



2.1B GUIDANCE ON MANDATED PERSONS (ROI ONLY)

Mandated persons (in the Republic of Ireland) should be mindful of their obligations under the Children First Act 2015. Where a concern meets the mandated reporting threshold as set out in the Children First Act, the reporting procedures must be followed. Mandated reporters cannot delegate their responsibility to report to another party. They may report directly to the statutory authorities or they may make a joint report with RCB Casework Team. If they make a direct referral to the statutory authorities, they must inform the RCB Safeguarding Casework Team.

Where a concern includes information that a person has committed a serious offence against a child, under the Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012, this must be reported to An Garda Síochána, in addition to Tusla.

The person who raised the concern should also be reassured that if they do choose to report the matter, they are covered by the Protection for Persons Reporting Child Abuse Act 1998. This Act provides that a person who would otherwise be liable in damages in respect of a communication by him or her to an appropriate person of his or her opinion that a child has been or is being assaulted, ill-treated, neglected or sexually abused, or that a child's health, development or welfare has been or is being avoidably impaired or neglected, shall not be liable, unless it is proved that he or she has not acted reasonably and in good faith in forming that opinion and communicating it to the appropriate person.

Mandated persons are required under the Children First Act 2015 to report any knowledge, belief or reasonable suspicion that a child has been harmed, is being harmed, or is at risk of being harmed and to report any disclosures of harm made by a child. The Act defines harm as assault, ill-treatment, neglect or sexual abuse, and covers single and multiple instances. The threshold of harm, at which a mandated person must report to Tusla under the Children First Act 2015, is reached when a mandated person knows, believes or has reasonable grounds to suspect that a child has been, is being or is at risk of being ill-treated, assaulted or neglected to the point where the child's health or development have been or are being seriously affected, or are likely to be seriously affected or has been, is being or is at risk of being sexually abused.

Where a mandated person has a concern that they believe meets the threshold for a mandated report, they should report as joint mandated report (**Guidance 2.1A**) with the RCB Safeguarding Casework Team as outlined in the reporting procedures set out above.

Under the Children First Act 2015 there is also a statutory requirement for mandated persons to assist Tusla in the assessment of risk of mandated reports, where requested to do so. Where such a request is received, the mandated person must provide such assistance as is required. Tusla accepts the time limitations and pressures on other professionals and will use mandated assisting only when necessary and only to the extent needed in each specific case.



The legal obligation to report as a mandated person under the Children First Act 2015 applies only to information that mandated persons acquire in the course of their professional work or employment. It does not apply to information they acquire outside of work, during a voluntary role, or information given to them on the basis of a personal rather than a professional relationship. Please note that a member of the clergy carries their mandated responsibility with them at all times.

LIST OF MANDATED PERSONS

Each diocese is required to retain a list of those who are classed as mandated persons. To do this each diocese should consult the full list of categories who are classified as mandated persons under Schedule 2 of the Children First Act 2015 to establish which members of church personnel are classified as mandated persons. To assist with this task it should be understood that:

- All members of the clergy (including OLMs) are to be considered mandated persons.
- Youth workers who are employed by a youth work service, and hold a professional qualification recognised by the National Qualifications Authority in youth work within the meaning of Section 3 of the Youth Work Act 2001 or a related discipline.
- Volunteers are not mandated persons under the Children First Act 2015.

On completion of this process the diocese must retain a list of all mandated persons, and ensure this is kept up to date. In developing this list Tusla have advised that there should be a clear statement of the type of roles that a church body are listing as mandated persons, then a number of mandated persons that are in the church body should be included against each role (i.e members of the clergy (25), Youth Worker (10)).

The Children First Act 2015 does not impose criminal sanctions on mandated persons who fail to make a report to Tusla. However, there are possible consequences for a failure to report. There are several administrative actions that Tusla could take if, after an investigation, it emerges that a mandated person did not make a mandated report and a child was subsequently left at risk or harmed.

Tusla may:

- Make a complaint to the Fitness to Practice Committee of a regulatory body of which the mandated person is a member.
- Pass information about the mandated person's failure to make a report to the National Vetting Bureau of An Garda Síochána.

This information could therefore be disclosed to current or future employers of the mandated person when they are next vetted.



EXEMPTIONS FROM REQUIREMENTS TO REPORT FOR MANDATED PERSONS (ROI)

Under the Criminal Law (Sexual Offences) Act 2006, the legal age of consent is 17 years. While a sexual relationship where one or both parties are under 17 years of age is illegal, when making a report to Tusla, it might not be regarded as child sexual abuse. There are certain exemptions from reporting underage consensual sexual activity. If a mandated person or panel is satisfied that all of the following criteria are met, the mandated person or panel is not required to make a report to Tusla:

- The young persons concerned are between 15 and 17 years old.
- The age difference between them is not more than 24 months.
- There is no material difference in their maturity or capacity to consent.
- The relationship between the people engaged in the sexual activity does not involve intimidation, or exploitation of either person. Any elements of coercion of either person may also be relevant to consider in relation to this bullet point.
- The young persons state clearly that they do not want any information about the activity to be disclosed to Tusla.

All persons must uphold the key principle that the welfare of the child is paramount and if a mandated person or Diocesan Safeguarding Panel have any concerns, even where all the above criteria are met, advice should be sought from the RCB Casework Team or Tusla/An Garda Síochána.