



# Parental Rights and Participation in Voluntary Care

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# Voluntary care removals

- 5.1 children per 1,000 in care
- 54% enter through voluntary care
- 32% year end on voluntary care
- No research
- SW + parent = decision-makers
- Dated law, limited guidance
- ↑ high professional discretion
- ↓ low accountability
- No time limits on agreements
- Parents retain some rights
- Parents can cancel at any time

# Under-researched areas

- Why voluntary care is chosen over other pathways to care;
- **The safeguards offered to parents at the point when they consent to voluntary care;**
- The safeguards in place to protect the best interests of children and to ascertain their views;
- The duration of voluntary care arrangements;
- The reasons why voluntary care arrangements transition to a court-based care order.

# Child Care Act 1991, Section 4

- S4 has no reference to voluntary care in the text (only in marginal note)
- No guidance on how parental consent should be secured
- No time limit
- Parents can withdraw consent at any time and retain significant responsibility for decision-making
- Does not authorise consent to medical treatment, passport etc

# Study phases

Literature scoping exercise: Oct. '18 - Jan. '19

Research ethics approvals

Survey consultations: January 2019

National survey of Tusla SWs: Feb. - March 2019. n=243

7 counties

Interviews with solicitors: Feb. – May 2019, n=20

Focus groups with SWs: Feb. – July 2019, n=7

Parents' pilot phase consultations: May – June 2019

Data collection with parents: began initial work but COVID impacted

# Strengths of Voluntary Care

- Less adversarial
- Less costly
- Facilitates more collaborative relationship
- Conducive to family reunification

# Why choose voluntary care instead of a care order?

Voluntary care is chosen where...

- Parents are likely to work well with social workers
- Parents are willing to sign and do not want to go to court
- There is less risk to the child (welfare rather than protection)
- The placement is likely to be short-term
- There is likely to be reunification
- There is a culture where voluntary care is the first care status offered
- Supports parental participation

(most common survey responses)

# Solicitor Interviews

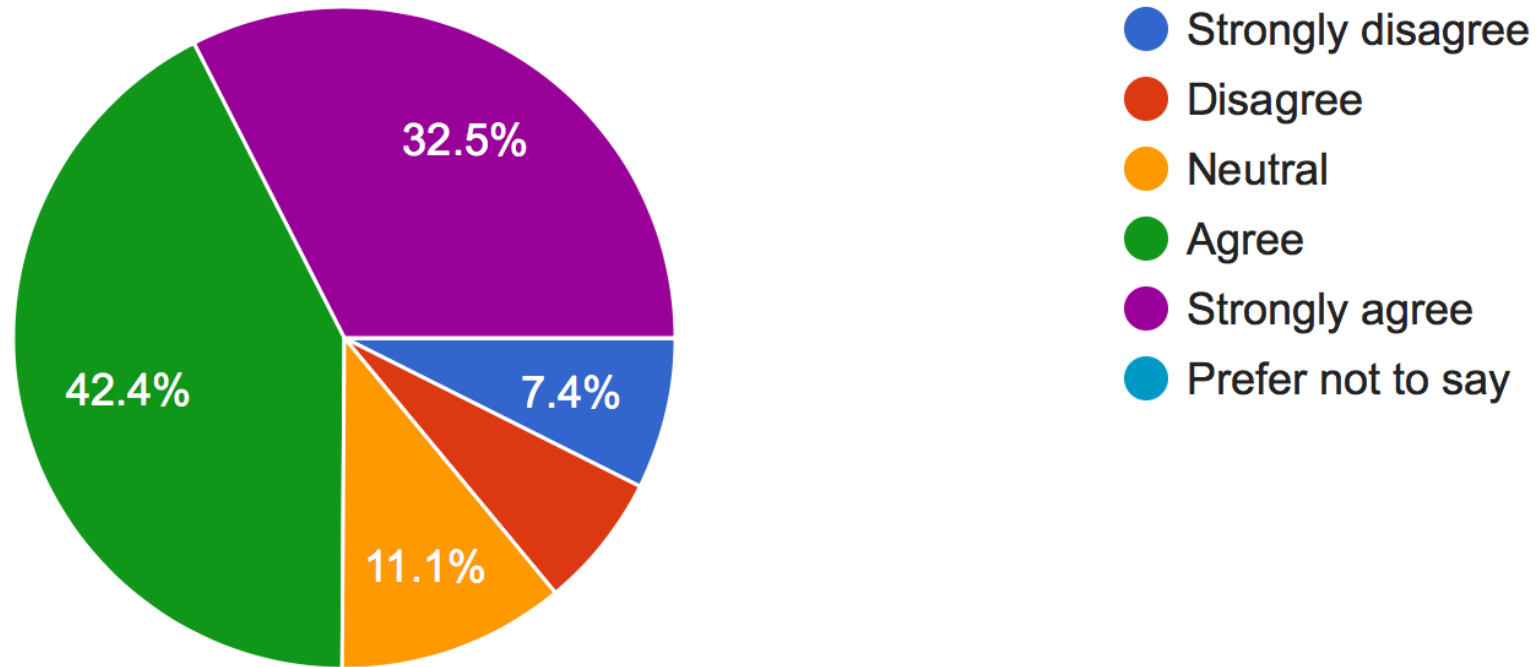
*“I think there are those cases where a voluntary care arrangement can work, **where the parent is very much involved**”*

