (ACERT);
- Ronan Daly Jermyn Solicitors, The Mall, Cork;
- Two Investigators;
- A Rapporteur; and
- Stenography services.

