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Child care regulations: regulatory enforcement in Ireland. What happens when the inspector calls?

Introduction

In common with many other countries, increasing numbers of young children (birth to five years of age) in Ireland attend Early Childhood Care and Education (ECCE) settings (Organisation for Economic Cooperation and Development, 2004, 2006). As governments acknowledge the relationship between quality ECCE and positive outcomes for children, raising and maintaining quality standards has become a key policy objective in many countries. While a corpus of literature exists in relation to the rationale for and enforcement of childcare regulations, little research has been undertaken in relation to ECCE teacher's perceptions and experiences of such regulations and the impact on their work with children (Brown & Sumsion, 2003). Similarly, there is a paucity of research relating to the qualification levels of regulatory enforcers or their enforcement style. Brown & Sumsion (2003) use the metaphor of a "fence" to describe ECCE teacher's working lives. They argue that "literally and metaphorically" (p.32), teachers operate on the other side of the fence from policy makers and regulatory enforcers.

Although much research focusses upon issues of governance in ECCE (xxx), it seldom accounts for the perspectives of those who "deal daily with the realities of implementing these policies" (Duncan, 2004, p.171). This paper gives voice to the people who operate from the other side of the fence (Brown & Sumsion, 2003), i.e., ECCE managers and teachers. It also explores the perceptions and experiences of support agencies working directly with the sector in Ireland as well as the views of the inspectorate. By bringing these various perspectives together, this paper provides a "fuller picture" (Duncan, 2004, p.171) of the regulatory environment and its impact upon the working lives of teachers and managers.

Why child care regulations?

Regulation is broadly associated with imperfection in the childcare market usually relating to a lack of information to parents about the quality of care (Blau, 2001, Gormley, 2000, Lombardi, 2003). Consequently, regulations can "in principle" (Blau, 2001) deal with the information deficit by ensuring that all ECCE providers offer care of a minimum quality.

Highlighting children's vulnerability; Gormley (1995), states that because

Children cannot speak for themselves, parents represent them. But when parents lack the time and the expertise to represent children effectively, who will? The principal answer to that question, at least in child care, has been government regulators. A key purpose of government regulation is to protect persons who cannot protect themselves (p.173).

Endorsing this viewpoint, Sciarra *et al.* (2009), asserts that the "vulnerability of children mandates the highest level of official scrutiny" (p.94) of all forms of ECCE. Likewise, Wiggans Helburn & Bergmann (2002) see regulations as a form of consumer protection designed to reduce the risk of harm to children. Indeed, Sciarra *et al.* (2009) describe child care regulations as a "basic and necessary component of government's responsibility for protecting all children in all programmes from the risk of harm and for promoting conditions that are essential for children's healthy development and learning" (p.96). This description moves the purpose of regulation beyond mere 'risk control' to align it with the potential of ECCE to support and enhance children's development and learning. However, Fenech, Sumsion & Goodfellow (2005) found that regulation might in fact be a "double-edged sword" (p.6) where on the one hand, it contributes to the structural and process elements of quality, while on the other; it leads to "excessive risk management" (p.6).

Not with standing this claim, Sciarra *et al.* (2009) assert that effective public regulation is the "cornerstone" of an effective ECCE infrastructure. Moreover, enforcement practices are "at the heart of effective regulation" (Wiggans Helburn & Bergmann, 2002, p.134). Researchers (Baldock, 2001, Dahlberg *et al.*, 1999, Gormley, 1999) warn of the dangers of policing the inspection process. Thus, Gormley (1999) argues that regulation is subject to the "twin dangers of insufficient rigour and excessive severity" (p. 117), the latter, promotes quality at the expense of accessibility and affordability (*ibid*). A didactic approach to regulation can lead to an adversarial relationship between childcare providers and inspectors (*ibid*). Clearly, inspectorate qualifications and training are necessary pre-requisites for effective enforcement; equipping inspectors with the skills required to enforce regulations and monitor standards.

Inspectorate background and qualifications

Gormley (2000) points to the complexity of the inspector's role, which involves inspecting all regulated and problematic settings and taking "prompt corrective action when a facility poses a threat to children (p. 67). Equally, Wiggans Helburn *et al.* (2002) assert that inspectors do much more than checking off compliance and non-compliance.