*“...it keeps more power and control with the parent and that’s kind of one of the strongest, one of the biggest pluses of it.”*



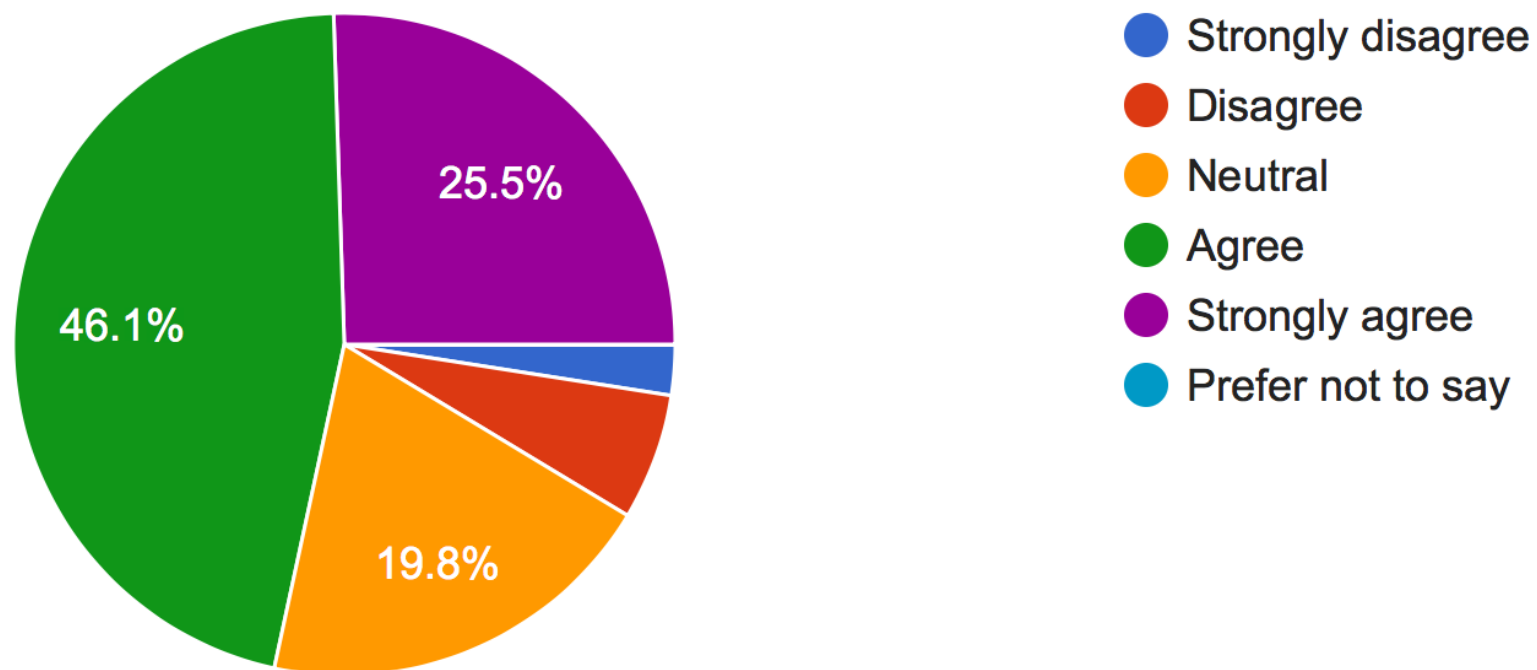
# I believe voluntary care agreements have a central place in child protection practice and should be retained

