

# CHILD PROTECTION POLICY

## PREFACE

This policy sets out the responsibilities of the Ombudsman and Ombudsman staff in relation to the protection of children from abuse, neglect and ill-treatment.

The Ombudsman has been given statutory responsibilities regarding the investigation of reportable allegations and convictions against staff of designated government agencies, designated non-government agencies and public authorities. This is also recognised in the Interagency Guidelines for Child Protection Intervention (2006 edition).

Some staff of the Ombudsman office are taken to be mandatory reporters under section 27 of the *Children and Young Persons (Care and Protection) Act 1998* (CYP (CP) Act). This policy reinforces the legal obligations of those staff and sets out the responsibilities of other staff, who are not mandatory reporters, to report children suspected to be at risk of significant harm.

The Ombudsman has responsibility under Part 3A of the Ombudsman Act 1974 to keep under scrutiny the systems:

- (a) *for preventing reportable conduct by employees of designated government or non-government agencies or of other public authorities*
- (b) *for handling and responding to reportable allegations, or reportable convictions, involving those employees.*

As a public authority, the Ombudsman should ensure that internal systems for preventing reportable conduct and for handling and responding to reportable allegations or convictions are of the highest standard.

## PURPOSE

The purpose of this policy is to:

- set out the responsibilities of staff with regard to the reporting of suspected reportable conduct
- set out the responsibilities of staff who have direct contact with children
- set out the office's position on recruiting staff who may be required to have direct contact with children
- specify the procedures that will be applied in respect of a staff member who has been the subject of a reportable allegation.

## RESPONSIBILITY

This policy applies to the Ombudsman and all staff of the office, whether by way of appointment, secondment, contract, temporary arrangement or on a fee-for-service basis. Any individual having employee functions or acting in an employee capacity, including a volunteer, is a member of staff for the purposes of this policy.

The Ombudsman is responsible for ensuring that this policy is effectively implemented and applied to all staff of the office.

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Related policies:	Code of conduct, Disclosure of information
File reference:	ADM/4978

This policy supersedes the Child Protection Policy dated 13 December 2006

## LEGISLATIVE FRAMEWORK

Staff may have responsibilities under some or all of the following legislation:

- *Children and Young Persons (Care and Protection) Act 1998*
- *Commission for Children and Young People Act 1998*
- *Ombudsman Act 1974*

## DEFINITIONS

In this policy:

- ‘at risk of significant harm’*** in relation to a child or young person has the same meaning that it has in the CYP (CP) Act, namely that current concerns exist for the safety, welfare or well-being of the child or young person because of the presence to a significant extent of any one or more of the following circumstances:
- (a) the child's or young person's basic physical or psychological needs are not being met or are at risk of not being met,
  - (b) the parents or other caregivers have not arranged and are unable or unwilling to arrange for the child or young person to receive necessary medical care,
  - (b1) in the case of a child or young person who is required to attend school in accordance with the *Education Act 1990* – the parents or other caregivers have not arranged and are unable or unwilling to arrange for the child or young person to receive an education in accordance with that Act,
  - (c) the child or young person has been, or is at risk of being, physically or sexually abused or ill-treated,
  - (d) the child or young person is living in a household where there have been incidents of domestic violence and, as a consequence, the child or young person is at risk of serious physical or psychological harm,
  - (e) a parent or other caregiver has behaved in such a way towards the child or young person that the child or young person has suffered or is at risk of suffering serious psychological harm,
  - (f) the child was the subject of a pre-natal report under section 25 and the birth mother of the child did not engage successfully with support services to eliminate, or minimise to the lowest level reasonably practical, the risk factors that gave rise to the report.
- ‘child’*** has the same meaning that it has in the CYP (CP) Act, namely ‘a person who is under the age of 16 years’ (note that ‘child’ is defined in s. 25A of the Ombudsman Act as a person who is under the age of 18 years).
- ‘reportable allegation’*** has the same meaning that it has in the Ombudsman Act, namely ‘an allegation of reportable conduct against a person or an allegation of misconduct that may involve reportable conduct’.
- ‘reportable conduct’*** has the same meaning that it has in s. 25A of the Ombudsman Act, and

includes sexual offences, sexual misconduct, assault, ill-treatment, neglect, and behaviour that causes psychological harm to children.

**‘reportable conviction’** has the same meaning that it has in the Ombudsman Act, namely ‘a conviction or finding of guilt of an offence involving reportable conduct’.

**‘statutory officer’** means the Ombudsman, or a Deputy Ombudsman

**‘young person’** has the same meaning that it has in the CYP (CP) Act, namely ‘a person who is aged 16 years or above but who is under the age of 18 years’ (note that ‘young person does not appear in the Ombudsman Act, see ‘child’).

## **POLICY STATEMENT**

### **1. Reporting of children at risk of significant harm**

Although most Ombudsman staff are not mandatory reporters under the CYP (CP) Act, it is the policy of this office that an Ombudsman officer who, in the course of their duties, receives information that leads them to form the belief that a child or young person, or class of child or young person, is at risk of significant harm, should report the grounds for that belief to Community Services. Staff are not required to report matters to Child Wellbeing Units.