[they must] make judgements about programme adequacy and apply the intent of the rules of the situations that exist in a given facility...[they] must know the law, decide if legal action is warranted in a particular case, know how to create the factual base for legal action, and serve as a credible expert witness in a judicial setting. They also serve as consultants to providers helping them to solve non-compliance problems (Wiggans Helburn *et al.* 2002, p. 141).

Public officials disagree on the most appropriate professional background for inspectors, and are uncertain whether they should have previously worked as childcare providers or possess expertise in child health, or have a background in law enforcement (Gormley, 2000). At a minimum, inspectors should be adequately trained in childcare or a related field and have at least 24 hours training per year of ongoing training so that they can remain abreast of relevant cases, procedures and child development research (Gormley, 2000, Wiggans Helburn *et al.* 2009). In addition to having preparation and a demonstrated competence in early childhood education and child development, Sciarra *et al.* (2009) stress the necessity for inspectors to be knowledgeable about programme administration, and regulatory enforcement (p.95). Yet again, Wiggans Helburn *et al.* (2009) adopt a firmer stance stating that ideally, inspectors should have experience as a “licensed child care provider, specialised legal and policy training, a master’s degree in either social work or early childhood development or education (p.141). Since the inception of the Childcare (pre-school services) Regulations, 1996, inspectors in Ireland come with a public health nursing background (DES, 1999, Schonfeld, 2006, *name deleted*) and thus, they are “relatively untrained in early childhood methodology (Bennett, 2004, p.8). This is potentially problematic in the context of enforcing child development regulations. Doubtless, these factors impact upon enforcement practices.

The regulatory environment in Ireland

While the school starting age in Ireland is six, half of all four year olds and nearly all five year olds attend primary school (DES, 2004, OECD, 2004, 2006). Children of school going age therefore are under the aegis of the Department of Education and Skills (DES), while children from birth to age 4/5 years are the responsibility of the recently established Department of Children and Youth Affairs.

In accordance with the Childcare Act, 1991, the Health Services Executive (HSE) is responsible for the welfare and care of children attending centre-based ECCE. The subsequent Child Care (pre-school services) Regulations, 1996 legislated primarily for structural quality and provided for an annual inspection by the HSE pre-school inspectorate.

In a critique of the 1996 regulations, Schonfeld (2006) argues that their predominant focus on health and safety was re-enforced by the fact that the inspection teams were almost exclusively comprised of personnel with public health nursing (PHN) and environmental health officer (EHO) backgrounds. None the less, as the first public ECCE regulations ever introduced in Ireland, their primary purpose was to enhance and maintain quality standards.

Following a review of the 1996 regulations, the current Childcare (pre-school services) Regulations, 2006 were introduced. In addition to a continued focus upon the structural aspects of ECCE; Article 5: Health, Welfare and Development of the Child calls upon teachers to be “pro-active in ensuring that appropriate action is taken to address each child’s needs in cooperation with his/her parents and following consultation, where appropriate, with other relevant services” (DHC, 2006, p. 36). This requirement demands a considerable level of critical engagement and decision-making capacity from teachers, and calls for appropriate academic qualifications and experience from teachers and inspectors. As far back as 1999, the DES proposed that should a childcare provider offer an early education service that “one inspector with expertise in both public health and education should carry out the inspection and provide a single report on all aspects of provision (p.120). To date, regardless of the introduction of Article 5, inspections continue to be undertaken primarily by PHNs and EHOs.

Moreover, despite a similar omission in the 1996 regulations regarding teacher qualification levels, the revised regulations simply require that “a sufficient number of suitable and competent adults are working directly with the children in the pre-school setting at all times” (DHC, 2006, p. 37). It is recommended that at least 50% of childcare staff would have a qualification appropriate to the care and development of children, and that qualified staff should rotate between age groupings. As the only statutory policy governing the ECCE sector in Ireland, the failure of these regulations to address teacher training requirements sends the “wrong message regarding the need for qualified staff, and can have a chilling effect on efforts to improve quality” (Lombardi, 2004, p. 14). In reality, if the regulatory system is to be effective, other aspects of the ECCE services infrastructure must also be in place (Sciarra *et al.* (2009). See Table 1.