243 responses



# The voluntary care system should be reformed

243 responses



# Informed Consent

- Literature identifies 3 key elements:
- *Capacity to consent*: ability to understand information and consequences at the time consent is given
- *Voluntariness*: given freely – no duress or coercion
- *Full information*: clear guidance on options; accessible format



# National Consent Policy



## Practice Guidance on Voluntary Consent for Admission to Care

<b>Document Reference Number</b>	PPPG 08/2017
<b>Revision Number</b>	
<b>Approval Date</b>	7 July 2017
<b>Next Revision Date</b>	7 July 2019
<b>Document Developed By</b>	National Focus Group chaired by National Policy Manager for Alternative Care
<b>Document Approved By</b>	National Policy Oversight Committee
<b>Responsibility for Implementation</b>	Area Managers, Social Workers-Children in Care, Child Protection and Welfare
<b>Responsibility for Review and Audit</b>	National Policy Manager, Alternative Care

### **What if I am not satisfied with my child's placement?**

You can request a meeting with your child's social worker, you can ask that an alternative care placement be found or you can withdraw your consent.

Or you can contact your local Social Work Department at the numbers below.

Monday to Friday  
9am to 5pm.

## **Voluntary Consent for Admission to Care**

### **What is a 'Care Order'?**

A Care Order is an application made by a Social Worker on behalf of the Child and Family Agency to the District Court to receive a child into the care of the Child and Family Agency.

It is the Judge's decision whether or not the child comes into care.

### **CONTACT DETAILS...**

**Check us out online**  
[www.tusla.ie](http://www.tusla.ie)



**Information  
Leaflet**





### **What is Voluntary Consent?**

Voluntary consent occurs when you ask or agree that the Child and Family Agency will care for your child(ren).

If you have agreed for your child(ren) to come into care on a voluntary basis, you will be asked to sign a form consenting to this.

You should receive a copy of this form from the social worker.

### **When is Voluntary Consent used?**

Voluntary consent can be used where there has been a decision made by the social worker that a child requires care outside of their parents or immediate family.

This can be at the request of the parents themselves or where there is a concern for the safety and/or protection of the child in the care of their parents. This can occur for any number of reasons.

### **What is the purpose of the Consent form?**

The consent form is to provide a written source of information and a place to document that your consent has been given freely.

### **Do I have to give Voluntary Consent?**

No. You do not have to sign the consent form. If you do sign the form, you can withdraw your consent at any time.

### **What will happen if I do not give consent?**

If the social worker feels that there is a strong enough concern for your child or that your child is at significant risk of harm, further actions may be taken to protect your child.

### **Who can sign the Voluntary Consent form?**

The parents or legal guardians of the child can sign the consent form.

### **Does giving Voluntary Consent remove all my rights as a parent?**

No all decisions in relation to your child's health, education and welfare will be discussed with you. Medical treatment will not occur without your consent. You will be involved and consulted in planning for the care of your child.

### **How long will my child remain in care?**

The period of time that your child will remain in care will be recorded on the consent form. If you are in agreement with this, then you can sign the consent form.

