

THE CHILDREN'S COURT

A Children's Rights Audit

Dr. Ursula Kilkelly

THE CHILDREN'S COURT

A Children's Rights Audit

An analysis of the extent to which the Children's Court operates
in line with national and international standards

Dr Ursula Kilkelly, Senior Lecturer, Faculty of Law, University College Cork

May 2005

Research supported by the Irish Research Council for the Humanities and Social Sciences

Table of Contents

<i>Acknowledgments</i>	<i>iv</i>
<i>Note on Author</i>	<i>v</i>
<i>Introduction</i>	<i>vii</i>
<i>Methodology</i>	<i>viii</i>
CHAPTER ONE:	
The Youth Court	1
CHAPTER TWO:	
Young People before the Children’s Court	16
CHAPTER THREE:	
The Courtroom and Court Sittings	32
CHAPTER FOUR:	
The Judge	47
CHAPTER FIVE:	
The Solicitor	70
CHAPTER SIX:	
An Garda Síochána	78
Conclusions and Recommendations	89

Acknowledgments

I am grateful to everyone who contributed to this research both by allowing their work and behaviour to be observed in the Children's Courts and through informal discussions. I am particularly grateful to the judges of the Children's Courts in Cork, Limerick, Waterford and Dublin who so willingly allowed me to observe their court in operation.

I am also grateful to the two researchers who assisted in the data collection for this project: Aisling Parkes undertook the original pilot of the project in the Children's Court in Cork in 2003, and Sylvia Hoare who, together with me, observed proceedings in Waterford, Cork, Limerick and Dublin throughout 2004. Without Sylvia's contribution and commitment, including with the production of the report, the research would not have been completed.

This research was made possible by a small project grant from the Irish Research Council for the Humanities and Social Sciences awarded in December 2002. I would thus like to extend my gratitude to the Council for providing me with the incentive to undertake, continue and eventually complete what was an ambitious, seemingly endless but always fascinating project.

NOTE ON AUTHOR

Ursula Kilkelly is a Senior Lecturer at the Faculty of Law, University College Cork where she has worked since 1999. She previously lectured at the University of Wales (Swansea) and completed her PhD at Queen's University Belfast between 1994 and 1997.

She has researched and published widely in the areas of children's rights and youth justice, and is author of *The Child and the ECHR* (1999) and editor of *ECHR and Irish Law* (2004). In 2002, she completed an investigation into the rights of children in custody in Northern Ireland for the Northern Ireland Human Rights Commission and wrote a practitioner's guide to the Children Act 2001 for the National Children's Office.

At UCC, Ursula teaches juvenile justice on the LLM (Criminal Justice) programme and Moot Court and International Trade Law on the BCL programme.

She is a member of the Board of the Irish Penal Reform Trust and is on the Council of the Irish Association for the Study of Delinquency. She is a founder member of the Irish Youth Justice Alliance.

Introduction

The Children's Court is the criminal court which hears all minor charges against children and young people under 18 years and acts as the clearing house for more serious charges which it sends to the Circuit and Central Criminal Court. It is thus the Court before which all young people charged with a criminal offence will appear and with which they will all have contact. The Children's Court has a central role in the administration of youth justice and as such, it has considerable potential to influence the behaviour of young people in conflict with the law and to address their offending behaviour. However, little consideration has been given by legislators, policy makers or researchers to how the Children's Court should operate in practice, and how its fulfilment of these objectives might be maximised. The Children Act 2001, which purports to overhaul many aspects of the youth justice system, neither addresses the role of the Court, nor deals with the lack of coherent infrastructure within which the Court functions.

The objective of this research was to carry out a children's rights audit of the Children's Court. By observing the Court in session in Cork, Limerick, Waterford and Dublin during 2003 and 2004, the research measures the extent to which the Children's Court operates in line with national and international standards in youth justice. In particular, the research considers whether young people's rights, including their right to participate in the criminal process, are fully protected before the Children's Court.

Methodology

THE BENCHMARKS

The principal objective of this research was to evaluate the extent to which the Children's Court operates in line with national and international standards. Prior to observing the Children's Court in session, it was necessary to establish the various benchmarks against which the Court was to be measured. This comprised both international standards on youth justice and legislative requirements regarding the operation of the Children's Court.

International standards in the area of youth justice consist of both binding and non-binding documents. The binding treaties, which have been ratified by Ireland include:

- **The UN Convention on the Rights of the Child, 1989 (CRC):** The CRC was ratified by Ireland in 1992 and in 1998, the Committee on the Rights of the Child, reviewing Ireland's progress implementing the Convention, expressed concern about the compatibility of parts of the youth justice system with the Convention's provisions¹;
- **The European Convention on Human Rights, 1950 (ECHR):** This treaty was ratified by Ireland in 1953 and given further effect in Irish law by the ECHR Act 2003. Its provisions have been found by the European Court of Human Rights to impose particular duties on states with regard to the treatment of young offenders.

Recommendations adopted by the United Nations reflecting international consensus on the treatment of children in conflict with the law are also important here. The principal documents are:

- **the UN Standard Minimum Rules on the Administration of Juvenile Justice, 1985 (the Beijing Rules);**
- **the UN Rules for the Prevention of Juvenile Delinquency, 1990 (the Riyadh Guidelines), and**
- **the UN Rules for the Treatment of Juveniles deprived of their Liberty, 1990.**

The authority of these Rules is supported by the fact that they are referred to in judgments of the European Court of Human Rights, while reference to them in the Preamble of the Convention on the Rights of the Child makes it clear that they are to be used in construing the CRC.²

1. The Committee on the Rights of the Child, Concluding Observations on Ireland, UN Doc CRC/C/15/Add.85.
2. The Committee on the Rights of the Child 'General Discussion Day on Juvenile Justice' reported at UN Doc CRC/C/37 para 214.

The legal framework for the Irish youth justice system is set out in the Children Act 2001, which constitutes the first major legal reform in the area since the Children Act 1908. The Act is being implemented on a phased basis and many of its provisions are now in force. However, crucial parts (eg Part 5 which raises the age of criminal responsibility to 12, Part 9 on community sanctions and Part 10 on detention) remain uncommenced.

APPLYING THE BENCHMARKS

Once the standards against which the system was to be measured were identified, the means of measuring the extent to which the process meets these standards was developed. As the primary research method used was the observation of court proceedings, a form was designed to record basic information on each case heard by the court. This facilitated the recording of information about each young person in court - their age, gender and charge - as well as other details such as whether a parent or guardian was in attendance and whether the child had legal representation. The form also recorded where everyone sat or stood in the courtroom during the proceedings, and noted the details of proceedings and any conversation or interaction between the parties in the Court, recording such exchanges verbatim where possible. The content of any legal discussion was also documented, together with a note of whether it took place within the earshot of the young person or involved the use of technical language. At the conclusion of each case, an overall assessment was made as to whether the young person had participated in the process and details of the outcome were recorded.

OBSERVATION OF THE CHILDREN'S COURTS

The research was piloted in the Children's Court in Cork, where once the permission of the presiding judge was obtained, proceedings were observed between May and July 2003 (over 9 days). The research findings were then reviewed and, in light of the importance of the subject and the perceived value of introducing a comparative element to the research, it was decided to extend its scope to other Children's Courts. Children's Court judges in Limerick, Waterford and Dublin kindly gave their permission to have proceedings observed (no reply was received from Galway) and observation of these courts, as well as further observation in Cork, was carried out between March and July 2004 (Cork 8 days; Limerick 11 days; Waterford 4 days and Dublin 13 days). Overall, the research involved observation of almost 1,000 (944) cases over a period of nearly 50 days. As well as drawing conclusions about the operation of the Children's Court in general, the research was also able to observe significant differences between Children's Courts.

COLLATING THE DATA

Once the observations were concluded, data were transferred to a spreadsheet recording the information (age, gender and charge, guardian present, interaction observed, outcome and description of defendant during the proceedings) according to the Court observed, the date of the proceedings and the judge presiding. Each case was given a number by which it is identified, where relevant, in this report. The review of forms, which accompanied this process, allowed for substantive comments to be made about the operation of the Court and the role of the different parties in the proceedings. Observations about the physical environment, the details of particularly typical or problematic cases and the drawing together of themes and trends also took place during this time. The process of collating this data, although lengthy and complex, facilitated a period of considered reflection on the compatibility of the Court's operation with the benchmarks identified.

STATISTICAL DATA

It is widely acknowledged that there is a lack of meaningful, detailed and up-to-date statistical data on the operation of the Irish youth justice system. A history of poor data collection by statutory agencies and a scarcity of primary research in the area mean that little is known about Ireland's young offenders, their backgrounds, their behaviour and their treatment by the criminal justice system. This has frustrated those with a desire to understand the scale and nature of the problem of young offending and to analyse the effectiveness of responses.

While the principal purpose of this research was to observe the Children's Court in operation, the descriptive data collected about each young person who appeared before the court emerged as a useful by-product. As this research did not have the resources to verify the accuracy of this data - for example, by carrying out a parallel case-file analysis, or accessing data on the Pulse or Criminal Case Tracking systems³ - its use here comes with a number of caveats. First, the research did not set out to follow individual cases or to track particular young people through the courts. The research evaluated cases not individual young people, and so young people who appeared before the court more than once are over-represented in the statistics. Second, while in some cases, facts such as the age of the young person or the reason for the adjournment were mentioned in Court allowing this information to be accurately recorded, this was not always the case. Where possible, estimates were used, although there may also be gaps in the data in some areas.

3. Research is currently being carried out by a researcher based at the Irish Association for the Study of Delinquency in this area. This is due to be published in July 2005.

The statistical information presented here thus does not purport to be definitive or scientific but nonetheless offers a useful, informative and descriptive account of the characteristics of young people who appeared before the Children’s Court during the research, their offending behaviour and how they were treated. It is hoped that this data goes some way towards alleviating the severe shortage of detailed and up-to-date statistics that characterise the area of youth justice in Ireland.

OUTLINE OF THE RESEARCH REPORT

Chapter One sets the theoretical backdrop to the analysis that follows by explaining the international and national standards and discussing the literature from other jurisdictions on the form a youth court should take and what objectives it should attempt to fulfil. Before proceeding to discuss the extent to which these standards are reflected in the operation of the Children’s Court, Chapter Two introduces the young people who appear before the Children’s Court and considers the process from their perspective. Chapter Three analyses the practical factors relating to the operation of the Children’s Court including the layout, setting and surroundings of the courtroom and other practical and environmental factors affecting its operation. Chapter Four evaluates the role of the Children’s Court judge, and Chapters Five and Six consider the roles of the legal representative and the Gardaí respectively. The final Chapter presents the principal conclusions of the research and identifies recommendations to be implemented as a matter of priority.

NOTE ON TERMINOLOGY

Although the official name of the Court is the Children Court, for the sake of fluency the term Children’s Court is used throughout this Report.

To protect anonymity, the term his/her is used with reference to young people, solicitors and judges.

INTRODUCTION

Although youth courts have been in place for over a hundred years in some jurisdictions, relatively little has been written about the specific type of institution a youth court should be and what functions it should have. One reason for this may be the lack of a common approach to youth justice where the only apparent consensus is that youth is a mitigating factor which requires that children who commit crimes must be treated differently from adults.¹ Thus, some states adopt a 'welfare' approach, where children who offend are directed to the attention of social services to have their needs met, while others, like Ireland, adopt a 'justice' model, which aims to punish children for their crimes through the criminal justice system. The fact that some states, like Sweden, combine these approaches by directing children under a high age of criminal responsibility to the attention of social services while prosecuting everyone above that age in the adult court,² while others, like the US, have a youth court system but direct many children to be tried by adult courts may further explain the lack of a uniform model of youth court across jurisdictions.