Table 1 Requirements of an ECCE infrastructure that underpin effective regulation

Elements required	Irish Government Action
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A holistic approach to addressing the needs of children and families that stresses collaborative planning and service integration across traditional boundaries of child care, education, health, employment and social services	<ul style="list-style-type: none"> • Establishment of the Department of Children and Youth Affairs (2011) • Appointment of a Minister for Children (2011) • Publication of <i>Síolta: the National Quality Framework</i> (2006) • Publication of <i>Aistear: the Early Childhood Curriculum Framework</i> (2009)
An effective system of professional development that provides meaningful opportunities for career advancement to ensure a stable, well-qualified workforce	<ul style="list-style-type: none"> • On-going work on the development of a workforce development plan
Equitable financing that ensures access for all children and families to high-quality services	<ul style="list-style-type: none"> • Introduction of various targeted funding programmes for disadvantaged families from 2000 – 2010 • Introduction of a free pre-school year in ECCE scheme (2010) to give children access to a free pre-school year in the year before they start primary school
Active involvement of all stakeholders-providers, practitioners, parents, and community leaders from both public and private sectors – in all aspects of programme planning and delivery (Sciarra <i>et al.</i> 2009, p.97).	<ul style="list-style-type: none"> • Publication of <i>Síolta: the National Quality Framework</i> • Publication of <i>Aistear: the Early Childhood Curriculum Framework</i> • Introduction of the <i>Childcare Regulations, 2006</i>

The DES (2011) acknowledges that while those working in ECCE have not been required to attain similar qualifications to primary school teachers; their role “is no less critical to ensuring positive experiences and outcomes for children’s learning well-being and development” (DES, 2011, p. 27). This politically astute commentary masks the fact that there is no mandatory training requirement for those working in the ECCE sector. There is however, one notable exception; the free pre-school year in ECCE scheme (2010) which requires minimum qualifications of Preschool Leaders in ECCE settings. However, in the context of the factors outlined in table 1, Ireland in common with many other countries is beset by problematic legacies including the employment of underpaid and untrained personnel (Bennett & Neuman, 2004).

The introduction of the free pre-school year in ECCE scheme is a vital first step towards raising the status of a sector that is universally recognised as the ‘poor relation’ within the educational sphere. As noted by researchers (Mahony & Hayes, 2006, *name deleted*, Oberhuemer, Schreyer & Neuman, 2010, OECD, 2004 and 2006) the sector is characterised by a mix of trained, semi-trained and untrained teachers, low status, poor remuneration and staff attrition. Barry & Sherlock (2008) for example, found that remuneration of teachers in Ireland ranged from €9.27 per hour for those with up to four years experience, to €10.03 for

those with over ten years experience. It is against this backdrop that the Childcare (pre-school services) Regulations, 2006 are enforced.

Regulatory enforcement

Dahlberg *et al.* (1999) suggest that the concept of quality is primarily about defining “through the specification of criteria, a generalizable standard against which a product can be judged with certainty” (p. 93). Accordingly, defining quality is an “inherently exclusive didactic process, undertaken by a particular group whose power and claims to legitimacy enable them to determine what is to be understood as true or false” (Dahlberg *et al.* 1999, p. 94). In the context of Ireland, it could be argued that the HSE inspectors use their legitimacy as “authorised officers” (DHC, 2006, p.7) to determine what is true or false in terms of quality standards. They act as “powerful agents” (Mills, 2003, p34 – 35) who have the capacity ‘to realise their will over the will of powerless people” (ibid). The legitimacy of the HSE is evident in how it disregarded the National Quality Framework for ECCE; *Síolta* (Centre for Early Childhood Development and Education, 2006). Underpinned by a series of quality principles and Standards; *Síolta* was intended to contribute to the development of a “modern regulatory and inspection environment” (Schonfeld, 2006, p. 3).

Following the publication of the revised regulations, the OMCYA established a Child Care Regulations Implementation Group. Its function was to provide a forum for key stakeholders in the sector during the initial period when the new regulatory requirements were being implemented (www.hse.ie). Although a range of quality standards were embodied within *Síolta*, the HSE requested that, the development of National Quality Standards for Pre-School Services should be included within the terms of reference of the regulations group. The resulting National Standards for pre-school services document contains 20 standards that mirror those within *Síolta*; thus reinforcing the legitimacy of the HSE as the authoritative voice on what constitutes quality in ECCE.