### **Can I change my mind?**

Yes you can decide at any stage that you do not want to continue to give your consent then you can notify the social worker of your decision and you will be asked to sign a form to say that you have revoked your consent. We would ask that you speak to your social worker about this decision and also about any worries or concerns you may have.

### **Will I have contact with my child?**

Contact will be agreed between you and the social worker and this will be documented in the child's care plan. A care plan is formulated at your child's review.

The review takes place within the first two months of your child being in care.

### **Where will my child live when I give consent?**

Your child can be placed in one of the following placements and the social worker will discuss this with you.

- Residential care
- Foster care general
- Foster care with relatives

### **Who is involved in my child's care?**

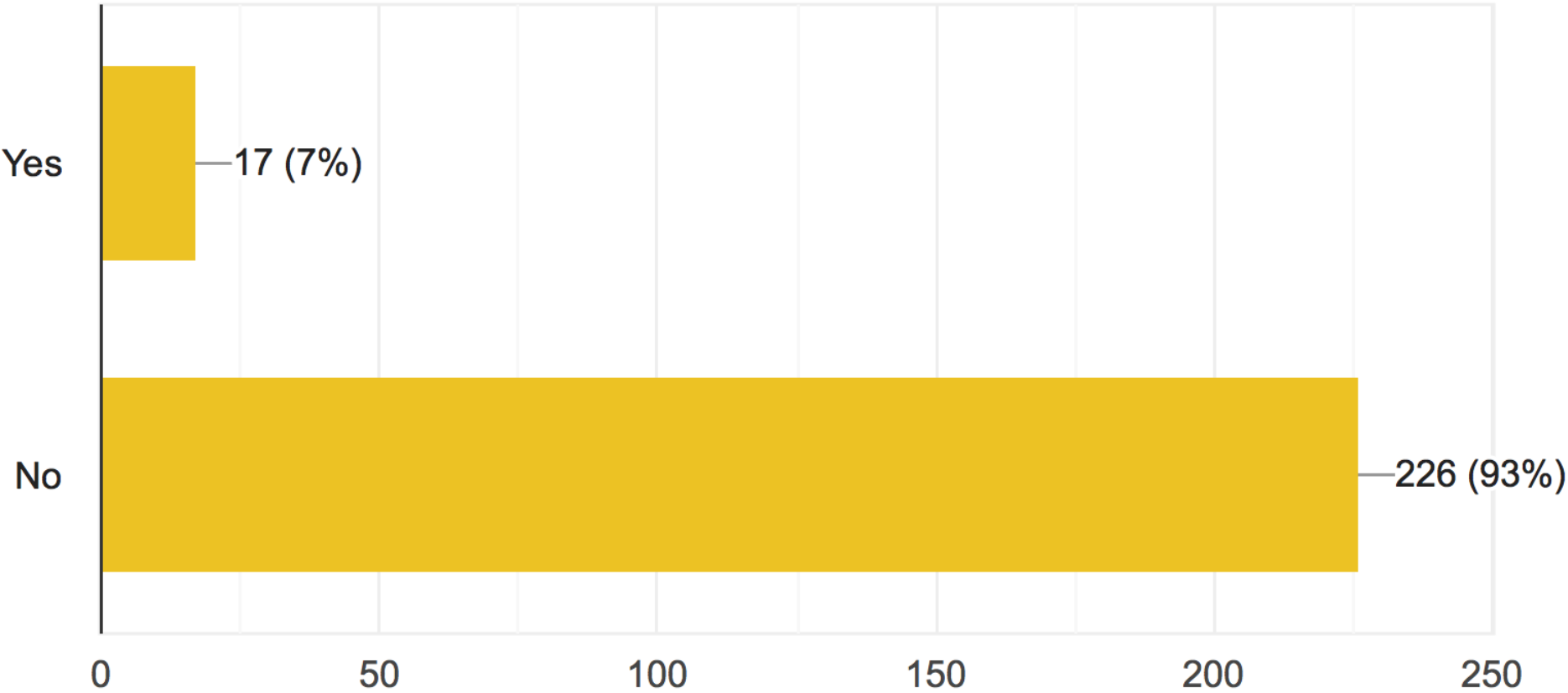
The child's social worker will be the primary person responsible for your child's care. The social worker will work with you and your family, the carers and or staff who are caring for your child.

