Family Justice

Response to Oversight Group consultation topic 'Optimising the delivery of family justice via the provision of facilities and supports in the family justice locations'

In our experience of child and family court proceedings, the court system presents itself as adversarial for all parties involved. In terms of child protection proceedings in particular, social workers have to move from a role of support to one of judgement, and back again. Parents who often have a multitude of personal difficulties, are placed in a position where they often feel they need to deny or minimise these for fear of their children will be placed with the other parent, being removed, and placed in care, or not being returned. Though it is almost certainly impossible to remove adversary and stress from this process, a more supportive, collaborative approach would almost certainly benefit everyone. In terms of the Child Care Act itself the IASW has previously made submissions on this, and we are aware there is some crossover here.
In terms of courts processes particularly, social workers commonly site derision and dismissal in the court processes as reasons for leaving those roles in Tusla, while parents are almost certainly retraumatized by the various 'steps' of court proceedings be they custody and access or moving from emergency to interim to full care orders, where their 'failings' are repeated time and again in a relatively public forum. Children's needs can be seen as bargaining chips between solicitors; that something must be agreed for something else to be conceded, so their needs are undermined or even lost in the process.

Impact on children

Adversarial structures
The primary fear of families in terms of social work involvement is the potential removal of their child. This is exacerbated by the conflictual processes of court whereby social workers and parents are pitted against each other and 'evidence' becomes the central tenet of the child's needs.

Within this children's needs and wishes are often held in conflict with their parent's. Social workers, Guardian ad Litem's and other professionals can have their assessments and analysis questioned and undermined, leading to decisions being made in a precarious way, often seen as something to be 'traded' to appease the other side, or delayed or even dismissed because of the weight of evidence and proof. This rarely benefits parents in the long run, as children remain conflicted, anxious, or unhappy, and so the outcome the parent, and often their child wants, becomes harder to reach.

The child's placement can at times be undermined as legal representation for parents seek to cast doubt in the courts mind as the source of a child's anxiety and distress. This can create further distrust and animosity between the parent and the carers or social work department, hindering their capacity to trust in the system that has the potential to support them.

Keeping children informed
Social workers are well placed to inform children regarding court processes. Guardian ad Litems when appointed can also advise and support children. EPIC have been available to children who wish to make certain submissions or are seeking advocacy outside of these professionals. For some children seeing the court and meeting judges or legal professionals is helpful. Given this an established process should be in place (it is currently relatively informal) and training for judges, solicitors and other court officers who may be meeting or guiding children when such visits occur.

Section 20 Reports
There is an understanding that these should be referred to TUSLA if specific child protection concerns noted (within the Act is is whether children should be in care or not). However, in some courts this is used as a mechanism for deciding custody & access. It is our view that unless the question in respect of threshold for S18 is what court requires, assessments around custody and access arrangements should be undertaken by social work and other professionals outside of child protection.

Voluntary Care
At present voluntary care is used in about half of the cases of children being placed in care. As has been highlighted in the work of Conor O'Mahony, Rebekah Brennan and Kenneth Burns there are ethical considerations in relation to informed consent and coercive language being used. There is a clear need for the recommendations of this research study to be considered in any future planning for care proceedings and how cases can be established as requiring a Care Order or Voluntary Care Agreement.

Voluntary Care also leaves the child open to greater instability in their placement and less consistent care planning. In addition, children who are in voluntary care do not have the pressures of the court on their care planning and are thus less likely to be provided with specialist services or prompt services in the way children whose cases are before the courts are.

There is a need for some regulation of this form of care and this could be reflected in regulations that set out specific periods for agreements to run or directions about the issue of consent.

Legal council
There is no specific training for judges, solicitors or barristers on child development, trauma, attachment/placement disruption or specialist/additional needs. As detailed in the Family Law Reform Report in 2019 Ireland continues to rely on an adversarial as opposed to inquisitorial system in court proceedings. Due to this the court is entirely reliant on witnesses, and legal teams are reliant on touting or undermining the views of these witnesses depending on who they represent. Witnesses, other than social workers, are invariably mental health or health and social care professionals. They have no specific training in court processes, or the threshold of evidence required for court.

Aside from the excellent points made in the 2019 report, those of us involved in childcare proceedings have observed that many professionals find this process stressful or even traumatic, especially when the legal teams are particularly combative. The outcome of this is that the child's best interest and needs are not heard fully or adequately by the court, and what

cannot be seen as 'evidence' (when often it is in fact untrained or unprepared witnesses) is then discounted from that child's needs. We fully agree with the findings of this report that an inquisitorial approach would allow for children's needs to be held at the centre of any child and family proceedings.