Power can be conceptualised as a possession that is held onto by those in power, which those who are powerless try to take from their control (Mills, 2003). Foucault (1978) contradicts this notion of power as “repressive hypothesis” (p. 82) where it is constructed as being owned and imposed by the “powerful” [inspectors] onto the “powerless” [ECCE teachers] (ibid. p.82). Rather, he views power as something, which “circulates”, or functions in the “form of a chain” (Foucault, 1980, p.98) where it is “employed and exercised through a net like

organisation". Mills (2003) summarises this perspective in terms of power being exercised in micro-relations and micro-practices in every interaction in every sphere of society. On the one hand, therefore, power is a "system of relations spread throughout society, rather than simply a set of relations between the oppressed and the oppressor" (Mills, 2003, p. 35) in this instance, the ECCE sector and the HSE. On the other hand, individuals should not "be seen simply as the recipients of power, but as the 'place' where power is enacted and the place where it is resisted" (ibid.p.35). In his analysis of disciplinary power, Foucault (1977) argues that power is exercised as a disciplinary technology; designed to observe, regulate and control individual behaviour where subjects (teachers) become "docile" bodies' (Foucault, 1977, p. 138); obedient, transformed and useful. Similar concepts are found within his work on governmentality (Foucault, 1991) where those who can govern; do so with minimum economy in order to achieve desired outcomes. In a regulatory context, ECCE inspectors seek teacher/manager compliance to achieve minimum quality standards. Conversely, in the words of Foucault:

If power were never anything but repressive, if it never did anything but to say no, do you really think one would be brought to obey it? What makes power hold good, what makes it accepted, is simply the fact that it doesn't only weigh on us as a force that says no, but that it traverses and produces things, it induces pleasure, forms knowledge, produces discourse... (1980, p. 119).

Drawing upon Foucaultian notions of power, it is reasonable to assume that regulations can potentially empower the ECCE sector. For, when teachers are acknowledged for achieving quality standards and complying with regulations, they should experience a sense of gratification that empowers them to continue to strive for greater levels of achievement and compliance. In this way, power is transferred to teachers, where both they and the inspectors become vehicles of power and, thus reject power as "repressive hypothesis" (Foucault, 1978, p.82).

The Study

Using a qualitative methodology, this study sought to explore ECCE manager and teacher perspectives of the revised Childcare (pre-school services) Regulations, 2006. It also sought the perspectives of the City and County Childcare Committees (CCCs) and the National Voluntary Childcare Collaborative; agencies that work directly with managers and teachers to enhance the quality of ECC provision. In addition, the views of the HSE inspectorate were

sought. A total of 43 individual interviews were conducted (table 2)

Table 2 Interview participants

Interview	Number
ECCE teachers	15
ECCE managers	10
*City and County Childcare Committees	10
*National Voluntary Childcare Collaborative	4
HSE pre-school inspectors	4

*denotes support agencies at local and national level that work with directly with ECCE settings to enhance quality.

Using a purposive sampling technique, participants were selected because they were “information rich” (Patton 2002 p. 46) offering useful information and insights to the phenomenon of interest. CCCs and NVCCs were contacted directly by the researcher and invited to participate. Prospective HSE participants were identified by the CCCS and following initial telephone contact by the researcher; four inspectors located in various geographic locations agreed to participate. In accordance with the Childcare regulations, 2006 ECCE service providers are obliged to notify the HSE that they are operating a service. Therefore, the sampling frame used for participating ECCE teachers/managers consisted of HSE notified listings of ECCE settings within a particular geographic location. Participants were representative of community based and private provision as well as urban/rural location.

Data Analysis

Data was analysed using grounded theory methodology (Charmaz, 2006, Charmaz and Bryant, 2007, Glaser and Strauss, 1967). Thus, data analysis occurred alongside data collection. Using a repetitive process, interview transcripts, analytical notes and field notes were read line by line, and preliminary codes were applied. Following initial general coding, more focussed coding enabled units of analysis of the data to be fully developed (Charmaz, 2006). Codes were clustered so that links between codes could be established. By reviewing these tentative links, additional categories were identified. Throughout this interactive process, data was continuously integrated and reduced leading to the development of provisional hypotheses.

Findings

Findings point to an unhealthy dissonance between the HSE inspectorate and those working in the ECCE sector. This dissonance is rooted in a myriad of factors including a perceived “unhealthy obsession with health and safety”; lack of appropriate inspector qualifications; and a didactic approach to inspection, which is vested in the statutory power of the HSE.