### **Can I seek legal advice?**

Yes all parent(s)/ guardian(s) are entitled to seek legal advice and to bring a support person with them to any meeting in respect of voluntary consent. The support person can be a person of your choice and does not have to be a legal advisor.

# Have you received training on the Tusla "Practice Guidance on Voluntary Consent for Admission to Care" (2017)?

243 responses



# Capacity to Consent

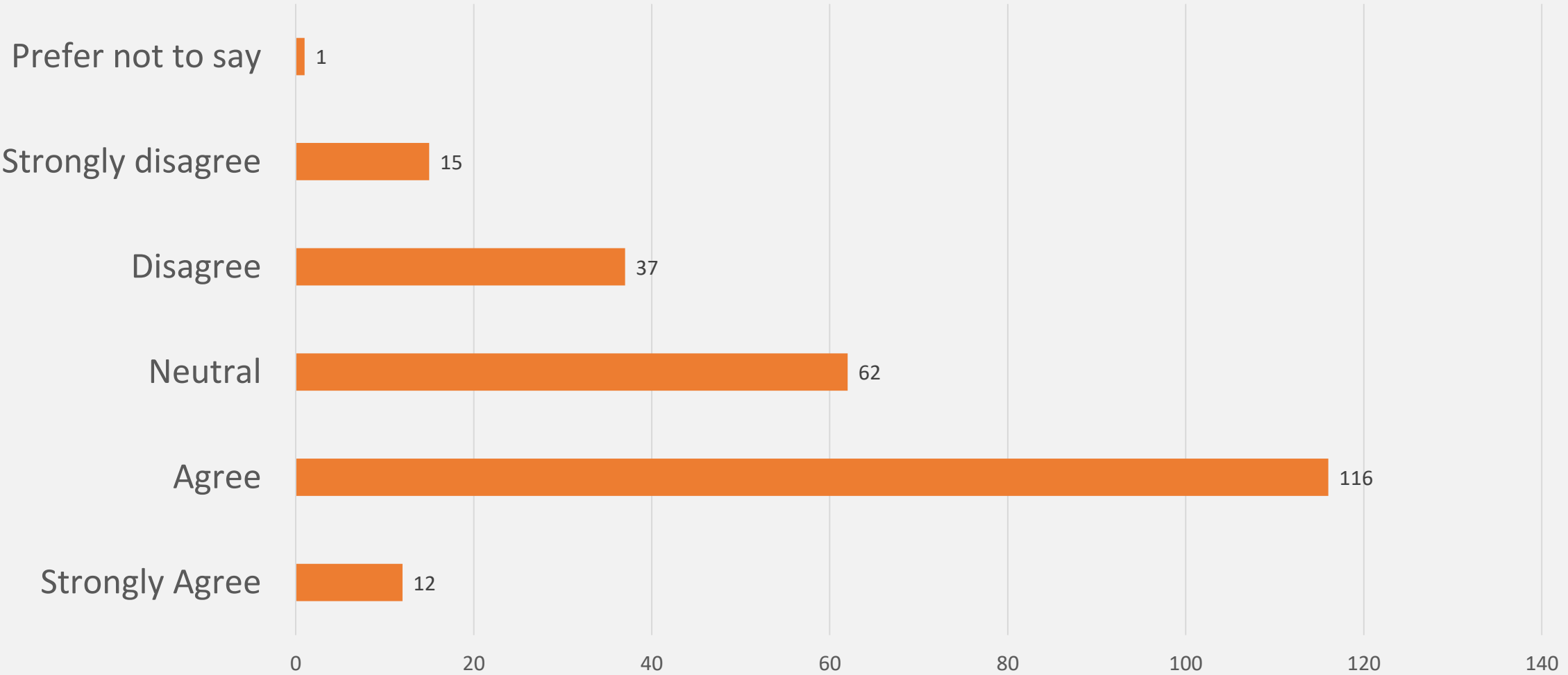
- High incidence of mental health, addiction and cognitive issues among parents in contact with care system (Masson, 2012; Coulter, 2015)
- Existing evidence of lack of parental understanding of care proceedings (Brophy et al., 2005; Sheehan and Borowski, 2014; O'Mahony et al., 2016)
- Demographic profile replicated in voluntary care cases