In any event, the lack of a specialised youth court does not mean that children are treated like adults when they are tried, nor that they should be. Thus, while case law from the European Court of Human Rights has been critical of the failure to adapt the English Crown Court for the trial of children, it has come close, but so far avoided the conclusion, that a child cannot receive a fair trial in an adult setting.³ Although it is clear that the adult procedure and setting must be adapted to take into account the age and circumstances of the young person being tried, the extent of this duty has not been fully determined. What is clear from international standards and best practice, however, is that flexibility and informality are important characteristics in a youth justice system, whose aim it is to deal with every offender in an individualised, age-appropriate and effective manner. At the same time, flexibility must never translate into arbitrariness, and the exercise of discretion must always be checked by the application of standards of due process.⁴ This is the reasoning behind Article 40(3)(b) of the Convention on the Rights of the Child, which makes it clear as a principle of international law that alternatives to judicial proceedings must never undermine the child's human rights and legal safeguards. In other words, regardless of the approach which a state takes

1. Doob and Tonry, 'Varieties of Youth Justice' 31 *Crime and Justice* (2004) 1-14. The most recent expression of this principle is found in the judgment of the US Supreme Court which found that imposing the death penalty on juveniles was unconstitutional. *Roper v Simmons*, 2005 U.S. LEXIS 2200.
2. On the age of criminal responsibility see further Bandalli, 'Children, Responsibility and the New Youth Justice' in Goldson (ed) *The New Youth Justice* (Russell House Publishing, 1999), pp 81-95.
3. See further below.
4. This was the conclusion of the US Supreme Court in the famous decision of *In re Gault*, 387 US 1 (1967), in which the Court gave express recognition to the relevance and application of due process rights to juveniles.

to youth justice, there is a bottom line of rights and due process below which the treatment of young people must not be allowed to fall.

This chapter aims to set out the international standards which inform the operation of a youth court within a modern youth justice system. It also highlights the provisions of the Children Act 2001, which guide the work of the Children's Court and the exercise of its criminal jurisdiction. Its objective is to develop a model of best practice against which the operation of the Irish Children's Court can be measured in the chapters that follow.

INTERNATIONAL STANDARDS

International standards relevant to the operation of the youth court can be found in a variety of sources including binding treaties and declaratory instruments that are either specific to children or general in nature. While the most significant binding instrument is the Convention on the Rights of the Child (CRC), this is supplemented by other non-binding General Assembly resolutions. The European Convention on Human Rights, together with the case-law of the European Court of Human Rights, is also relevant here.

GENERAL PRINCIPLES

According to the Committee on the Rights of the Child, the Convention on the Rights of the Child has three fundamental principles, which must inform the implementation of all Convention provisions.⁵ The Committee has confirmed that these principles are of particular relevance in the area of youth justice.⁶ They provide as follows:

- Article 2 guarantees to all children the right to equal enjoyment of all their Convention rights: this means *inter alia* that children are entitled to equal treatment before the law.
- Article 3 requires that the best interests of the child are a primary consideration in all decisions taken concerning the child: this is reinforced in Article 40 of the Convention and by the Beijing Rules, Rule 5 of which states that the aim of a juvenile justice system must be to emphasise the well-being of the juvenile and Rule 17.1 which recognises that the well-being of the juvenile must be the guiding factor in the consideration of her/his case.

5. Committee on the Rights of the Child, General guidelines regarding the form and content of initial reports to be submitted by States Parties under article 44, paragraph 1(a), of the Convention, UN Doc CRC/C/5.

6. See the Committee on the Rights of the Child's 'General Discussion Day on juvenile justice', reported at UN Doc CRC/C/37 (1995) para 212.

- Article 12 requires that the child has the right to express his/her views in all matters concerning him/her and have them given due weight in accordance with the child's age and maturity. Children also have the right to be heard in judicial or administrative proceedings which affect him/her either directly or through a representative. Rule 14 of the Beijing Rules requires that the proceedings must be conducted in an atmosphere of understanding, which allows the juvenile to participate and to express him/herself freely therein.

RIGHT OF YOUNG PEOPLE TO DUE PROCESS

The CRC also sets out the principal values which must inform a state's approach to youth justice. Article 40(1) provides that children in conflict with the law have the right to be treated in a manner consistent with the promotion of their sense of dignity and worth and which reinforces their respect for the rights and freedoms of others. Their treatment must also take into account the child's age and the desirability of promoting his/her reintegration and assuming a constructive role in society.

Article 40(2) makes more detailed provision for the child's right to due process, including the right

- to be presumed innocent until proven guilty;
- to have the matter determined without delay by a competent, independent and impartial tribunal;
- not to be compelled to give testimony or confess guilt, and
- to appeal and to an interpreter.

In addition, Article 40(2)(b) recognises protections of particular importance to children including:

- the right to be informed promptly and directly of the charges against him/her, if appropriate through his/her parents;
- the right to a fair trial in the presence of his/her parents unless this is not in the child's best interests taking into account his/her age or situation, and
- the right to have his/her privacy fully respected at all stages of proceedings: the need to protect children from the harm caused by undue publicity and the process of labelling is also required by Rule 8 of the Beijing Rules which states that, 'in principle, no information that may lead to the identification of a young person accused or convicted shall be published'.

In summary, it is clear that children have rights equal to those enjoyed by adults in the criminal justice system and in addition, they have the right to be treated in a manner which takes into account their age and maturity. They have the right to particularly expeditious proceedings wherein their privacy is protected, the right to be heard and to understand their proceedings, as well as the right to have their best interests and rights taken into account throughout the process. Where possible, international standards require the protection of children from the harmful effects of the formal justice system and stipulate that any treatment they receive should be in proportion to their circumstances, their offence and should take into account the need to promote their well-being, continued education and need to play a constructive role in society. These must be considered to be the core values of any youth court.

SPECIALISATION AND TRAINING IN THE YOUTH JUSTICE SYSTEM

Article 40(3) of the CRC requires that states seek to promote laws, procedures, authorities and institutions specifically applicable to children in conflict with the law. This is supported by the Riyadh Guidelines, paragraph 9 of which requires specialised personnel at all levels in the youth justice system, while paragraph 58 recommends that personnel be trained to respond to the special needs of young persons and should be familiar with and use, to the maximum extent possible, programmes and referral possibilities for the diversion of young people from the justice system. According to Rule 1.6 of the Beijing Rules, juvenile justice services must be systematically developed and coordinated with a view to improving and sustaining the competence of personnel involved in the services, including their methods, approaches and attitudes. This is supported further by the recommendations of the Committee on the Rights of the Child that relevant personnel and agencies including the judiciary, the legal profession and the police undergo training on children's rights and youth justice.⁷ Rule 22 of the Beijing Rules also recommends that 'professional education, in-service training, refresher courses and other appropriate modes of instruction' be utilised to 'establish and maintain the necessary professional competence of all personnel dealing with juvenile cases'. The accompanying commentary recommends that a minimum training in law, sociology, psychology, criminology and behavioural sciences is required. This is considered as important as the organisational specialisation and independence of the competent authority.

Highly specialised personnel are thus required to ensure that the criminal justice system operates in line with youth justice and children's rights standards. This relates to the need to maximise the potential of the youth justice system to protect the rights and interests of young people, as well as the need to check the exercise of the powerful discretion which is inherent in the flexible approach to youth justice. In this regard, the Commentary to the Beijing Rules highlights that accountability and professionalism are the most appropriate instruments to curb broad discretion and stresses that both professional qualifications and expert training are a valuable means of ensuring the judicious exercise of that discretion in the youth justice sys-

7. Committee on the Rights of the Child, 'General Comment on Implementation', UN Doc CRC/GC/2003/5 para 223.

tem. The formulation of specific guidelines on the exercise of discretion and the provision of systems of review and appeal which permit scrutiny of decisions and accountability are also emphasised in this context.

THE EUROPEAN CONVENTION ON HUMAN RIGHTS

The European Convention on Human Rights (ECHR) guarantees the right to liberty (Article 5) and the right to a fair trial (Article 6). Although the Convention makes no specific provision for the rights of children in conflict with the law both provisions have been interpreted by the European Court of Human Rights in children's cases. Importantly, the Convention and its case-law have been given further effect in Irish law through the ECHR Act 2003,⁸ which means that the ECHR has added value in this jurisdiction as a source of standards for the treatment of children in conflict with the law. It may also provide a remedy for young people whose rights are infringed in the Irish youth justice system.

SPECIAL ARRANGEMENTS IN THE CRIMINAL PROCESS

According to the European Court of Human Rights special arrangements designed to protect young people in the criminal process may be compatible with Article 6 as long as they meet the minimal requirements of an independent and fair trial process. In *Nortier v the Netherlands*⁹, the Court rejected the complaint of a 15 year old boy that he had not received an impartial or independent trial because, in accordance with the Dutch legal system, the same judge had adjudicated on his case at both pre-trial and trial phases. The applicant argued that the judge's involvement in the proceedings at the investigative stage meant that by the time the case came to trial, he had formed a concrete opinion as to the applicant's guilt and the likely sentence to be imposed. This, he argued, violated his rights under Article 6. While the European Court decided the issue on the basis of fact - they found no evidence of partiality or lack of independence by the judge and thus found no violation had occurred - broader consideration of the issues was undertaken by some members of the Court. For example, Judge Morenilla referred in his concurring judgment to Article 40 of the CRC, which recognises the right of young offenders to special protection. He also placed the applicant's complaints in the context of the need to set up

juvenile courts under specific procedural rules to apply penal or protective measures aiming at the correction or re-education of the minor rather than the punishment of criminal acts for which he is not fully responsible.¹⁰

8. See further below.

9. *Nortier v Netherlands* (1994) 17 EHRR 273.

10. See above.

In addition, the Judge commended attempts within the Dutch system to develop a relationship of trust between the youth court judge on the one hand, and the minor and his parents or guardian on the other. While not required under Article 6, it is nonetheless clear from the Court's judgment in *Nortier* that providing such special protection for young people in the justice system is not incompatible with the Convention, as long as independence and impartiality are maintained in practice.

TRIAL IN AN ADULT COURT

Article 6 guarantees the right to a fair trial and in 1999, the Court considered whether the trial of a child in an adult court was compatible with this provision and in particular, whether special arrangements are required to ensure that the trial of children is consistent with the Convention.¹¹ *T and V against the UK* concerned the trial of two 11 year old boys in an English Crown Court, where proceedings took place over three weeks with high levels of media and public interest. Some measures were taken in view of their young age and to promote their understanding of the proceedings, including shortening of the hearing times and explaining the procedures to the children in advance. Nevertheless, the Court observed that the formality and ritual of the Crown Court must, at times, have seemed incomprehensible to a child of eleven. There was also evidence that certain modifications to the courtroom - such as the raised dock which was designed to enable them to see what was going on - had the effect of increasing their sense of discomfort during the trial and their sense of exposure to the scrutiny of the press and the public. Considerable psychiatric evidence showed that the boys suffered from post-traumatic stress disorder making it difficult, if not impossible, for them to instruct their lawyers and follow the trial. In the circumstances, therefore, the Court held that it was insufficient for the purposes of Article 6 that the applicants were represented by skilled and experienced lawyers because it was highly unlikely that they would have felt sufficiently uninhibited, in the tense courtroom and in the glare of public scrutiny, to have consulted with them during the trial. Indeed, given their immaturity and disturbed emotional state, it considered it unlikely that they were capable of cooperating with their lawyers even outside the courtroom in order to give them information for their defence. These factors, the Court concluded, meant that neither applicant was able to participate effectively in the criminal proceedings against him and both boys were, as a consequence, denied a fair hearing.

PARTICIPATION IN CRIMINAL PROCEEDINGS

Failure to take effective measures to reduce or eliminate the publicity and the formality of the proceedings was the principal reason for the Court's judgment that the trial of *T and V* was

11. *T v UK and V v UK* (2000) 30 EHRR 121.

unfair. The impact on the judgment of the children's mental state during their trial is not clear; nor is the significance of the Court's conclusion that the decision to allow them to stand trial in the first place was not contrary to the Convention.¹² What is important, however, is the Court's clear requirement that

a child charged with an offence (must be) dealt with in a manner which takes full account of his age, level of maturity and intellectual and emotional capacities, and that steps are taken to promote his ability to understand and participate in the proceedings.¹³

This strongly worded principle requires that the ability of children to understand and participate in their own criminal proceedings be facilitated. The principle is not confined to children charged with murder or serious crime or even those tried in an adult court, but is intended to govern in a general way how the criminal justice system deals with all young people. Given its significance, therefore, it is unfortunate that the Court did not present more detailed guidance on how states might meet the challenge of creating a criminal court, which is informal enough to facilitate the understanding and participation of children.