An Unhealthy Focus on Health and Safety

All research participants welcomed the revised Childcare (pre-schools services) Regulations, 2006. In particular, the increased emphasis on child development was lauded. Regardless of the broad welcome for the revised regulations; there was an overwhelming consensus 89% of participants (N=39) that there was still an “unhealthy obsession with health and safety” (Angela: NVCC interview) by the inspectorate. In the main, participants believed that this focus was inherited from the previous Regulations, 1996. Hence, participants believed that childcare regulations had sanitised the environment for children where teachers were “afraid to let children climb, run, fall or get dirty or any of the normal things that children do when they’re playing” (Nuala: CCC interview). In this respect, teachers/managers claimed that inspectors made “ridiculous rules...like, I was asked to remove a vase of flowers from a window ledge [because it might pose] a “risk to children” (Shona: Community based manager).

Overall, 84.6% of managers and teachers (N=25) felt that because of the regulations, their primary role was that of supervision; ensuring that “children are safe at all times while they’re in our care” (Máire: teacher: private setting). While there was an acute awareness of the need to develop and implement appropriate activities for children, a focus on structural characteristics was paramount.

Acknowledging the dilemma for staff, Nuala (CCC interview) argued that the focus on health and safety was “creating protected environments for children that are far removed from real life”. Support agencies recounted examples where settings were required to “cover the whole outdoor play area in multi-purpose matting” to “prove that paint used by children is non toxic” or “to remove necklaces from the dressing up box” for example. This approach to children’s safety was “unrealistic” and linked to an overall absence of “basic trust” between the inspectorate and the manger/teacher (Sophia: CCC interview).

The following interview excerpts further highlight the focus on health and safety within the regulatory environment. At one level it was associated with an over “zealous inspectorate” (Fiona: community manager interview) and at another it resulted from a “societal focus” where parents want to protect their children at all costs.

There is a focus in terms of static control; what can you see and what can you measure... so all the static dimensions of quality were very much the focus of the inspections – safety....ridiculous, to the point of cutting down a tree in case a child would climb up it, getting rid of sand in case the child would slip (Alana: NVCC interview).

I know the building has to be up to standard but when you're pulled because there's a cobweb on the light, or the plug is missing from the sink; that's ridiculous” (Marina: private manager).

There is a societal focus ...that has become very conscious of safety and health in general – in the work place for adults and the worker has to be protected. So you have this focus along with this huge investment in children in terms of fewer children, more time, effort, love; nothing is ever going to happen to my child...(Ruby: NVCC interview).

The sector is a victim of both societal values and regulatory regimes, where the sector has the “HSE coming down on them telling them this is not safe that is not safe but they also have parents questioning practice” (NVCC interview). Thus, the concept of accountability is to the forefront of practice.

Within the current inspection system... “[staff] never measure up because [inspectors] always find something no matter how small it is” (Annie: community-setting teacher). Indeed, 95% (managers/teachers: N=25) suggested that the HSE “keep moving the goal posts...”

In the last inspection that we had it was all routines and we should be doing what the routine says and now they're moving away from that and saying ‘well we don't really want it to be routine based we want it to be freer’. You don't know where you stand. Before they didn't want the very young children mixing with the older ones and now they're encouraging that; so they do change their mind and you're getting a little bit frustrated that you're doing what they said the last time and now they've changed it again (Justine, community setting teacher).

Overall, managers/teachers aspired to “keep the HSE happy”. This perspective was portrayed through comments such as: “we don't rock the boat”, “I wouldn't draw them (HSE) on me”, “you just do whatever they ask, it doesn't matter if you think it isn't right for your service, even if it's a recommendation...do it...they'll make you anyway”.

Inspectorate qualifications

The HSE inspectorate has a statutory duty to enforce the childcare regulations. Ultimately, it is the guardian of quality within the ECCE sector. The lack of appropriate inspectorate qualification was highly contentious with 97% (N=39) of participants expressing concern

about the absence of “childcare personnel on the inspection team”. As a result, inconsistency with inspection was prevalent.

Inconsistency is a problem; inspectors are simply learning and interpreting as they go along. They see something in your setting a policy, a toy or whatever that they like, then they look for it in the next place and if they don't have it, they tell them they have to get it (Eimear: private manager).