# Capacity to Consent

- *“They will tell you they have signed something. **They can’t remember what they’ve signed.** It’s certainly not a document that they would have been aware had any status or meant anything.” (Sol 7 & 12 LAB County C)*
- *“ ... we’ve had some parents ... saying to us **she didn’t realise how easy it was to withdraw her consent for it,** you know ... I suppose some parents obviously things are very difficult when you have to sign a child into voluntary care, and we probably did the very best we could in providing information for them, but they don’t understand it or they don’t accept it or fully really get to grips with it and then we don’t review it.” (SW FG 3 County D)*

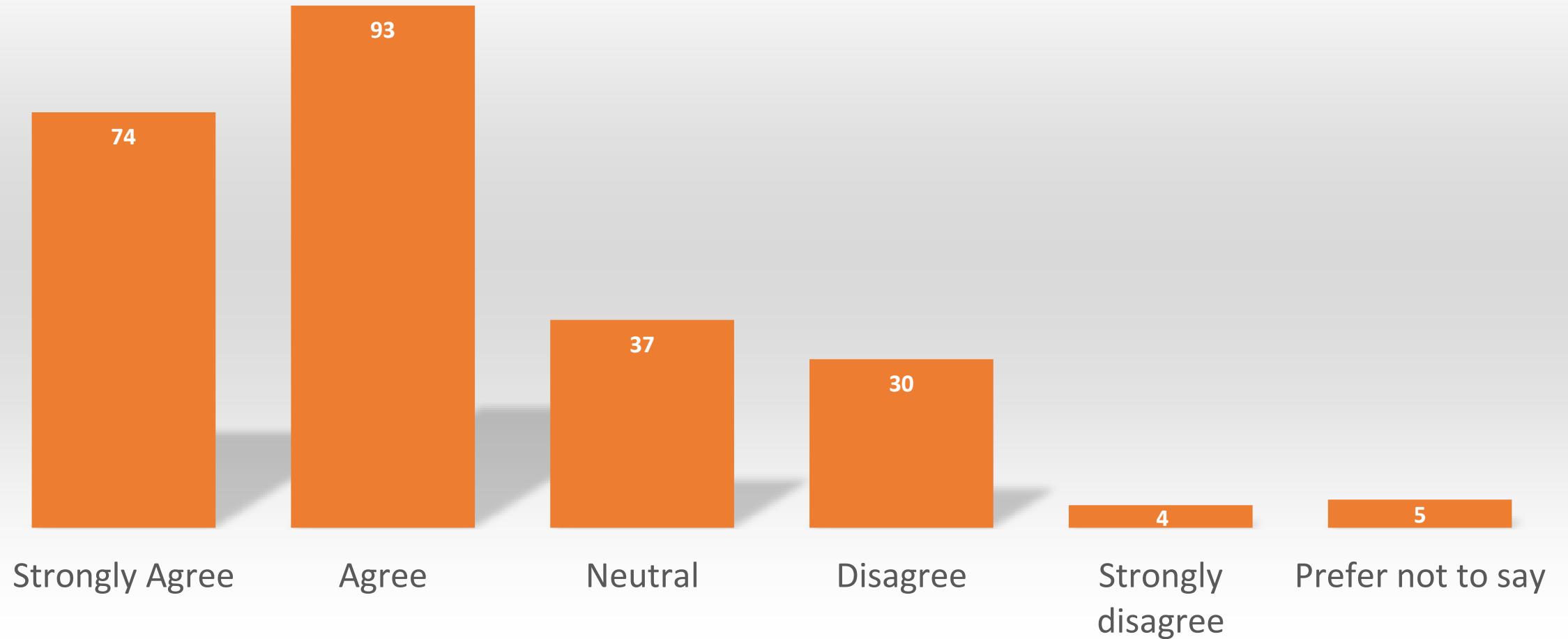
Parents with an intellectual disability / mental health issue / substance use issue  
can consent to voluntary care