Staff may make such a report without contravening s. 34 of the Ombudsman Act (which prohibits the disclosure of information) under the following circumstances:

#### **a. Where the staff member is a mandatory reporter**

Section 27 of the CYP (CP) Act requires certain persons (‘mandatory reporters’) to report to the Director General of Human Services if they have reasonable grounds to suspect that a child is at risk of significant harm. A person is a mandatory reporter under section 27 if they deliver health care, welfare, education, children’s services, residential services, or law enforcement, wholly or partly, to children, or if they are a direct supervisor to such a person.

The Youth Liaison Officer (YLO), and his or her direct supervisor, falls within the definition of ‘mandatory reporter’ under s. 27. Other staff generally do not fall within the definition, unless they deliver health care, welfare, education, children’s services, residential services, or law enforcement, wholly or partly, to children, or if they are a direct supervisor to such a person.

If the YLO or another staff member deemed to be a ‘mandatory reporter’ does have reasonable grounds to suspect that a child is at risk of significant harm, that staff member must make a report of their concerns to the Community Services Helpline, notify a statutory officer, and record the incident in ADM/2635.

#### **b. Where consent is given for the disclosure**

The making of a report based on information provided to a member of staff is permitted by s. 34(1)(a) of the Ombudsman Act if the source of the information consents to its disclosure.

#### **c. Where disclosure relates to the safety, welfare or well-being of a child or young person**

Ombudsman staff may disclose information obtained in the course of their duty to a police officer, Community Services, or any other public authority that the Ombudsman considers appropriate if the information relates to the safety, welfare or well-being of a particular child or young person (or a class of children or young persons) (s. 34(1)(b1)).

Ombudsman staff may disclose information obtained in the course of their duty to any person if the Ombudsman believes on reasonable grounds that disclosure is necessary to prevent or lessen the likelihood of harm being done to any person (s. 34(1)(b2)).

Disclosure under these sections must be made with the approval of a statutory officer and must be recorded in ADM/2635.

**d. Where disclosure is in response to a direction under s. 248(1)(b) of the Children and Young Persons (Care and Protection) Act 1998**

The Ombudsman has a responsibility to comply with a written direction under s.248(1)(b) of the *Children and Young Persons (Care and Protection) Act 1998* issued on behalf of the Director-General of Community Services. A direction under s.248(1)(b) places a duty on a 'prescribed body' to furnish the Director-General with information relating to the safety, welfare and well-being of a particular child or young person or class of children or young persons. The Ombudsman is a 'prescribed body' and will therefore comply with such directions where we hold such information.

Where such a request is received, the information to be disclosed under s.248(1)(b) must be made with the approval of a statutory officer and must be recorded in the register in ADM/4870. Those involved in managing the request may ask to meet with representatives from Community Services to clarify the information that we hold and the nature of the information required. Any concerns about the release of information should be discussed with the statutory officer prior to their approval.

**2. Requirements subsequent to the making of a report**

When a member of staff makes a report to Community Services that a child or young person is at risk of significant harm, he or she is to record the circumstances of the making of the report in ADM/2635 and provide a copy of the record to a statutory officer as soon as practicable.

**3. Situations where a report to Community Services would not fall within the exceptions to section 34(1)**

In any case where a member of staff forms the belief, based on information obtained in the course of their employment, that a child or young person is at risk of significant harm, and the staff member believes that the making of a report to Community Services would contravene s. 34(1) of the Ombudsman Act, the member of staff must report the circumstances of the matter immediately to a statutory officer.

The statutory officer is to decide whether the circumstances of the matter are such that the public policy of protecting children and young person from abuse justifies the making of a report to Community Services.

**4. Members of staff in direct contact with children**

Unless there are reasonable practical impediments to doing so, all staff having direct contact with a child or a young person should make sure that either another Ombudsman staff member or some other responsible adult is present during any such interaction.

**5. Recruitment of Ombudsman staff**

The office will observe all legislative requirements intended to assess any risk that may be posed by persons who have been found to have committed reportable conduct gaining child-related employment. Particular Ombudsman employees, such as the YLO, or Official Community Visitors who have direct and unsupervised access to children will be screened by the Commission for Children and Young People prior to employment, and will be required to sign the Prohibited Employment Declaration form (see the Personnel Handbook for further information).

We will identify positions within the office that involve child-related duties and ensure that advertisements for any of these positions clearly state that screening will take place.

**6. Notification of reportable allegations against staff members**

The requirement for a public authority to notify the Ombudsman of any reportable allegation or reportable conviction against an employee that arises in the course of that employee's employment applies to our office. When any staff member becomes aware of a reportable allegation or reportable conviction concerning another staff member arising from the other staff member's employment with the Ombudsman, they must report that allegation or conviction to a statutory officer.

It is the duty of any statutory officer receiving a reportable allegation or reportable conviction against an Ombudsman member of staff to advise the Ombudsman of the matter as soon as practicable, and refer that matter to an appropriate body. The statutory officer must also ensure the records relating to the allegation have the appropriate security classification.

In addition, the Ombudsman will ensure that an assessment of the risks relating to any such allegation is undertaken immediately upon receipt of the allegation, and at every appropriate point thereafter, and that the agency to which the allegation is referred is consulted regarding the appropriateness of staff of the Ombudsman office conducting an investigation of the allegation, consistent with the requirements imposed upon all public authorities by Part 3A of the Ombudsman Act.

**OMBUDSMAN APPROVAL**

A handwritten signature in black ink, appearing to read "B. A. Barbour". The signature is written in a cursive, flowing style.

Bruce Barbour  
**OMBUDSMAN**