Ruby claimed that because of their PHN back-ground; the inspectorate was uncertain about the dynamic aspects of quality; they “concentrate on the area that they know best.... measure the place to bits; probe it and measure it and test it and count whatever [they] can count” (NVCC interview). Martina, a HSE inspector with a PHN background confirmed this assertion:

When the 1996 regulations were introduced, we got on fine – we were able to measure rooms...I could do any part of it...I became an expert, the same will happen with Article 5 (Martina: HSE interview).

In order to redress the imbalance associated with lack of inspectorate pedagogical knowledge; 90% of participants (N=39) recommended a strengthening of the inspection teams. A dual inspection system was proposed; that would involve the “static elements” such as health and safety and the environmental aspects remaining with the HSE while responsibility for ‘curriculum and the more dynamic aspects of quality’ would be transferred to the DES (Ruby NVCC interview). Irrespective of a desire to broaden the composition of the inspectorate, there was consensus that any additional personnel appointed to the inspectorate should have a “qualification in the early years specifically” (Sophia: CCC interview).

HSE participants were not adverse to the idea of expanding the composition of inspection teams. Indeed, Magdalene (HSE interview) acknowledged that the inspectorate role was not solely the remit of PHNs. The inclusion of ECCE graduates or experienced teachers on the team would enable the inspectorate to “be more credible and supportive to providers who are asking where they go next and how they can improve” (ibid). Clearly pointing to deficiencies in the inspection process, she explained that in order to support the sector to enhance and implement best practice, inspectors need to “understand what it is they are talking about” (ibid).

HSE perspective on inspector qualifications

HSE participants were aware of criticisms relating to inspectorate qualifications. They explained how the current inspectorate composition dated back to the introduction of the 1996 regulations...the “natural home for them was with the HSE” (Magdalene: HSE

interview). As a result, the role of inspectorate was given to “PHNs around the country” (ibid). While Christine justified the appointment of PHSs; who have ‘the maturity of understanding the seriousness of the situation that children are in, people in child care wouldn’t have that level of maturity” (HSE interview), Magdalene disagreed.

She was critical of PHN qualifications, stating that PHN understanding of child development was “utterly different from group care”; it took no account of how to “support children’s learning and development in a group situation”. Consequently, PHNs are “looking at learning and development but they just don’t get it”. Thus, Article 5 of the revised Childcare (Pre-School Services) regulations, 2006 was a “real challenge for the inspection teams” (ibid). Irrespective of these misgivings however, Magdalene was adamant that “we’re actually functional authorised officers of the HSE which has got the legal responsibility for looking at Article 5”.

Driving standards down

Both the NVCCs and the CCCs were concerned that “providers don’t realise that the pre-school regulations are only minimum quality requirements” (Ruby: NVCC interview). As such, fears were expressed that the regulations do little to further the quest for quality within the sector. Daily practice is “all about complying with the regulations” (Alana: NVCC interview). Accordingly, the sector is “more concerned with looking at what has to be done as opposed to what could be done” (Patsy: NVCC interview). While the over arching objective is to improve quality, the regulations may in fact “drive standards down” (ibid). These concerns were shared by CCC participants who spoke of an over emphasis on “minimum basic standards” as well as the “top down heavy handedness of the HSE” (Jacinta: CCC interview). This approach instils fear rather than building capacity. In turn, the sector attempts to achieve minimum standards as set out in the regulations rather than seeking to maximise quality.

Ultimate possession of power and authority

The single biggest issue for teachers/managers was the level of “power that is given to the HSE over us” (Tara: private setting teacher). Congruent with CCC perspectives, 90% (N=25) stated that the HSE used a “heavy handed approach” (Nicola: community manager) in terms of how it enforced the regulations. In counterpoint, the inspectorate was not “robust enough

about challenging people's practice" (Magdalene: HSE interview). All four HSE participants were unequivocal that "the regulations are the law, are the law are the law". Inspectors took their responsibilities seriously, and were willing to "take whatever measures necessary including court to make sure that the sector is compliant....it doesn't bother us" (Magdalene). Ultimately, the regulations "are binding, providers are legally obliged to comply and our job is to make sure that it happens" (ibid).