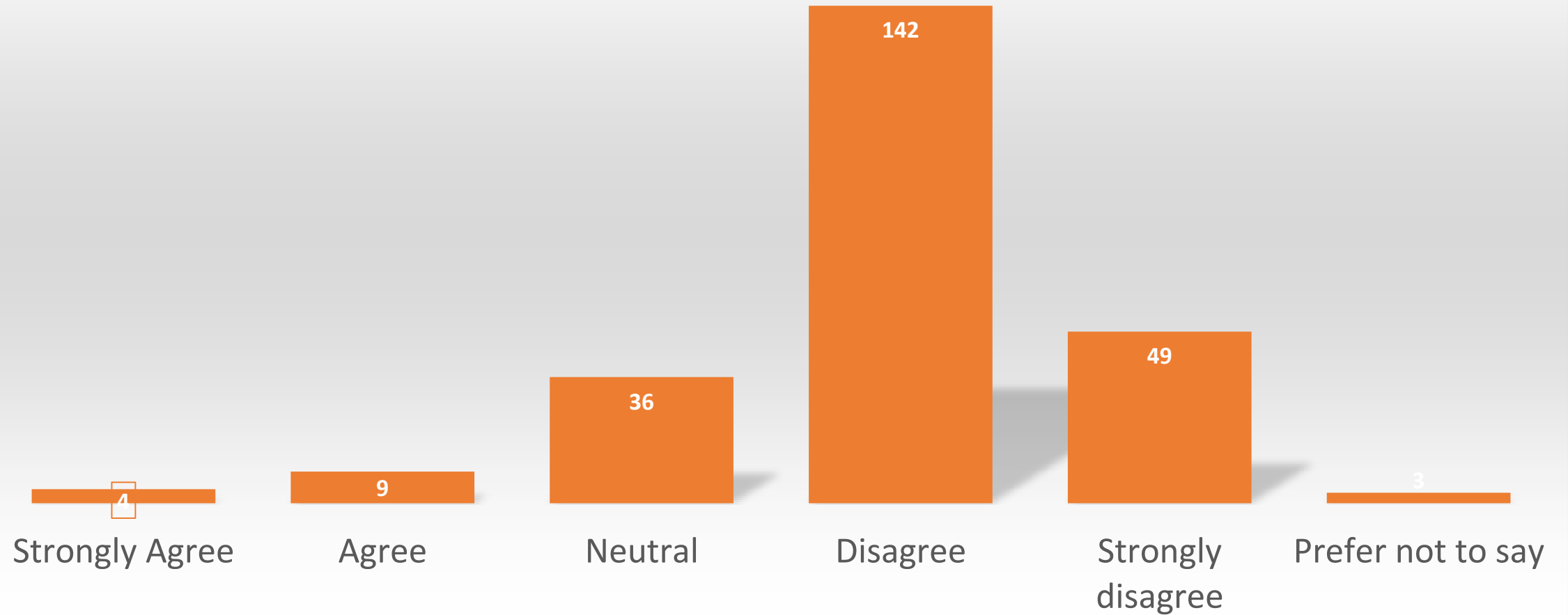
# Informed Consent

- *“And so there’s always some kind of capacity issue, you know. So how we deal with it, I mean, we do and should recommend that they go **for independent legal advice.**” (SW FG 3 County D)*
- *“... what is the legal advisor going to say? A legal advisor **can’t make the person have capacity to understand** what they are doing.” (Sol 20 County G CFA)*

**When I am discussing vol. care with a parent I always recommend that they seek independent legal advice before they sign**



Parents always get independent legal advice before  
they sign a voluntary agreement