MEANING OF 'EFFECTIVE PARTICIPATION'

In 2004, the Court elaborated further on the state's duty to facilitate the child's right to participate and understand criminal proceedings. *SC v UK*¹⁴ concerned the compatibility with Article 6 of the trial in the English Crown Court of an 11 year old boy who had a very low intellectual level for his age. This meant that he could not, it was argued, fully comprehend or participate in the trial process or give adequate instructions. The Court accepted that Article 6 does not require that a child on trial should understand or indeed be capable of understanding every point of law or evidential detail, not least because given the sophistication of modern legal systems many adults of normal intelligence are unable fully to comprehend all the intricacies and exchanges which take place in the courtroom. However, 'effective participation' in this context

presupposes that the accused has a broad understanding of the nature of the trial process and of what is at stake for him or her, including the significance of any penalty which may be imposed.¹⁵

Thus, the Court said, the defendant should be able to follow what is said by the prosecution witness, to explain to his own lawyers his version of events, point out any statements with

12. The Court held that setting 10 as the age of criminal responsibility did not constitute inhuman and degrading treatment contrary to Article 3, although its conclusion that this age is not inconsistent with European-wide state practice is questionable.

13. *T v UK*, para 84.

14. *SC v UK*, judgment of 15 June 2004.

15. *SC v UK*, para 29.

which he disagrees, and make them aware of any facts which should be put forward in his defence.

On the facts, the Court noted that although the applicant was tried in public, steps were taken to ensure that the procedure was as informal as possible and many of the intimidating features of the trial in the T and V cases were absent. Notwithstanding that the Recorder had the judgment in these cases in mind when exercising his discretion to allow the trial to proceed, the Court noted that two experts who assessed the applicant before the hearing concluded that he had a low intellectual level for his age. One concluded that while he had probably been aware that his actions were wrong, 'his understanding of their consequences may have been adversely affected by his learning difficulties and impaired reasoning skills'.¹⁶ Despite the recommendation that the process be explained carefully to him in a manner commensurate with his learning difficulties, and the efforts to that end by the social worker, the Court noted that the applicant seemed to have little comprehension of the role of the jury in the proceedings or the importance of making a good impression on them. 'Even more strikingly,' the Court said, 'he does not seem to have grasped the fact that he risked a custodial sentence and once sentence had passed and he was taken to the holding cells he appeared confused and expected to go home with his foster father'. In the light of this evidence, the Court found that the applicant was not capable of participating effectively in his trial and there was, accordingly, a violation of Article 6.¹⁷

According to the Court, when the decision is taken to deal with a child who risks not being able to participate effectively because of his young age and limited intellectual capacity, by way of criminal proceedings (rather than some other form of disposal directed primarily at his best interests and those of the community),

it is essential that he be tried in a specialist tribunal which is able to give full consideration to and make proper allowance for the handicaps under which he labours and adapt its procedure accordingly.¹⁸

The Court did not see any conflict with this position and the failure on the part of the applicant to argue that he was unfit to plead. It noted, in particular, that it does not follow from a child being fit to plead that he is capable of participating effectively in his trial to the extent required by Article 6. Again, the wide application of this principle is clear.

The right to a fair trial under Article 6 of the ECHR requires that steps be taken to secure the

16. SC v UK, para 32.

17. Judge Pelonpaa joined by Judge Bratza expressed the dissenting view that the domestic court's assessment of the applicant's ability to proceed and be tried in the Crown Court should have prevailed *inter alia* due to the absence of the aggravating factors present in the cases of T and V, the lack of evidence that the applicant was unfit to plead, and the fact that the domestic judge, who made the assessment which was upheld on appeal, had personal contact with the young defendant.

18. SC v UK, para 35.

participation and understanding of children in criminal proceedings. According to the Court, this requires that criminal proceedings in which children are involved are adapted to take into account any possible learning, intellectual or developmental difficulty which might hinder the child's effective participation in the process. While no preference is shown for an adult or a youth court, what is clear is that the tribunal in which this hearing takes place must be a 'specialist' one, which is sufficiently flexible to allow the child's circumstances to be fully considered and whose procedures have been modified accordingly.

PRACTICE DIRECTION OF THE LORD CHIEF JUSTICE OF ENGLAND AND WALES

While these judgments provide some direction as to which modifications are insufficient, they offer relatively little as to how the court, which is Article 6 compliant in such circumstances, might operate. Further guidance as to how the trial of children and young people may be brought into line with the requirements of the ECHR may be sought from the Practice Direction concerning the trial of children and young persons in the Crown Court issued by the Lord Chief Justice of England and Wales in February 2000 subsequent to the judgments of the European Court of Human Rights in T and V.

Reflecting the overriding principle that the trial process which is aimed at determining guilt and appropriate sentence should not expose the young defendant to avoidable intimidation, humiliation or distress, the Practice Direction requires that regard be had to the welfare of the young defendant in such cases and that 'all possible steps' should be taken to assist him/her to understand and participate in the proceedings. On a practical level, it requires that where appropriate, young defendants should visit the courtroom out of hours to familiarise themselves with the surroundings, and that the assistance of the police should be engaged to protect the young person from likely intimidation, vilification or abuse generated by public or media interest. With regard to the trial itself, the Practice Direction specifies that where practicable:

- The trial should be held in a courtroom in which all the participants are on the same or almost the same level;
- A defendant should normally be free to sit with members of his family and in a place which permits easy, informal communication with his legal representatives and others with whom he wants or needs communication;
- The court should explain the course of proceedings to a young defendant in terms he can understand, should remind those representing him/her of their continuing duty to explain each step of the trial to him/her and ensure as far as practicable that the trial is conducted in language which the young defendant can understand;

- The trial should be conducted according to a timetable that takes full account of a young person's inability to concentrate for long periods;
- Robes and wigs should not be worn and any person responsible for the security of the young defendant who is in custody should not be in uniform - there should be no recognisable police presence in the courtroom save for good reason;
- The court should be prepared to restrict attendance at the trial to a small number, perhaps limited to those with an immediate and direct interest in the outcome of the trial, and
- Facilities for reporting the trial must be provided although restrictions may be imposed to protect the young defendant's rights and interests.

While the Practice Direction gives considerable discretion to the court as to how these rights may be secured to the young defendant, it requires that this discretion be exercised having regard to the principle of what is in the child's best interests.

THE ECHR ACT 2003

The ECHR Act 2003 has enhanced the importance of judgments of the European Court of Human Rights in the Irish legal system. In addition to requiring that organs of the State (including many agencies in the youth justice system but excluding the courts) must perform their functions in a Convention compliant manner, the Act also reinforces the relevance of ECHR case law to the work of the courts. Section 2 requires that, in so far as is possible, courts must interpret legislation and rules of law in a manner consistent with the state's obligations under the Convention. Thus the courts, when interpreting the Children Act 2001 and other statutory provisions in children's cases, must attempt to do so in line with the Convention and the case law of the Court. Given that the Practice Direction of England and Wales was issued in order to implement the Court's judgments in the cases of T and V, this should also be taken into account in elucidating the state's (Ireland's) obligations in this area. Moreover, section 4 of the ECHR Act requires that the courts take due account of the case law of the European Court when interpreting and applying Convention provisions in relevant cases. This gives applicants in every court the right to raise Convention arguments and requires courts at every level to take ECHR law into account. It may also provide the basis for an appeal where decisions are taken which do not reflect achievable consistency between domestic law and Convention law.¹⁹

19. See Kilkelly, 'Introduction', pp liii-lviii, and O'Connell, 'The ECHR Act: A Critical Perspective' pp 1-11 in Kilkelly (ed), *ECHR and Irish Law* (Jordan's, 2004).

THE CHILDREN ACT 2001

The Children Act 2001 establishes a modern statutory framework for the Irish youth justice system by putting in place a range of options and mechanisms to deal with young people in conflict with the law.²⁰ Despite its many welcome features, the Act lacks an infrastructural framework for the delivery of these services and while it establishes the Children's Court as the court with jurisdiction in this area, it does not, unfortunately, consider the role of the Children's Court in any detail.

THE EXERCISE OF JURISDICTION IN CHILDREN'S CASES

The Act recognises the Children's Court as the district court with summary jurisdiction in children's cases and sets out mandatory principles as to how this jurisdiction should be exercised. Section 96 (1) provides that any court when dealing with children charged with offences shall have regard to–

- (a) the principle that children have rights and freedom before the law equal to those enjoyed by adults and, in particular, a right to be heard and to participate in any proceedings of the court that can affect them, and
- (b) the principle that criminal proceedings shall not be used solely to provide any assistance or service needed to care for or protect a child.

With respect to deciding which penalty to impose on a child, section 96(2) provides that detention should be imposed only as a measure of last resort and requires that any penalty imposed on a child for an offence should

- cause as little interference as possible with the child's legitimate activities and pursuits,
- take the form most likely to maintain and promote the development of the child, and
- take the least restrictive form that is appropriate in the circumstances.

According to section 96 (2), these sentencing principles recognise that it is desirable wherever possible:

20. See McDermott & Robinson, *Children Act 2001* (Round Hall, 2003). Ursula Kilkelly wrote a practitioner's guide to the Act for the National Children's Office in 2003. This has not yet been published.

- (a) to allow the education, training or employment of children to proceed without interruption;
- (b) to preserve and strengthen the relationship between children and their parents and other family members;
- (c) to foster the ability of families to develop their own means of dealing with offending by their children, and
- (d) to allow children reside in their own homes.

In addition, section 96 (3) requires that a court may take into consideration as mitigating factors a child's age and level of maturity in determining the nature of any penalty imposed, unless the penalty is fixed by law, but notes that the penalty imposed on a child should be no greater than that which would be appropriate in the case of an adult who commits an offence of the same kind and may be less.

According to section 96(5), any measures for dealing with offending by children shall have due regard to the interests of any victims of their offending.

The Children Act 2001 thus provides important and detailed guidance to judges in the exercise of their sentencing functions, as well as valuable direction regarding the requirement to ensure that children are heard and can participate in criminal proceedings. This is highlighted by the possibility that the failure on the part of a judge to adhere to the requirements of section 96 may constitute or substantiate an argument based on irrationality or disproportionate grounds if a decision or order of the Children's Court is appealed or judicially reviewed.²¹

OPERATION OF THE CHILDREN'S COURT

In addition to the change in nomenclature (the juvenile court is renamed the Children's Court) the Act makes some provision for the operation of the Children's Court as follows:

- Under section 71, the court must:
 - sit in a different building or room from other courts, or on different days or at different times from other courts (section 71(1)(b));
 - as far as practicable be arranged in such a way that children are not brought into contact with adult accused or those attending other courts (section 71(2)) and,
 - sit often enough to fulfil its functions (section 71(4)).

21. McDermott & Robinson, above, p 112.

- Section 73 sets out two requirements in relation to the organisation of the Court's list: first, it requires that as far as practicable, the hearing of proceedings in the court shall be arranged so that the waiting time is kept to a minimum; second, it requires that the time stated in every summons requiring a person to appear before the court shall be a time which the person preparing the summons reasonably expects that the relevant proceedings will be heard. According to McDermott and Robinson, this provision recognises that a summons may require the accused to attend in court at 10.30 am and yet it may be 4 pm before his/her case is actually reached. Section 73 (2) thus recognises that it is undesirable for children to have to remain for long periods of time in the proximity of the court and that such periods of waiting may result in the child associating with other offenders or missing school time. Section 73 is thus intended to provide some impetus to ensure that this does not happen.²²
- Section 81 requires the parent/guardian of a child to be present, unless he/she has reasonable excuse, when the Children's Court is dealing with a child charged with an offence.
- Section 94 requires that the hearings of the Children's Court take place *in camera* and accordingly, lists the persons permitted to remain in the court to include the parents/guardian of the child, persons directly concerned in the proceedings, bona fide press representatives and such other persons as the Court may at its discretion permit to remain. Section 93 sets out the restrictions on press or media reports of proceedings of the Children's Court in which children are concerned, requiring the Court, which dispenses with this requirement, to explain its reasons for doing so in open court.