Discussion

Earlier in this paper, childcare regulations were described as a "basic and necessary component of government's responsibility" (Sciarra *et al.* 2009, p.96) for protecting children attending ECCE settings from the 'risk of harm and for promoting their healthy development and learning' (ibid). Few could argue with this premise. Likewise, if the purpose of regulating the ECCE sector is to ensure minimum quality standards; enforcement practices must be upheld (Wiggans Helburn *et al.* 2002).

This study provides insight into an enormous sense of frustration and helplessness experienced by ECCE teachers/managers in terms of regulatory enforcement. These feelings were largely unrelated to the childcare regulations, per se; rather they were directly related to the manner of regulatory enforcement. Clearly, those working within the sector felt thwarted by the lack of appropriate inspectorate qualifications, inconsistencies in inspection, and the power of the inspectorate.

Findings indicate that a PHN or EHO background limits the scope of inspectors' ability to assess certain aspects of the regulations; most notably, child development. In 1999, the DES proposed the need for one inspector with expertise in public health and education. Much has changed since 1999 in terms of regulating the ECCE sector in Ireland. The revised Childcare (pre-school services) regulations, 2006 for instance, introduced Article 5: Health, Welfare and Development of the Child; providing for a greater focus upon child development and early education. At a minimum, Article 5 calls for a strengthening of the inspection teams either through comprehensive training, or the expansion of the teams to include somebody with expertise in early education. The combination of PHNS/EHO leaves the inspectorate lacking in "curricular or pedagogical knowledge" (Bennett, 2004). This is problematic as PHN understanding of child development is "utterly different from group care" and takes no

account of how to “support children’s learning and development in a group situation” (Magdalene: HSE interview). Therefore, PHNs are “looking at learning and development but they just don’t get it” (ibid). This finding raises serious questions about the ability of the current inspectorate to assess the early education aspect of the revised childcare (pre-school services) regulations, 2006. If inspectors do not understand the basic principles of early education, how can they inspect this aspect of ECCE provision?

There is a direct correlation between inspectorate qualifications and an “unhealthy focus on health and safety”. Ruby’s (NVCC interview) synopsis is particularly relevant. She argues that because the inspectorate is uncertain about the dynamic aspects of quality, they concentrate on what they know best; measuring, probing, testing. Hence, while regulation contributes to the structural and process elements of quality, it leads to “excessive risk management” (Fenech *et al.* 2005, p.6). Findings in this study endorse this view. In fact, findings indicate that because of regulation; ECCE environments have become sanitised. Teachers in this study were “afraid to let children climb, run, fall or get dirty”. While the purpose of regulation may well be to reduce the risk of harm to children by protecting them from injury, unsafe buildings and so on, teachers also have a responsibility to enhance children’s development and learning. Yet, this study indicates that teachers are restricted in the types of experiences that they are permitted to offer children. Requests to remove a vase of flowers, to remove necklaces from a dressing up box, to cover the outdoor play area in multi- purpose matting appear misguided and surely deprive children of valuable educational experiences. As discussed previously, the fact that daily practice is “all about complying with the regulations” with an associated emphasis on risk management; fuels claims that the regulations do little to further the quest for quality within the sector.

Consistent with the notion of policing the inspection process and controlling the environment (Baldock, 2001, Dahlberg *et al.*, 1999, Gormley, 1999), ECCE teachers/managers concurred on the need to “keep the HSE happy”. This is a difficult task for the sector, not least because the inspectorate continually moves the “goal posts” so that teachers never “know what [inspectors] are looking for”. Equally, it is evident that regulatory compliance is linked to fear. Teachers/managers do not want to “rock the boat”. Perhaps this sense of helplessness is linked to the weak professional status of the sector, poor training levels and appalling remuneration (Hayes, 2006, Mahony & Hayes, 2006, *name deleted*, Oberhuemer, *et al.* 2010, OECD, 2004 and 2006) which undermine sectoral confidence and belief in the value of their

work. In this context, Sciarra *et al.* (2009) note that if the regulatory system is to be effective, other aspects of the ECCE services infrastructure must also be in place including; an effective system of professional development. As discussed previously, although the DES (2011) acknowledges the absence of a degree level training requirement for ECCE teachers, it describes their roles as being “no less critical to ensuring positive experiences and outcomes for children’s learning well-being and development” (p. 27). This statement points to the contradictory nature of ECCE, where at one level, teachers’ work is critical to young children’s development; at another level, in the absence of a mandatory training requirement, teachers must meet regulatory requirements while simultaneously their salaries are abysmal. While compliance with the regulations is certainly necessary, it can only occur in the context of appropriate support structures of which the training, qualifications and remuneration of ECCE teachers is paramount.