# Voluntariness

- Evidence from England and Wales: *"it may be that it is a bit of an **arm up the [back] job**. 'You work with us or we will go for an order.'"* (Masson, 2005)
- Most solicitors perceive that social workers make parents feel like they have no choice but to sign voluntary agreements
- Most social workers agreed that this may well be the case

# Voluntariness

- *“... just sign up, you know, we won’t take your kids into court ... and they’re nearly threatened nearly. That’s the impression they get. They feel sometimes they’re being threatened. You know, if you don’t sign your kids away we’re taking them away. We’ll be in court on Tuesday and we’ll get the judge to take them away. You know, speaking as it’s a threat. Now, nobody would agree that necessarily they were threatened, but **that’s the way they perceive it**, you know, that they’re being threatened and they had to give away their child [his/her emphasis].” (Sol 10 LAB County B)*

# Voluntariness

- *“... it was always referenced that, you know, ‘I have the power to do this. If I need to do it, I will do it. If you want to almost keep me on side and keep the system working with you, you will sign this ... If you don’t, we will all head down to Court’ ... it is what the practice was in the area. **You try and get everybody to sign up – if they won’t, you force them to sign up.** I suppose it is not great practice really.” (SW FG 6 County C)*
- *"I can see why parents would find that threatening or coercive but I'm **not sure how else you have that conversation** without outlining the consequences to them." (SW FG 3 County D)"*



# Full Information

- Strong consensus across professions that parents should have access to independent legal advice before signing voluntary care agreements
- Equally strong evidence that most parents do not actually receive such advice
- Cause for concern in light of evidence on parental understanding and soft coercion

# Full Information

- *“To a very limited extent we might have clients who contact us for advice before signing their children into voluntary care, but that would be the **exception rather than the rule** ...” (Sol 13 LAB County A)*
- *“ ... to have lawyers on speed dial and advocates on speed dial, **I just don’t know if that’s going to be possible**. So it’s an imperfect system that we have that people are agreeing to voluntary care without having, you know, access to all of these things, but I just don’t know a way around that.” (Sol 15 CFA County B)*

# Combination of factors

- *“I saw one where the parent signed something allowing her daughter to be taken out of the jurisdiction and maybe to be left there indefinitely. And really without any—**no legal advice whatsoever** ... and the parent then was saying, ‘Why did this happen?’ And I said, ‘Well, did you sign anything?’ ‘Oh, I think I signed something. **I don’t know what I signed. Nobody told me**’ ... the parent in this case had no real knowledge because the parent was very compromised mentally. You know, they had very **low intellectual ability** and really didn’t know what they had signed; said they didn’t understand what they had signed. And also felt that they were **sort of coerced**, that if they didn’t sign it that there was going to be an application to court.”*  
(Sol 7 & 12 LAB County C)

# Tusla Practice Guidance (2017)

- Defines consent as “when a Tusla social worker asks or agrees with a parent(s) that Tusla will care for their child(ren) and the parent(s) have signed a form consenting to this.”

→ *But just signing a form doesn't guarantee informed consent*

- Social workers required to assess capacity – but limited guidance on how to do this

Voluntary  
care  
agreements



Court-  
ordered  
removals

Voluntary  
care  
agreements

Policy

Training

Practice  
tools

Time limits  
(NZ, Victoria,  
Ontario)

Independent  
oversight  
(New South  
Wales)

Court-  
ordered  
removals

Parental  
advocates

Legal advice  
(Ontario,  
New South  
Wales)

Cooling-off  
periods

Reviews  
(Victoria)

Notice periods  
(NZ)

# Recommendations

- **Retain voluntary care, but regulate more tightly**
- Revise policy on informed consent – believe this is underway
- Limits on duration and renewal
  - 3 months renewable once if no legal advice
  - 12 months renewable more than once if legal advice provided
- Strengthen review mechanisms
  - Independent chair; binding recommendations
- 72 hour notice period for withdrawal of consent
- Review of Childcare Act is still ongoing



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