COMPATIBILITY WITH INTERNATIONAL STANDARDS

While it is the purpose of this research to examine the extent to which the Children's Court operates in line with the international standards highlighted above, a number of comments must first be made here about the compatibility of the Children Act 2001 with these standards.

THE YOUNG PERSON'S RIGHT TO PARTICIPATE

The Act's requirements regarding the organisation of the Court's work are clearly welcome insofar as they attempt to separate the Children's Court from the adult criminal justice system and to minimise the negative impact for a young person of an appearance before the court. However, the limited nature of these provisions means that, taken in isolation, they fall

22. McDermott & Robinson, above, p 97.

short of prescribing how the District Court is to be transformed into an age appropriate environment in which young people have the right to be heard and to participate in their own criminal proceedings. The fact that section 96 recognises this right but does not put in place the measures to make it effective, means that the Act is inadequate in this respect.

ADAPTING PROCEDURES

The Children Act 2001 thus fails to consider fully how the Children's Court should be adapted so as to vindicate the rights of children tried there. For example, there is no provision made for the physical changes that need to take place in the District Court to facilitate children's participation in the proceedings and easy communication with their legal representative and family members. Nor does the Act require that the Court's legal procedures be adapted to allow their explanation to the young person or the use of age-appropriate language.

TRAINING OF PERSONNEL

While it is significant that the Act makes provision for judicial training in section 72, greater compliance with international standards would have been achieved by specifying what training judges should undertake. It might also have made statutory provision for the training of other court personnel on the rights of young people and the provisions of the legislation designed to vindicate those rights.

THE COURT'S FUNCTIONS

The mandatory sentencing principles set out in section 96 of the Act are welcome. They promote the exercise of the Court's jurisdiction in line with international standards which reflect the importance of proportionality in the sentencing of children and take into account the child's education and training and need to maintain links with his/her family and community.

CONCLUSION

International standards thus offer substantial guidance to states as to how youth courts should be established and should operate in practice so as to maximise their potential and protect the rights of young people. In summary, they recommend or require that the court's procedures:

- are informal, flexible and private in nature;
- are accessible to young people, and

- are adapted by the use of age-appropriate language and procedures.

They also require a specialised tribunal which

- is physically adapted to facilitate the young person's understanding and participation in the process, and
- employs specially trained personnel the exercise of whose discretion is checked by professional codes of conduct.

Young People before the Children's Court

INTRODUCTION

This chapter has two purposes. First, it presents the statistical data gathered as a by-product of the observations of the Children's Court. Despite the limitations of the data (explained above), it illuminates the background of a sample of young people appearing before the Children's Court, the offences with which they are charged and the sanctions they received. The resulting quantitative analysis raises a number of issues with the youth justice system that are further discussed in the chapters which follow. Second, the Chapter presents the data collected by this research on the experience of young people in the Children's Court. It attempts to illustrate with reference to their behaviour and demeanour, the extent to which young people understood and participated in the Court's proceedings and it highlights the perceived positive and negative features of the experience for young people and their families.

YOUNG PEOPLE BEFORE THE CHILDREN'S COURT

The data collected during observations of the Children's Court for this research shed some light on the nature of young offending in Ireland.

GENDER

Out of 944 cases observed in the Children's Court during the period of this research, the vast majority of the defendants were male. 93% (878) of the cases observed involved boys and girls were only involved in 7% (66) of cases.¹

1. This ratio contrasts with the gender profile of those admitted to the Garda Diversion Programme. For example, in 2003, 77% of young people admitted were boys and 23% were girls. See An Garda Síochána Annual Report 2003, p 58.

AGE PROFILE

International Standards

While international standards do not recommend that the age of criminal responsibility be set at any particular age, the Beijing Rules and the CRC both advocate the adoption of an age which reflects the child's emotional, mental and intellectual maturity.² In 1998, the Committee on the Rights of the Child criticised Ireland for its low age of criminal responsibility (7 years) and for failing to adopt a higher age. Part 5 of the Children Act 2001 raises the age of criminal responsibility to 12 years but it has not yet been commenced.

7 - 11 Years

A number of points fall to be made about the age of young people appearing before the Children's Court. First, the number of very young children appearing before the court is very small. The research observed one case involving a 9 year old, three cases involving a 10 year old and one case concerning an 11 year old.³ Notwithstanding that significantly greater numbers of this age group come into contact with An Garda Síochána via the Diversion Programme, the fact that so few children are being brought before the Children's Court at this age calls into question the need to maintain the age of criminal responsibility at 7 years. Regardless, it is difficult to justify, in any terms, bringing such young children into contact with any part of the criminal justice system.

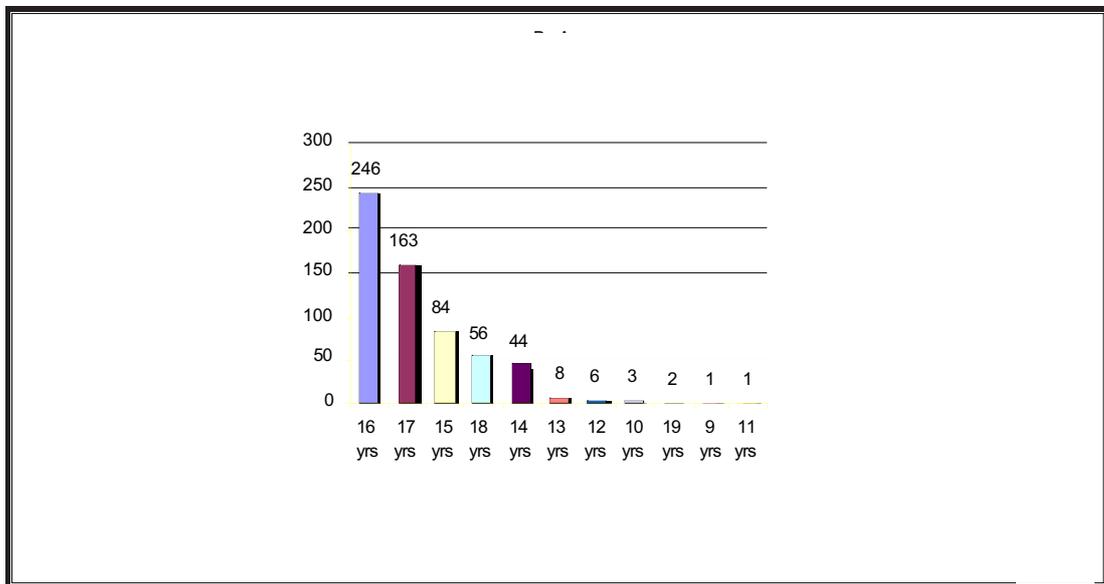
12 - 13 Years

During this research only a limited number of cases were observed involving 12-13 year olds: there were six cases of 12 year olds and eight cases of 13 year olds making up only 2% of all cases before the Children's Court during the research period.⁴ These figures support the need to give serious consideration to raising the age of criminal responsibility to at least 14 years.⁵ This would bring certainty and consistency to the area⁶ because it would mean that all children under 14 years who get into trouble would be brought to the attention of the Health Board and not the Gardaí, as is currently the case. It would also bring Irish law closer to ages of criminal responsibility in Europe.⁷

-
2. See Rule 4 of the Beijing Rules and the Concluding Observations of the Committee on the Rights of the Child: Ireland CRC/C/15 Add.85
 3. These figures are consistent with the numbers of children admitted to the Garda Diversion Programme. For example in 2003, 15% of those admitted were aged 7- 9 years while only 3.5% were aged 10 and 11. See Report of the Committee appointed to Monitor the Effectiveness of the Diversion Programme, 2003, p 14.
 4. Similarly, in 2003, of those admitted to the Garda Diversion Programme 4% were aged 12 years and 7.5% were aged 13 years. *Ibid.*
 5. This is supported by Garda statistics which highlight that particularly small numbers of young people under 14 years are prosecuted. See, for example, An Garda Síochána Annual Report 2003, pp 34-37.
 6. Section 52(2) of the Children Act 2001 provides that children between 12 and 14 years may avail of the rebuttable presumption of *doli incapax*, ie that they were incapable of committing an offence because they did not know what they were doing was wrong.
 7. See Weijers and Duff, *Punishing Juveniles Principle and Critique*, (Hart Publishing 2002).

14 - 17 Years

This research observed that most cases before the Children's Court involved young people between 16 and 17 years of age. Thus, only 44 cases involved 14 year olds and 85 cases involved 15 year olds. In contrast, 246 cases or 40% of the total observed involved young people of 16 years, while 17 year olds were involved in 163 cases or 27% of cases. This number continued to fall for 18 year olds who were involved in 56 cases.⁸ It appears, therefore, that 16 and 17 year olds comprise the dominant group appearing before the Children's Court and it may be argued that the age of 14 acts as something of a watershed for young people involved in offending behaviour.⁹ This is illustrated in the Table below.



Cases observed according to Age

Recommendations

- Part 5 of the Children Act 2001, which raises the age of criminal responsibility to 12 years, should be commenced immediately.
- Serious consideration should be given to raising the age of criminal responsibility to 14 years.

8. The Children's Court may retain jurisdiction over young people who have reached 18 years when they committed their offences before that age.

9. Unfortunately, Garda statistics permit no comparison as the age categories 14-16 and 17-20 are used.

RANGE AND COMPLEXITY OF PROBLEMS

Previous research has found that two thirds of the children appearing before the Children's Court in Dublin came from a relatively small area of Dublin, characterised by high levels of deprivation.¹⁰ Nothing observed in this research contradicts this view in relation to the Dublin, Limerick or Cork Courts. Indeed, many young people, although not all, showed clear signs of either disadvantage (including educational disadvantage) or outright poverty; in some cases both factors were obvious.

Observations of the court proceedings during this research also indicated an apparently increasing number of cases in which the Health Board was involved; this highlights the depth and complexity of problems faced by many young people before the Children's Court. In many cases, mental health issues, behavioural problems, substance abuse, and alcohol and drug addiction were prevalent. It was also clear that a number of young people before the Court lived in Bed and Breakfast accommodation - including those in the care of the Health Board - and in hostels for children out of home.

The following case studies highlight some of these problems in more detail:

- A 16 year old young person appeared in the Children's Court charged with theft of beer. He had a long history of care in the Health Board and appeared very nervous and very poorly dressed in torn clothes and shoes. The charge was minor, to which he pleaded guilty, but the judge was critical of his failure to go to the doctor (the Health Board has offered him psychiatric assistance) or to address his literacy problems. He was remanded to Cork prison for two weeks (Case 211).
- A 14 year old boy appeared before Limerick Children's Court accompanied by his sister who was also his guardian. The Court was told of the young person's family background - his father was gone and his mother was an alcoholic. The Court imposed a probation bond with conditions to attend school and evening education programmes (Case 303).
- A young person from the Traveller community was charged before the Cork Children's Court with theft of money. Both the young person and his mother appeared extremely poor. The judge noted that three older family members had also been before the Courts and expressed concern that there appeared to have been no response from the Health Board in his case. The judge also expressed concern over the capacity of the boy, and put the case back for six months to enable a Probation and Welfare Report to be prepared (Case 247).

10. McLoughlin, Maunsell and O'Connell, *Children in the Irish Juvenile Justice System*, cited in Bacik, 'The Practice of Sentencing in the Irish Courts' in O'Mahony (ed) *Criminal Justice in Ireland*, IPA, 2002, pp 363-364.