Findings indicate that defining quality is an “inherently exclusive didactic process” (Dahlberg *et al.* p.94), undertaken by the HSE whose power and “claims to legitimacy enable them to determine what is to be understood as true or false” (ibid p. 94). The inspectors use their power as “functional authorised officers of the HSE” (Magdalene: HSE interview) to determine what is true or false in terms of quality standards. Within the regulatory environment, the HSE act as “powerful agents” (Mills, 2003, p34 – 35) who have the capacity ‘to realise their will over the will of powerless people’ (ibid). The legitimacy of the HSE is evident in how it disregarded the National Quality Framework for ECCE; *Síolta* (CECDE, 2006) which was intended to contribute to the development of a “modern regulatory and inspection environment” (Schonfeld, 2006, p. 3) in favour of developing its own quality standards. Moreover, it is evident by the way, in which it overlooks its inability to adequately inspect Article 5 of the childcare regulations, 2006. Foucault (1980) would have us envisage power as something that “circulates” or functions in the “form of a chain” (p.98) where it is “employed and exercised through a net like organisation” (ibid). Conversely, in this study, power is indeed a “repressive hypothesis” (Foucault, p. 82); it is unquestionably owned and imposed by the powerful - inspectors onto the powerless ECCE sector. Therefore, those working within the ECCE sector are simply the “recipients of power” (Mills, 2003, p.35). The didactic regulatory enforcement style ensures that those working in the sector become “docile” bodies’ (Foucault, 1977, p. 138); obedient, transformed and useful. From the perspective of the HSE inspectors, “the regulations are the law, are the law

are the law... [they] “are binding, providers are legally obliged to comply and [the inspector’s] job is to make sure that it happens”.

Conclusion

In Ireland, the approach to ensuring quality standards in ECCE provision is typified by a top down macro approach at the centre of which is the power and legitimacy of the HSE. Accordingly, ECCE managers/teachers are disenfranchised and operate within a culture of fear; where they believe that the current inspection system is predisposed towards health and safety. Hence, the sector believes that the HSE applies a narrow set of criteria that is subject to the whim of individual inspection teams. Worryingly, rather than enhance quality; regulations may potentially drive standards down as the sector puts all its energy into meeting minimum standards rather than maximising quality. Clearly, ECCE managers/teachers adopt a docile demeanour and lack the capacity to engage with the inspectorate in a meaningful way. Their inability to do so is hindered by their own poor levels of training and feelings of helplessness when faced by didactic inspectorate practice. They therefore accept inspectorate dictates without question. Teachers must be supported to develop the capacity to explain their practice; to convey why it is necessary for children to engage in risk taking, to explore with the dressing up box and so on. Only in this way, can power become something other than a “repressive hypothesis” (Foucault, 1980, p. 82); that does not weigh on the ECCE sector as a force that says no (ibid).

Regardless of their lack of understanding of early childhood education, which compromises their ability to inspect Article 5 of the Childcare (pre-school services) Regulations, 2006, HSE inspectors operate from a position of governmentality (Foucault, 1991). Thus, as “functional authorised officers of the HSE” they must ensure that the ECCE sector complies with the regulations. This involves going to court. In this construct, the HSE use their statutory authority to enforce aspects of the childcare regulations that they themselves do not comprehend. Given that the inspectorate is the ultimate guardian of quality within the ECCE sector, it is inconceivable that the government unquestionably accepts this level of ineptitude and dysfunction from those tasked with ensuring that the sector complies with basic minimum requirements. This is indicative of an abject failure by government to address the issues endemic within the sector; inspectorate training and composition of inspection teams, ECCE training levels, support, resources and appropriate remuneration. If government is serious about improving quality standards, then it must not let the inspectorate hide behind its

legal status, it must take steps to ensure that inspection teams are fit for purpose. An immediate review of inspectorate skills, followed by a comprehensive training programme for inspectors or the inclusion of somebody with expertise in ECCE are vital steps towards addressing the issues highlighted in this paper.

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