In the interim specialist training for the judiciary and legal professionals is required to ensure that basic concepts around children's health, development and welfare are adequately understood and accepted. Information sessions that focus on ensuring that the best interest of the child is held paramount in childcare proceedings, and the danger of adversarial and conflictual approaches in undermining the needs of the child including inhibiting these being heard fully and fairly by the court may be a first step to changing attitudes overall. Without any revision to current procedures this recommendation could be undertaken by the Justice Oversight Group without delay.

We do not believe that the onus is on professionals to be prepared for adversarial court proceedings. Adversarial proceedings result in less positive outcomes for children and parent's in these proceedings are less likely to access support services than those in more cooperative proceedings. However, like parent's needs detailed above, access to information, expectations and their own rights before the courts would be helpful.

Evidence presented

Because many cases are heard regularly there is often a repetition across professional reports as they make the case for the threshold of evidence continuing to be met. This is time consuming for all professionals and provides little benefit to the proceedings themselves. A statement similar to an affidavit would likely be more efficient and less onerous on all involved.

Parents may benefit from presenting evidence formally themselves. As it stands their legal team make presentations but in the body of reports there are rarely those solely reliant on the parents own views. Though judges are often very receptive to parent's statements and accounts given by their solicitors these are not available on the children's Tusla file or feature book of evidence on which the child's case is decided. From the child's point of view having access under Freedom of Information to what was submitted and what was considered is important, and to feel their parent's views are not available or present leaves a gap for the child in terms of their own meaning making of decisions made.

Legal professionals can make submissions to the court regarding 'hearsay' evidence – what a child might have said or behaved, or the account of a foster carer of this. Demands can be made to bring the child or carers to court or dismiss this evidence. Both are problematic in ensuring courts have a full account of a child's needs. For children, the role of the GAL can be beneficial in this, though even this can be challenged by legal teams.

For carers a process such as an affidavit should be in place to allow their evidence to be available without asking them to become witnesses to adversarial or contentious proceedings. Ethically this also poses difficulties for the child's meaning making; how they may view their carers if they understand they gave evidence 'against' their parents and how this can be understood by children and young people trying to understand their own history.

Supervision Orders

Supervision Orders are granted along the same grounds that apply to Interim Care Orders. The best interests of the child and family could be served by the provision of greater clarity regarding the use and function of such orders. It has also been proposed under the current Departmental review of the Child Care Act 1991 that in the granting of such orders Courts

should be enabled to attach child and family-specific directions; for example, granting a social worker access to meet with a child, but also directing a parent or guardian to present the child for a medical treatment. At present there is inconsistency in how such orders are applied and used, with consequent impacts on the child, family, and support services.

Interim Care Orders

Interim Care Orders normally last 28 days but can be agreed for longer durations. Where agreement is not made, cases are returned to court every 28 days and long-term planning for children, particularly permanency planning or assurances to children in relation to their care can be undermined. It is in children's best interests that their care planning allows for both short- and long-term needs, including permanency. A limitation on the duration a child can be in care under an Interim Care Order before a full Care Order is sought should be established.

Care Orders

A care order normally seeks to place a child in care for a longer duration than an Interim Care Order. This can be anything from a number of months or until they are eighteen. Again, the best interests of the child can be undermined in a number of ways due to the current need to negotiate parent's needs versus children's needs, rather than holding the best interest of the child at the centre of all decisions. In addition, offering reassurance in their permanency planning to children can prove difficult with shorter Care Orders.

Reviewing of Care Orders

Currently courts review care orders with differing frequency and intensity. This can intensive the impact on parents and cause confusion for a child who cannot understand the reason why their case is different from another child's. this process can also result in social workers spending significant amounts of time waiting in court rather than engaging children.

Reviews could also be submitted by way of reports to the court and shared with parent's legal team where the threshold of evidence may not be required. If a review process is in order for court oversight of care planning this could be submitted to the court by legal representatives and may not need to be sworn in as evidence in the same way as it would in respect of an application for a Care Order for example.

It may be helpful if there was a recommended frequency for review and a set court to review such matters with dedicated time so that appointments could be given. This would at least provide more predictability and planning on behalf of parents and social workers while facilitating ongoing oversight as appropriate.

Open adoption

Permanency planning in Ireland remains inconsistent and precarious due to the nature of the Orders relied upon. Though adoption is available it is rarely used, and it is usually children advocating for their own adoption or a deceased or long absent parent that will lead to this. Having a process of open adoption that allows the child to retain a relationship with their birth family but gives them permanent and stable rights within the family they are being raised in is central to a rights-based approach to childcare proceedings.

Reunification

Reunification is largely based on a parent's progress and there is little focus on joint therapeutic needs of the parent and child in repairing their relationship. We are advocating for a therapeutic jurisprudence approach to the process of childcare proceedings overall, and with particular attention to this in terms of reunification and ensuring that the therapeutic supports for families is a central element to reunification planning. Reunification plans that are therapeutically rather

than task led have a greater chance of success, and courts should have services available to them to support this both in private family law and childcare cases.