- A 16 year old young person charged with causing criminal damage to his parents' house appeared before the Children's Court. He was assessed as having long-standing behaviour problems, suffering from both Attention Deficit Disorder (ADD) and substance abuse. Although his parents expressed extreme concern, there were reportedly no placements available for him; he was unsuitable for prison (he had been on remand in Cork Prison) and could not be returned home because his parents could not cope with his behaviour. The Gardaí also expressed concern about his behaviour and the prosecuting Inspector said he would prefer him in prison than dead. The judge granted the young person bail with strict conditions and adjourned the case for the attention of the resident judge (Case 292).
- A young person appeared before the Children's Court charged with assault, theft of a mobile phone and public order offences. The boy has ADD, the Court was told, and gets into trouble when he comes off his medication. The judge noted that alcohol and drugs' were also involved in these incidents contributing to the young person's loss of self-control. He was convicted and sentenced to 12 months in St Patrick's Institution (Case 431).
- A young person of 17 years of age appeared before Dublin Children's Court having spent the previous week on remand in St Patrick's Institution. He was charged with a range of charges of assault, theft of alcohol and public order offences. His solicitor explained that he was anxious to have the charges dealt with quickly and was willing to plead guilty to this end. He had 25 previous convictions, had spent several months in Oberstown House and otherwise been in the care of the Health Board since 1989 moving between foster homes and out-of-hours services. As both the Probation Service and his social worker agreed to work with him, the judge granted him bail with strict conditions, amended to allow him to access the out-of-hours service in that area, although the need to ensure that he did not associate with others in the hostel was unaddressed by the judge (Case 487).
- An 18 year old young person appeared before Dublin Children's Court facing a long list of charges including road traffic offences. The young person asked to be remanded in custody to get away from what he described as 'negative influences' According to the judge, he has spent 6 years in custody since the age of 12 and is institutionalised. While the judge was unwilling to accede to his request for custody, when it appeared that he had threatened to damage the waiting area of the court, the judge agreed to remand him and gave him a choice of St Patrick's Institution or Cloverhill. He chose the latter because of its proximity to his family (Case 722).

These factors clearly demonstrate that many young people before the Children's Court have a range of complex problems. The fact that so many of them are or had been in the care of the Health Board demonstrates the failure of the state's agencies which have responsibility for

addressing their needs. Yet, it was not always apparent that the complexity of their situation was appreciated by the Children's Court, which is, in any event, ill equipped to respond effectively. This is examined in more detail in Chapter Four below.

ATTENDANCE OF FAMILY MEMBERS IN COURT

Although the Children Act 2001 requires the attendance of a parent or guardian in the Children's Court unless there are exceptional circumstances excusing his/her attendance, it was observed during this research that children frequently attended court alone. In particular, parents were absent in 30% of cases highlighting lack of family support as a particular problem. In contrast, both parents attended court with their child in only 10% of cases and in a further 37%, mothers attended court either alone or with another, usually female, relative such as the sister or grandmother of the child. Fathers alone attended in only 14% of cases. Care staff attended in a further 3% of cases and others, such as support, community workers and other advocates comprised the remaining 6%.

Absence of a Father Figure

A worrying factor, highlighted by the data, was that there was no father figure present in court in 67% of cases observed. While some fathers or male guardians may have been unavailable to attend court on the day in question, the absence of a male role model or father figure is nonetheless a serious issue in the lives of many young people in the Children's Court, the vast majority of whom are boys.

Difficulty Attending Court

It was apparent during this research that there are many reasons why parents may not be able to attend court with their children. The most common reasons presented to the Court by way of explanation included illness and family or work commitments.

Young People in Custody

The presence of family members offers important support to young people who otherwise face the process alone. However, it was apparent during this research that the parents of children in custody did not always attend court: this appeared to caused distress for young people, particularly those in Cork or Limerick Children's Court who had travelled from custody in Dublin for the court appearance. In some of these cases, it emerged that the parent had not been notified of the child's appearance in court. This is unacceptable, not least given parents' duty to attend.

Support of Family Members in Court

Young people who did not have the benefit of family members in court appeared to be particularly isolated and vulnerable. Rules were also observed to differ between courts as to whether communication between young people and their parent or guardian was permitted during the proceedings. In the Dublin Children's Court, for example, young people were not permitted to communicate with family members during the proceedings, and Gardaí were observed intervening where such communication was attempted, particularly where the young person was in custody. In the Children's Courts in Cork, Limerick and Waterford, however, young people sat together with their parents in the courtroom and communicated freely throughout the proceedings.

Apart from the inconsistency, it is apparent that the harshness of the approach in the Dublin Children's Court is difficult to justify given that parents or other family members may provide the only personal support the young person enjoys throughout the process. It would similarly appear unjustified given the flexibility and informality permitted in the other Courts did not appear, in any way, to interfere with or impact negatively on the proceedings.

THE NATURE OF YOUNG OFFENDING

According to the research, the three dominant areas of youth offending appear as follows:

- **Road Traffic Offences:** including criminal damage and theft of cars, driving and taking away, dangerous driving and driving under the influence of alcohol or drugs (eg sections 112, 113 and 56 of the Road Traffic Act 1961);
- **Public Order Offences:** these include failing to move on, drunken behaviour and urinating in public (eg sections 4, 6 and 8 of the Criminal Justice (Public Order) Act 1994);
- **Theft:** this comprises mostly shop-lifting or theft of alcohol from supermarkets and off-licences, theft of DVDs/CDs, and theft of mobile phones (under the Larceny Acts 1916-1990).

These offences were present in almost proportionately equal amounts among the cases observed during the research period and many young people faced multiple charges of each category of offence. Approximately half that amount again faced charges of both assault and criminal damage. Some of these related to theft or road traffic charges, and some also related to the circumstances of arrest, such as where the Garda was allegedly assaulted during arrest. Charges prevalent to a lesser degree included possession of drugs, possession of a weapon and trespass with the latter often relating to homelessness or attempted theft.

The Influence of Alcohol and Drugs

Observation of court proceedings for this research highlights clearly that alcohol is a significantly influential factor in the lives and offending of young people who face charges in the Children's Court. Drunkenness and alcohol misuse appeared to be common occurrences. For example, the public order offences were observed to be almost exclusively alcohol related as were the charges of assault; many of the charges of theft also involved alcohol as the principal item being stolen, and theft of other items easily resold were sometimes explained by a desire to fund alcohol or drug habits.¹¹

Persistent Offending

During this research it was observed that some young people faced only one charge before the Children's Court and were unlikely to re-appear. They were frequently those young people who were accompanied by both parents in court. However, many more young people - and proportionately more in the Dublin Children's Court - were identifiable as persistent offenders with more than 20 charges. While the decision to charge and prosecute young people on the maximum number of charges relating to one particular incident is undoubtedly punitive, it is also apparent that young people can pick up a long list of charges within a very short period of time. Thus, while a young person who faces 20 or 30 charges or a long list of previous convictions may have the appearance of a hardened criminal, this may be easily explained in the case of a young person who experiences problems with alcohol or drugs at a particular time in their lives, which commonly combine to give rise to charges of theft and public order, and/or by association with a negative peer group. The latter, for example, may encourage a susceptible or immature young person to get involved in risk taking behaviour such as car crime, which may then result in them facing a wide range of charges including criminal damage (necessary to steal the car), car theft, dangerous driving and a range of road traffic offences including no licence, no insurance and no tax. Apprehension by the Gardaí following a night's pursuit in a stolen car may also result in public order charges (if the orders of the Garda are not obeyed) or in some cases a charge of assault (if arrest is violently resisted). In these circumstances, it is not difficult to understand how a young person can, within a relatively short period of time, face a long list of criminal charges. However, the failure to process these charges quickly has more serious consequences. In particular it can be seen to cause the young person to spend long periods of time on bail without having his/her behaviour checked. During this time, they commit further offences resulting in an endless cycle of offending. This is explored further in Chapter Four.

11. See also the report of the Committee appointed to monitor the effectiveness of the Garda Diversion Programme, p 15, which shows the principal offences as a percentage of the total referrals received at the National Juvenile Office to be theft, drink offences, criminal damage and public order offences in that order.

Range of Offending Behaviour

Observation of the Children's Court supports the view that although many young people face multiple charges, they appear to relate to criminal behaviour of a particular kind, rather than widespread criminal activity. For example, during this research it was observed that young people charged with criminal damage also faced charges of theft (mostly relating to car crime) and public order charges often combined with possession of alcohol or drugs, or theft (mainly of alcohol). In some cases, assault charges are combined with charges of criminal damage particularly where the circumstances concern the troubled behaviour of young people in the family home or in the care environment. In this context, the fact that the Court takes each charge in isolation and, for various reasons, does not take an holistic approach to the young person's offending is a matter of serious concern.¹²

BAIL CONDITIONS

Few young people who appeared before the Children's Court during this research were remanded in custody. The vast majority whose cases were adjourned were remanded on continued bail with a variety of conditions attached. Some of these conditions were standard including the requirement to stay away from the Dublin Children's Court unless appearing, not to re-offend, and to co-operate with the Probation and Welfare Service. Other conditions were tailored to meet the specific circumstances of the defendant. The most common conditions were as follows:

- **Curfew:** many young people had a curfew imposed as a condition of their bail requiring them to be at home between certain hours such as between 9 pm and 7 am. The hours chosen depended on the young person's day activities (whether they were in school, training or work) and other factors;
- **Restriction on Movement:** a common condition of bail was for young people to stay away from certain places such as public parks or other areas where they had allegedly committed offences. This restriction on the young person's movement frequently covered quite a large geographical area such as the requirement imposed by the Children's Court in Cork to remain 'north of the north channel of the River Lee; or in Dublin, to stay away from the 'Temple Bar area' or the postal district 'Dublin 1'. Problems sometimes emerged where the young person was residing or attending therapy or training within that geographical area and in this case exceptions were made to allow them to pass through for a specific purpose;

12. See further Chapter Four.

- **Restriction on Association:** another common bail condition imposed by the Children's Court was to prohibit young people from associating with named individuals. These names were frequently offered by the prosecuting Garda and/or the young person's parent/guardian;
- **Sign on:** most bail bonds require young people to sign on daily or regularly during the week at a local Garda station;
- **Residence:** many young people were required by their bail bonds to reside at a certain address;
- **Alcohol and Drugs:** Young people with alcohol or drug problems were ordered to stay sober and/or to stay away from illegal substances.

Lack of Bail Support

Throughout this research it was apparent that the bail conditions imposed on young people are rarely explained to them in age appropriate language or in a manner that they can understand. This is discussed further in Chapter Four below. Apart from the extent to which young people genuinely understand their bail conditions and the consequences of breaching them, the lack of bail support is also a problem. In particular, it was apparent during this research that extensive bail conditions are imposed by the Children's Court without young people being provided with assistance to meet those conditions. This raises the question of a young person's capacity, as opposed to his/her willingness, to observe the conditions of his/her bail. While it is possible that, at least in some cases, the onerous and broad nature of bail conditions is setting up young people to fail, the lack of any bail support schemes means there is little encouragement or practical help for young people to comply with bail conditions and to avoid further offending during this time. For example, it is not difficult to appreciate that young people who have committed criminal offences under the influence of alcohol, drugs or a negative peer group, cannot be expected to stop that behaviour simply because they are ordered to do so by the Court, particularly when it is likely to have few consequences for them. This would appear to be borne out by observations of the Court which confirm that many young people commit further criminal offences while on bail. The frequent adjournment of cases in the Children's Court and the consequent delay in dealing with the charges they face in an expedient manner exacerbates the situation by prolonging the time they have to stay within their bail conditions. For this reason, the way in which the system deals with individual charges is at least partly responsible for allowing individual situations to deteriorate in the absence of any real support or assistance.

It is apparent from this research that the lack of bail support is undermining young people's compliance with bail conditions and failing to help them avoid offending while on bail.

Recommendations

- Further research is required to identify the full scope of problems in this area and the level of support which young people require to meet their bail conditions.
- Bail support programmes, attached to every Children’s Court, should be developed and resourced as a matter of priority.

SENTENCING OF YOUNG OFFENDERS

Previous Research

Two studies in the 1980s and 1990s carried out statistical analysis of the sentencing process in the Dublin Metropolitan Children’s Court. In 1985, O’Donovan’s study found that of the 4,083 cases which involved summary offences, the vast majority of these, 83.7%, were disposed of by way of supervision by the Probation Service, dismissal under the Probation Act or struck out. Only four cases were dealt with by way of community service order, 10.3% by way of fine, and the remaining 5.8% were sentenced to detention. His study also noted that the incarceration rate had increased from 4.9% in 1982.¹³ A more recent, unpublished study, carried out for the Department of Justice, Equality and Law Reform, found that 10% of children appearing before the Dublin Children’s Court whose cases were disposed of during the study received a custodial sanction. When the researchers measured case outcome according to charge sheets rather than individual offenders, custodial sanctions represented the most frequently used penalty for male offenders.¹⁴

This Research

Of the 944 cases observed in this research, less than 20% involved final disposal of charges or the determination of sentence: approximately 80% of cases involved an adjournment or remand for one reason or another. Of those cases that involved the imposition of a sanction (151), the following shows the breakdown of the different sanctions applied:

Probation Bond	33%
Custody	23%
Probation Act	17%
Fine	13%
Suspended Sentence	6%
Community Service Order	6%
Bound to keep the peace	1%

13. O’Donovan, Report, Dublin: Probation and Welfare Service, 1987 in Bacik, above, pp 362-363.

14. McLoughlin, Maunsell and O’Connell, above.

While the application of fines has not changed significantly since the previous studies, the rate at which detention is imposed, witnessed in this research, shows a significant increase from 10% to over 20% (almost 30% if suspended sentences are included). This suggests a higher rate spread across Children's Courts which requires further investigation.

Length of Custodial Sanction

Consistent with previous studies, this research indicates that of the 35 young people who received a custodial sanction, all but one were male. The length of sentence imposed ranged from one month to two years, the latter being imposed on a 15 year old boy who refused to co-operate with the Probation and Welfare Service. The concern of previous studies that younger offenders tend to get longer sentences must be reiterated here. In terms of the length of the custodial sentence, periods of either two months or six months were the most common, although several young people who received a custodial sanction received two or more concurrent sentences. Six young people who received a custodial sentence were already in detention either on remand or serving a sentence on other charges. The two young people under 16 years were sentenced to be detained in Trinity House (a Children Detention School) whereas those over 16 years were sent to St Patrick's Institution: one notable exception was the case of a young person sent to Cork Prison. In eight (of the 35) cases in which custody was ordered there appeared to be no parent in court: in only five cases were both parents present.

Reasons for Custodial Sanction

During the observation of Children's Court proceedings, it was almost impossible to understand for which precise charge the young person was being sentenced to custody. Although this information may be retrievable from a study of charge sheets, it is nonetheless of serious concern that during this research no clear explanation was given in open court for the custodial sentence imposed. While the judge cited breach of bail conditions as one of the reasons for the sentence in at least four cases, in the other cases, the basis for the judge's decision (particularly at this point in time) was not clear. While observation of the Children's Court supports the conclusion that, in most cases, those sent to custody (which the Children Act requires must be a sentence of last resort) have a history of persistent offending and failure to co-operate with the Probation and Welfare Service, it frequently appeared to be the accumulation of circumstances that prompted the custodial sentence rather than one single offence. This questions whether young people themselves understand the consequences of their actions.

Available Sanctions

This research highlights clearly the limited sanctions available to the Children's Court. The most commonly used sanction - a Probation Bond - requires a young people to be supervised (via a monthly meeting) by the Probation and Welfare Service for a period of 12 months with a range of conditions attached with a view to offering him/her the counselling, support and practical advice necessary to prevent him/her from re-offending. While designed to give the young person 'another chance' (and frequently explained by judges in these terms) the under-resourcing of the Probation and Welfare Service means that, in many cases, a Probation Bond provides inadequate support for many young people to undertake the serious change required to avoid re-offending. This is particularly the case for those whose offending has deep rooted causes such as those who come from abusive backgrounds, have suffered poor development and educational disadvantage, and lack parental or community support.

Nor can the other sanctions available to the Children's Court - such as fines, Community Service Orders (only applicable to 16 and 17 year olds) or the application of the Probation Act - be said to act as a sufficient punishment or deterrent to young people to refrain from offending behaviour. This is particularly the case where offending is alcohol or drugs related, or involves risk-taking car crime for example. Moreover, the complexity of problems with which such young people present means that a far more sophisticated response to their offending is required - one which addresses the root causes of their behaviour and addresses its underlying reasons. For example, imposing a fine on a young person (particularly where that fine is extremely small) will not mean that his/her behavioural, psychological or addiction problems are either identified or addressed. In these cases at least, the potential to put an end to offending behaviour is missed.

Overall, it is apparent from this research that despite many judges' best efforts, the Children's Court does not have a sufficient variety of sanctions at its disposal to respond effectively to the offending of young people. Those sanctions that are available are not specific to young people. The lack of timely intervention and appropriate and meaningful responses to young offending have a knock-on effect on the youth justice system as young people enter an endless cycle of offending resulting in one court appearance after another.

Detention as a Last Resort

The requirement that detention be imposed as a last resort is a well established international standard which is also incorporated as a sentencing principle in section 96 of the Children Act 2001. In recognition of the damaging effect that custody can have on young people, this principle requires that non-custodial or community sanctions are tried and failed before a custodial sanction is imposed. It also requires that custody only be imposed for serious offences

and on dangerous offenders from whom the public deserves protection. However, the lack of appropriate and meaningful non-custodial sanctions means that detention is not currently being imposed as a sanction of last resort. In this regard, the failure to commence Part 9 of the Children Act 2001, which contains a wide range of community based sanctions for offending behaviour, not only reduces the ability of the Court to respond to young offending in a meaningful way, but also undermines the Court's duty to impose detention as a measure of last resort.

Effectiveness and Impunity

Real concern thus exists about the limited range of sanctions and meaningful responses to young offending available to judges in the Children's Court. This situation means that young people who appear before the Children's Court are unlikely to receive a sanction that addresses their behaviour in any meaningful way or which teaches them the consequences of their offending. It is clear from observing the court, for example, that an appearance in the Children's Court will not of itself deter young people from re-offending and, combined with the endless delays in the system, the lack of sanctions undermines the Court's effectiveness to deal with persistent offenders. In many cases, this leads to young people developing a sense of impunity (or immunity) with regard to the consequences of their offending behaviour. This is discussed further in Chapter Four below.

Recommendations

- Part 9 of the Children Act 2001 must be implemented as a matter of urgency.

THE COURT EXPERIENCE

Legislative and international standards explained in Chapter One require that children have the right to understand and to participate in criminal proceedings against them. To be effective, this requires that the procedure and the physical environment of the courtroom be adapted to take into account their vulnerability and special circumstances. While the structure of the court is examined in Chapter Three below, the following section illustrates the experience of young people and in particular, the extent to which their right to understand and participate in the proceedings is respected in the Children's Court.

APPEARANCE OF YOUNG PEOPLE BEFORE THE CHILDREN'S COURT

It is not possible to generalise regarding the appearance of young people before the Children's Court. While some - often those who have appeared in court several times but have not

received a custodial sentence - appear confident and self-assured, giving the impression that they are unaffected by their situation, their apparent cockiness may mask a genuine lack of concern over their circumstances. However popular this perception of young people before the Children's Court, it was clear throughout this research that it is not the reality: far more representative is the young person who appeared concerned and genuinely vulnerable, frightened and uncertain about their circumstances and what was about to happen. Young people and their guardians were frequently observed portraying a range of negative emotions including looking dejected, upset, fearful, agitated and anxious. Occasionally, young people appeared excited and giddy; showed clear evidence of immaturity, drug or alcohol problems, and mental health and capacity issues were also apparent.

UNDERSTANDING OF AND PARTICIPATION IN THE PROCESS

This research specifically observed the extent to which young people appeared to understand and participate in the court process. While experience varied from court to court, it is nonetheless possible to conclude that young people generally struggled to do either. While the physical environment reinforced their distance from the judge and the other parties, the young person's isolation from the process was derived mainly from the fact that the judge, solicitor and Garda generally failed to address them directly unless under examination. Thus, in many cases, the young person was observed straining physically to hear and/or to follow the dialogue between the parties (the judge, prosecuting Garda and Solicitor), and appearing visibly confused, anxious and upset at their marginalisation from the process. Other young people became agitated and restless as a result of this isolation, and in a small number of cases frustration boiled over into anger prompting them to call out to the judge or the court at large for help.

For other young people, perhaps those who had appeared many times before the court, their persistent lack of involvement and inability to follow proceedings resulted in their apparent boredom with the process. Rather than attempt to follow the proceedings, young people were frequently observed looking around the courtroom, fixing their hair or biting their nails. Significant numbers of young people observed appeared motionless, staring straight ahead or at the floor, nervous, frightened and tense, or in some cases utterly lost and emotionless.

The inability of young people to follow proceedings was exemplified in the numerous cases where proceedings were concluded without the young person and his/her guardian realising that the case was over. Young people frequently left the courtroom shaking their heads, confused as to what had just happened; in many cases, their only prompt that the case was over was that the next case had been called and another defendant entered the court.

PREPARATION FOR COURT

It is clear from this research that many young people were not adequately prepared for their court appearance: they did not know where to stand/sit, how to behave in the courtroom, how to address the judge or how to attract the attention of the judge or solicitor if they wanted to intervene. This uncertainty about and lack of familiarity with the procedure appeared to compound their marginalisation from the process as they tried, awkwardly, to get involved, to intervene or to contribute to the proceedings in some way. For example, in one case the young defendant put his hand up to speak in the middle of a discussion about whether or not he had breached his bail conditions. No-one noticed his hand up for a while and when the judge finally saw him, he shouted at him to put his hand down telling him that his solicitor would speak for him. (Case 297) On other occasions, a young person's failure to remove his/her baseball hat or chewing gum or to observe the necessary decorum in the courtroom resulted in a reprimand by the judge.

CONCLUSIONS AND RECOMMENDATIONS

This chapter highlights that the typical profile of the young person before the Children's Court is that of a male aged between 16 and 17 years, with problems of varying complexity including alcohol or drug addiction, health problems including behavioural disorder, educational disadvantage and a lack of family support. The typical offender has, say, ten charges against him of either public order or theft offences. He comes to the Children's Court alone, or with his mother, and he does not participate in the process in any meaningful way. He is remanded on continuing bail for long periods of time while his charges are pending and before they are finally determined, he has breached his bail conditions and offended again. Lack of effective sanctions means that the Children's Court can do little to respond to his behaviour.

Only the full implementation of the Children Act 2001 will address the problems identified by this typical scenario. In addition, measures must be taken to address the marginalisation of young people within the process. While the duties that this imposes on the judge, the solicitor and the Garda are discussed in the chapters below, serious consideration should also be given to putting in place formal, independent support structures for young people, in the form of a court-based advocacy service. The role of such an advocate would be to prepare the young person for court, advise him/her where to stand, how to address the judge, and how to communicate with his/her solicitor during the proceedings. The advocate, which in other jurisdictions takes the form of a social worker, could offer independent support to all young people who attend court and act as a court-based liaison officer between the young person and his/her family, the Probation and Welfare Service, the court and other agencies.

The Courtroom and Court Sittings

INTRODUCTION

The objective of this chapter is to consider the extent to which the physical environment of the courtroom and the organisation of the sittings of the Children's Court meet national and international standards. It evaluates whether the sittings of the Children's Court fulfil the requirements of the Children Act 2001 in this area and considers the broader question of the role the courtroom and the court's organisation play in the enjoyment by young people of their rights.