Impact on parents

Parent support and mediation

Again, as established in the 2019 report there are currently no established mediation or parent support services for parents whose children are being considered for care. This means that for children whose parents do not feel they can agree to a voluntary care arrangement, that the only other option is an adversarial one. In terms of considering these options and how to navigate this system, there is a clear need for an independent service to be available to parents to support them in establishing their rights, wishes, and the pros and cons of differing systems.

'Welfare' cases

There are a cohort of family law matters that would be better settled in and Alternative Dispute Resolution (ADR) mechanism such as conciliation, conflict resolution, mediation, and negotiation or arbitration. While ADR will need specific attention in regard to cases involving domestic violence there are cases that don't need to be in court but would benefit from some level of support while others could be resolved quickly with a targeted ADR approach. Then there are cases that will require therapeutic intervention before resolution and a remaining small cohort of cases that will require court attention.

This ADR approach has been successfully in place in Wales through Children and Families Court Advisory Services (CAFCAShttps://www.cafcass.gov.uk/) with a body of trained personnel with a clear link to the courts and able to make recommendations to the court so that parties understand that they need to take the ADR process seriously.

Social work could have a lot to offer this type of service once it is targeted and resourced to support families and should form part of the reform agenda with family justice.

This approach would also benefit from adopting a transparent approach to its assessment tools, promoting the voice of the child, and adopting a trauma informed approach to the work.

Court structures and accommodation

As highlighted by Carol Coulter and others, parents are required to attend court for, very often, an entire day in public waiting rooms where other vulnerable parents are waiting anxiously to have their case heard. The lack of private rooms where they can talk to social workers and solicitors means that they are on view to everyone while discussing life changing issues, such as the potential for their children to be received into/remain in care. This offers them little dignity, does not protect their right to confidentiality and it certainly contributes to the adversarial nature of the court system and to the stress on families. While it is not practical or realistic to request that private rooms be provided for all parents in court on a given day, a more structured and planned sequence of the cases to be heard would be an achievable change that could have many benefits for parents.

During Covid-19 restrictions in 2020, a number of changes were made to allow cases to continue. One was that proceedings moved online. For cases where there was general agreement and the 'rollover' of an order, this was practical and allowed parents to decide in advance of court if they wished to consent to this, and if not ensured that time was given in advance to resolve concerns or issues. Under normal circumstances parents and social workers are asked to attend and these issues worked out on the day, leading to longer days and less time for resolution. We believe that this approach should continue as a permanent measure for cases that can be agreed.

In some District Courts each case was given an allocated time, and this was communicated in advance to all stakeholders. Parents and professionals arrived at a specified time and left when

their case was heard. This should become standard practice across all court services in family proceedings post-Covid, due to the following benefits:

- Reduced stress for parents
- Increased confidentiality with less people waiting to have their cases heard.
- The potential for parents and professionals to have more privacy when discussing their case before and after the hearing.
- Greater efficiency for professionals who would also only be required to attend for the times allocated to their cases. For social workers, this would mean that more time could be spent with children and families, as opposed to spending full days in court unnecessarily.

We understand that there is likely to be counterarguments to having a fixed schedule of cases in all family court proceedings. However, as a relatively straightforward first step, we would ask that the Family Justice Oversight Group reflect on the changes to logistical proceedings as a result of the pandemic and apply any learning going forward to make the system less adversarial for vulnerable families.

Parent support and services

Parents who lose their children through court processes experience a significant trauma. This is often exacerbated by the social and emotional circumstances that contributed to their being unable to care for their children. Therapeutic support should be automatically available to any parent engaged in court proceedings in relation to the care of their children.

Adversarial proceedings, in our experience (though we could find no research to support this) undermine parents' potential for engaging in services and progressing to real and long-lasting change. This is because the system and process that the parents are in seeks to undermine and dismiss professional opinion and insight within the court hearing, while expecting parents to then trust in and work with those same professionals as soon as the court hearing ends. Anecdotally we have observed parent's with particularly conflictual and abrasive council tell social workers, addiction, or mental health professionals that they do not need to work with them or are not in need of these types of services, and they believe their legal team will have their children returned without having to make these changes. We have also seen legal teams strongly advocate for parents to receive support and hold Tusla or the HSE accountable for ensuring this is provided and is enduring. The latter, more welfare-based model, seems to lead to more beneficial outcomes for parents.

Formal mediation by a qualified professional (not legal teams) should be available to parents and social workers throughout court proceedings.

Aine McGuirk
Chair
The National Social Work Organisation of Ireland CLG