SITTINGS OF THE CHILDREN'S COURT

THE CHILDREN ACT 2001

According to section 71(1)(b) of the Children Act 2001, the Children's Court must take place in a different building or room or at a different time or day to other (adult) courts. It is thus sufficient under the Act that it fulfil one (and not both) of these criteria and, to this extent, the legislative requirement accommodates existing arrangements for the sittings of the Children's Court in different Districts. In the Dublin Children's Court, for example, the Court sits in Smithfield in a different building from the District Court, where it takes place in a specially designed courtroom. This is clearly compliant with section 71 of the Act. The Children's Court in Limerick, Cork and Waterford sits in the same venue as the District Court, but at a different time or day. Thus, in Cork, the Children's Court sits exclusively every Monday, and Tuesday afternoons is dedicated to the children's list in Limerick. The same principle - different time rather than venue - applies to other Districts also, with less frequent, monthly sittings taking place in Galway and Waterford. These arrangements are all, clearly, compliant with section 71.

However, consistency with the requirements of the Children Act is less clear cut where the District Court hears cases against children on an ad hoc basis, as and when needed. This occurs, for example, in Tralee, Kilkenny and Thurles where the Court hears cases involving children in between adult cases. This also happens in Waterford where, although there is a children's list one Thursday every month, the small number of cases means that once these cases are heard, the Court moves onto adult cases, returning to a children's case where required. Here, practical arrangements such as the availability of a solicitor, rather than the age of the defendant, may dictate the order of the list.

Recommendations

- Ideally, the Children’s Court should take place separate from the adult District Court.
- Where the small number of children’s cases makes a dedicated sitting of the Children’s Court impractical, consideration should be given to how best to group together such cases to encourage greater compliance with the Children Act. For example, a short break in proceedings could be used to signify that the Court is moving its jurisdiction from District Court to Children’s Court. This would ensure that the spirit, if not the letter of section 71(1) is promoted.

PREVENTING CONTACT BETWEEN CHILD AND ADULT DEFENDANTS

THE CHILDREN ACT 2001

Section 71 (2) of the Children Act provides that, as far as practicable, sittings of the Children’s Court must be arranged in such a way that children are not brought into contact with adult defendants or those attending other courts.

Compliance with this requirement is guaranteed in the Dublin Children’s Court where the only court in use in the courthouse hears exclusively children’s cases. However, there are varying difficulties in the other Children’s Courts in this respect. The Children’s Court in Limerick and Waterford sits in the only courtroom in these District Court buildings, meaning that child and adult accused are, for the most part, prevented from coming into contact. However, problems arise when adult cases follow the conclusion of the Children’s Court’s business.

Separation of child and adult defendants is more difficult in Cork where the layout of the courthouse poses a particular challenge to the full implementation of section 71(2). There, courtrooms one and two face each other and are separated by a small waiting area, which is shared by those attending both courts. This means that on Mondays, when the Children’s Court sits in one courtroom and the (adult) District Court sits across the corridor in the other, there is an inevitable mixing of child and adult accused in the common waiting area and corridor. Apart from the overcrowding caused, this situation is contrary to both the spirit and the letter of section 71.

Recommendations

- Measures must be taken to ensure that, as far as possible, children and adults do not come into contact with each other when appearing before the court. In particu-

lar, it is recommended that the court list be arranged in a way that allows for a short, but deliberate break in proceedings to allow the Children's Court to rise, and the adult District Court to commence. This would promote, if not guarantee the principle that child and adult defendants are prevented from coming into contact with each other, as far as practicable, in line with the legislation.

- the absence of structural change to the Cork District courthouse, a space should be identified as a separate waiting area for the young people attending Court on Mondays.

THE WAITING AREAS

Neither international standards nor the Children Act 2001 makes provision for the availability or quality of waiting areas. Nonetheless, the private nature of the Children's Court means that their existence and state of repair and cleanliness play a significant role in the experience of attending court for both children and their parents.

The quality and standards of the waiting areas for all Children's Courts is relatively poor. The exception is Waterford courthouse, whose lobby provides a bright, clean and spacious environment for children and their families waiting to attend the Children's Court.

Limerick and Cork Children's Courts

In Cork, there is some seating in the waiting area although conditions are cramped. In Limerick, there is very little indoor seating, leaving young people and their families to sit on the steps either indoors or just outside the courtroom. As a result, in both Limerick and Cork courts, young people waiting for their cases to be called frequently stand and sit around on the steps of the courthouse. In addition to being on public view, this is uncomfortable and undignified for them and their families. Moreover, these young people risk not hearing their cases being called and on several occasions during this research, a benchwarrant was issued unnecessarily for the arrest of young people who were waiting outside the building.

Dublin Children's Court

Notwithstanding that the Dublin Children's Court sits in a dedicated building, and only one of the courtrooms is in use, the waiting area is totally inadequate to accommodate all the young people waiting to have their cases called. Many young people thus have no option but to stand in the foyer of the building or to wait outside.

The fact that parents are required to attend the Children's Court when their children's cases are being heard, and frequently bring along younger children, means that the limited seating and standing area in all the waiting areas fills up very quickly. The lack of refreshment facil-

ities and space for children to play means that some families have to spend several hours waiting in what are very poor conditions. This is a particular problem in the Dublin Children's Court where it is exacerbated by the length of the list and the large numbers of people (young people, family members, Gardaí) involved.

Recommendations

- Urgent consideration should be given to providing the minimum facility of a clean, bright and spacious waiting area to young people and their families in all Children's Courts.
- While addressing the length of court lists and amending appearance times should reduce the numbers of young people and their families waiting to be called before the Court (see below), the need for satisfactory waiting areas with appropriate facilities must also be addressed.

MANAGEMENT OF THE COURT LIST

'SIT OFTEN ENOUGH TO FULFIL ITS FUNCTIONS'

While the Children Act 2001 does not specify how frequently the Children's Court must sit in any particular District Court area, section 71(4) requires that the Court - and this must be taken to mean any individual Children's Court - sit frequently enough to fulfil its functions. This may be interpreted to require that the Children's Court sit often enough to prevent delays occurring in the system, while also requiring that all the cases listed to be heard on a particular day can, realistically, be heard on that day.

Cork, Limerick and Waterford Children's Courts

The Children's Court sits on a weekly basis in Limerick and Cork and monthly in Waterford and in other areas. As cases are normally only listed at these intervals, this may give rise to delay in the system. It is important, in this regard, that judges are flexible at allowing cases to be re-entered outside the Children's Court sittings although care must be taken to ensure that the requirements of the Children Act are always observed whenever the Children's Court sits.

In general, the length of case lists was not identified as a particular problem in the Children's Court in Limerick and Waterford. Lists, while occasionally long, were normally dealt with on the day to which they had been assigned.

However, the length of the list is occasionally a problem in Cork. In particular, as the Court sits every Monday, the Monday following a bank holiday (so called 'double Monday') involves an extremely long list. This poses problems both for the management of cases in the list and the increased number of young people required to attend court on those days.

Recommendation

- Consideration should be given to moving the day on which the Children's Court sits in Cork so as to limit the problems caused by the double list on such Mondays.

Dublin Children's Court

Despite the fact that the Dublin Children's Court sits on a permanent basis, the daily list which often comprises 50-60 cases is too long and puts a considerable strain on the court's resources. In particular, it places unnecessary pressure on the judge, it creates difficulties for defending solicitors and prosecuting Gardaí, and means that a significant number of young people and their families, must sometimes wait for several hours for their cases to be heard. It was obvious on a number of occasions during this research that the sheer volume of cases to be heard added a pressure and sense of urgency to the process, which had the potential to undermine the quality of the process and the time taken to deal with each case. Despite the best efforts of court personnel, it is possible to conclude that this court is not sitting frequently enough to fulfil its functions in an adequate manner.

'KEEPING WAITING TIME TO A MINIMUM'

The Children Act contains two requirements regarding the organisation of the case list. First, it requires that proceedings be arranged so as to keep the time the young person has to wait to a minimum and, second, it requires that the time on the summons must, as far as practicable, reflect the time the case is likely to be heard.

While the small number of cases heard in the Children's Court in Waterford and Limerick means that young people rarely have to wait longer than between one and two hours, the delay experienced by young people and their families waiting for a case to be heard can be significant in both Dublin and Cork Children's Courts.

Dublin Children's Court

In Dublin, there are two lists: the ordinary (morning) list begins at 10.30 am and the cases listed for hearing begin at 2 pm. This means that young people whose cases are listed for trial do not have to be in court until the afternoon, and as there are generally no more than

four or five cases on the afternoon list, the wait involved for them is not normally significant. However, the morning list - where every case is listed for 10.30 am - can contain more than 50 cases meaning that many young people and their families must wait for long periods of between two and four hours for their cases to be heard. Moreover, on many occasions, the list is too long for the Court to get through in the time allowed, requiring the Court to postpone the remaining cases until 2 pm. Thus, young people required to be in court from 10.30 am may not have their cases heard until early or mid-afternoon, which situation also has a knock-on effect on the 2 pm list, delaying these cases also.

The current situation means that the provisions of the Act aimed at minimising the time young people are out of school or employment in order to attend court are being frustrated by the length of the list, and the knock-on effect on waiting times.

Cork Children's Court

The problem of delay is also serious in Cork where there is only one list, which begins at 10.30 am. This requires that all young people attending court that day be there at this time, even though their cases may not be heard until much later in the morning or, in some cases, in the early afternoon.

Recommendations

- The organisation of the list must be addressed as a matter of urgency in both Cork and Dublin Children's Courts in order to reduce the delay, to relieve the strain under which personnel in both courts currently work, and to ensure that the Court has the opportunity to direct its full attention to each case being heard. In Dublin, the temporary assignment to the Children's Court of an additional judge (who could use Court 56 in the Smithfield building) would help to clear the back-log. The implementation of other recommendations made here should reduce the number of cases to be listed in the Children's Court in the long-term.
- It is also recommended that the list be organised so as to reduce the waiting periods and prevent young people mixing with other defendants and spending long periods of time in the negative environment of the court. In particular, an effort should be made to devise a more sophisticated list system, such as one which assigns each case a time-slot. At the very least, cases could be assigned at hourly or two hourly intervals in order to minimise waiting time for both young people and their parents. This should ensure that delays are kept to a minimum.

In compliance with international standards which require that the child's identity and privacy be protected throughout court proceedings, the Children Act stipulates that the proceedings of the Children's Court are heard *in camera*, in the absence of the public and those who are not directly involved in the proceedings. Section 94 provides that the Court has discretion to permit such other persons to attend the Court and this is often used to allow *bona fide* researchers, members of other government agencies such as the Special Residential Services Board and extended members of the young person's family to attend the proceedings. Maintaining the privacy of the courtroom is thus a goal in itself although it has also been linked to reducing the intimidating features of criminal proceedings for young people on trial.

ATTENDANCE OF AN GARDA SÍOCHÁNA

One of the problematic issues arising in this context is the presence in the Children's Court of members of An Garda Síochána not involved in the case being heard. In Limerick, Cork, and Waterford Children's Courts, several Gardaí were observed to remain in the courtroom throughout the Court's proceedings notwithstanding their lack of involvement in the cases being heard. On several days in Limerick, for example, in excess of ten Gardaí were present in the courtroom throughout the Children's Court hearings, in respect of which they were not directly involved. Similar numbers were observed in the Cork Children's Court on many occasions.

It is an apparent breach of the *in camera* rule to allow Gardaí not involved in individual cases to remain in the courtroom during that time. Moreover, the fact that members tend to sit together makes their presence an obvious and sometimes intimidating feature of the proceedings. For example, on one occasion in Limerick Children's Court, a relative of the young person whose case was being heard, had to walk through a number of Gardaí to get to the witness box. Further interference with the process is caused by members having personal conversations during the proceedings, and adding to the unnecessary traffic in and out of the courtroom.

In contrast, in the Dublin Children's Court, only the Gardaí prosecuting or giving evidence in the case being heard are entitled to be present. This is administered by the clerk announcing the name of the prosecuting Garda along with the name of the young person when his/her case is being called. With the exception of the Garda monitoring the door to the courtroom, therefore, no other Garda is permitted to be present during the Court's consideration of each case.

Recommendations

- The practice currently used in the Dublin Children's Court of limiting the presence of

Gardaí to those directly involved in each individual case should be mainstreamed in other Children's Courts.

- Efforts should also be made to reduce the visible police presence in the courtroom by limiting the number of uniformed Gardaí to those required to maintain security. This would also help to reduce the sometimes palpable tension in the courtroom.

KEEPING PROCEEDINGS PRIVATE

During this research, the enforcement of the *in camera* rule arose as an issue on several occasions. In particular, it was clear during the research that the identity of those in court is not always checked by Gardaí. Thus, on several occasions in Cork and Limerick Children's Courts in particular, there appeared to be large numbers of people in court whose identity and connection with the proceedings was unclear. Although this may be a matter for the Garda mind-ing the door, it is apparent that this is not always managed effectively and judges themselves frequently queried the identity of the parties present. This happened in Cork, Limerick and Waterford where judges were observed reminding the Garda responsible to 'watch the door'. Thus, on one occasion in Limerick, a group of three young men arrived into Court, one with a can of beer, and had to be escorted out. On another occasion in Waterford, a group of young people walked into the Court causing the judge to ask the prosecuting Inspector who they were, before they were asked to leave.

In addition to the failure to police the *in camera* rule effectively, some courts have a glass door or porthole which allows people to peer inside. This is the case in Dublin, for example, where young people waiting outside the courtroom regularly seek to distract the young person in court via the port-hole in the courtroom door.

Recommendations

Steps should be taken to ensure that the *in camera* rule is effectively observed in every Children's Court:

- Security should be assigned to the door to ensure that only those involved in proceedings enter the courtroom.
- Windows into the courtroom, if considered necessary from a security perspective, should be effectively policed.

THE CALL-OVER IN CORK CHILDREN'S COURT

In Cork Children's Court, the use of a public call-over procedure raises serious concerns of incompatibility with the *in camera* rule.

The call-over usually happens as follows: at 10.30 am every Monday morning all young people and their parents are called to the Children's Court for a roll call. Everyone whose case is listed that day, together with their parents, legal representatives, Probation Officers and relevant Gardaí must attend. The result is that this is a chaotic time when everyone mixes together and squeezes into the available seating in the courtroom. The identities of those entering the courtroom are not checked at the door, and it is very possible that people not involved in the proceedings, including members of the public intentionally or unwittingly in court, are there in breach of the *in camera* rule. Solicitors often use this time to consult with their clients within the earshot of others.

The clerk then goes through the morning's list, calling out the name of every young person in turn. While this mechanism appears to be used principally to check whether a particular young person is in court, it is clearly in breach of the privacy rights of the young defendant to call out their name, and sometimes their address in the courtroom in full view and earshot of people not involved in their case. This situation is exacerbated when, as sometimes happens, the judge asks to hear the facts of a particular case from the prosecuting Garda. Where this occurs, the facts are read out in front of everyone in the courtroom. Benchwarrants are also issued at this time in respect of those not in attendance, and legal aid is granted/refused if necessary after the judge questions the defendant or his/her guardian as to their means. Observation of the Cork Children's Court thus raises concern that the public call-over involves a serious breach of the *in camera* rule and the privacy rights of young defendants.

Recommendation

- Urgent consideration should be given to withdrawing the practice of the public call-over in Cork Children's Court.

CONSULTATION ROOMS

The lack of dedicated consultation rooms is a problem in all Children's Courts. In Cork, Limerick and Dublin, solicitors were observed consulting with their clients in the corridor, in the waiting areas and on the steps outside the courtroom. In Cork Children's Court, consultations were frequently observed taking place during the morning call-over and in both Limerick and Cork, consultations appeared to take place in the middle of the courtroom before the young person's case was heard. On several occasions during this research, full details of private consultations between young people and their solicitors could be heard by those sitting nearby. Such public consultations are unacceptable for both young people and their solicitors.

Recommendation

- Private consultation rooms should be provided in all courthouses as a matter of urgency.

The Courtroom

Although international standards recognise the right of young people to understand and participate in criminal proceedings, they set few specific requirements regarding the physical environment of the courtroom. However, vindication of the young person's right to participate in the proceedings requires that the physical environment of the courtroom be adapted to this end. For example, the Practice Direction issued in England and Wales in response to the European Court's judgments in the cases of T and V concluded that effective participation required a flat-level courtroom in which the accused could sit together with family members and legal representatives to facilitate communication and in which the number of parties be limited to those directly involved in the proceedings. This is one way in which this right can be secured.

The Children's Court currently sits in two distinct settings: a specially adapted courtroom is used in the Dublin Children's Court, and the normal District Court building is used in every other area. However, this research observed that the physical environment, layout and structure of the courtroom have a significant impact on the extent to which young people enjoyed the right to participate in the proceedings and on the nature of the court experience more generally.

SIZE OF THE COURTROOM

The *in camera* rule means that attendance in the Children's Court is limited to those directly involved in the proceedings. As a result, no more than approximately ten people should be in the courtroom at any one time (eg accused, parent, judge, solicitor, clerk, probation officer, prosecuting Garda).

Dublin Children's Court

The specially designed Dublin Children's Court reflects this expectation insofar as it provides a small and intimate environment for criminal proceedings against children. In particular, in addition to its dedicated seating for the accused, judge, solicitor, clerk, probation officer, prosecuting Garda/witness, the only other available seating is a bench at the back of the courtroom. This is where a child's parent or guardian sits, as well as any witnesses, others (such as Gardaí, social or community workers) involved in the proceedings and observing researchers or journalists. The small size of the courtroom thus means that in certain cases, particularly those involving a full hearing, the seating is insufficient to accommodate all those present. In such cases, which also tend to be longer in nature, people including family members, members of An Garda Síochána or witnesses may have to stand for the duration of the proceedings. This is an unacceptable situation both for them, and for the Court generally given that over-occupation is uncomfortable for everyone involved.

Cork, Limerick and Waterford Children's Courts

The opposite problem exists in the Children's Court in Cork, Limerick and Waterford. While these courtrooms vary in size and layout, in principle they are all too big for this purpose insofar as they could seat approximately 60 people. In these Children's Courts, the young person and his/her family were observed to be removed from the other parties and the process both physically and figuratively. While there is adequate seating for everyone in these courtrooms, the fact that large areas of the courtroom are unoccupied impacts negatively on the atmosphere in Court and leaves young people 'lost' in every sense. Unadapted and unaltered, these physical environments are inappropriate settings in which to hold Children's Court proceedings.

FORMALITY OF THE ENVIRONMENT

Dublin Children's Court

The Dublin Children's Court is designed to provide a relatively informal environment for the trial of children and young people. It is a small, flat level court, with only a large desk separating the judge (who sits with the probation officer and the clerk to his/her right and left) from legal representatives, who share a bench facing the court. The accused has designated seating (similar to an old fashioned school desk) to the judge's right hand side, and the prosecuting Garda sits to the judge's left across from the accused. Facing the judge, at the back of the courtroom is a long bench, the length of the court, which seats approximately six people including the child's parent or guardian.

The informality of the Dublin Children's courtroom has many advantages, including the fact that all the parties sit very close to each other, facilitating direct communication and eye contact. Most importantly, the young person is at the centre of the process and sits at the same level as the judge, which enhances his/her direct and indirect involvement in the proceedings. Communication between the judge and the young person, and between the solicitor and his/her client is facilitated by their proximity and parents, who sit behind solicitors, can also be easily involved. The size of the courtroom also means that dialogue between all of the court personnel can be heard without difficulty, and everyone is focussed on the young person and their case.

Cork, Limerick and Waterford Children's Courts

The courtrooms in Limerick, Cork and Waterford constitute much more formal and traditional courtroom environments for children's cases. Each court has a raised bench of varying height (Waterford is particularly elevated) where the judge sits, with a further row of the bench in front to accommodate the clerk or registrar of the court. Solicitors and the prosecuting Inspector sit in front of this again. This means that in these courts, the judge is physically removed from the young person. In contrast, the solicitor and the prosecutor sit or stand

closer to the judge, encouraging and promoting communication between these parties (in preference to the young person).

No DEDICATED PLACE TO SIT/STAND

Cork, Limerick and Waterford Children's Courts

Apart from the stand or witness box, where the young person sits only when giving evidence, there is no dedicated place for young people and their families to sit or stand in the courtrooms in Cork, Limerick or Waterford. As a result, young people were observed during the research choosing to stand at the entrance to the court, to sit in a particular part of the courtroom either close to the judge or their solicitor. Solicitors were rarely observed to advise them in this regard although, on some occasions, parents physically pushed them to the front of the courtroom where they tended to stand awkwardly while their case was being heard. While some parents and young people chose to sit together, others sat apart, in front or behind each other in the available seating. Few if any young people sat close to their solicitors, and those that did, did so out of (their) choice or initiative rather than being directed to do so by their solicitor. In this regard, the young person's choice of position within the courtroom could be said to impede the effectiveness of their communication with their legal representative as well as their participation in the process.

In this way, the lack of a dedicated seating area for the defendant was observed to compound their isolation from the Court and the process as a whole. While the raised bench is not a problem in itself, the fact that the judge is simply too far away from the accused to communicate effectively and directly with him/her contributes to the distance - real and apparent - between the judge and the young person. The fact that the same distance prevails between the solicitor and his/her client marginalises the young person further within the process. The failure of solicitors to ensure that their client sits or stands in a position which facilitates their easy and direct communication with them is thus a serious problem. Observation of the Children's Court clearly substantiates the conclusion that the lay-out of these courtrooms, combined with the lack of a dedicated place for the young person to sit that allows him/her direct contact with the judge and his/her solicitor, is the most significant barrier to his/her participation.

The impact of the physical environment on the extent to which the young person participates in their proceedings is dramatic and decisive. Poor acoustics in the courtroom - in some courts the solicitors are inaudible, in others the judge cannot be heard - compounds the problems created by the physical environment. This serves only to isolate the young person from the other parties and frustrate their participation and involvement in the process.

Traditional courtrooms are thus unsuitable for the trial of children as they do not facilitate

their effective participation in the process. This is particularly the case where they have not been adapted to accommodate the young person's physical size and increased vulnerability in the process.

Recommendations

Suitably adapted rooms should be put in place for hearing cases involving children. These should be large enough to accommodate all the parties comfortably, but small enough to facilitate effective communication and the participation of the young person in the process.

In order to adapt the current courtrooms, the following recommendations are made:

- In the Dublin Children's Court, the wall between Court 55 and the adjoining courtroom (which is unused) could be removed to create one, flat-level courtroom of reasonable size;

Other Courts could be adapted in the following way:

- Each court should identify seating for the young person and his/her parent or guardian located in a position which allows them a clear view of the judge, solicitor and prosecuting Inspector and ensures that the dialogue between all the parties can be heard.
- The courtroom should be adapted from its regular, large size, for example, by restricting the seating area to the front part of the courtroom to ensure that all the parties sit near enough to each other to communicate effectively.

NOISE LEVELS IN COURT

Closer adherence to the *in camera* rule should mean that levels of activity in the court generally are kept to a minimum. While this is the case in the Dublin Children's Court, during this research the opposite situation was noted in the Courts in Limerick, Cork and Waterford. Conversations between solicitors and/or Gardaí not directly involved in the case being heard, noise from the custody area, and the general movement of people, notably Gardaí and other court personnel, in and out the various doors of the Court were all observed to create an unnecessary distraction from the Court's business.

While noise levels in the Dublin Children's Court are minimised by limits placed on the number of personnel present in the courtroom and the resulting traffic in and out of the courtroom, distractions often come instead from the custody room, where young defendants regularly bang radiators and pipes knowing it can be heard in the courtroom above. On occasion also, the presence of court personnel, who were unrelated to the proceedings but needed to use the computer in the courtroom, often appeared to distract the participants.

Recommendations

- Noise and movement in the courtroom should be kept to a minimum while the Children's Court is in session.
- Young people in the custody area should be supervised to limit their opportunity to make noise.
- Those in Court should be reminded regularly of the importance of a quiet courtroom.

LOCATION OF DUBLIN CHILDREN'S COURT

The fact that only one Children's Court sits in the Dublin Metropolitan area means that young people travel from all over the city to appear: the resulting congregation of young people (accused and convicted) at the courthouse has on occasion lead to public order and other problems. Although these have largely been addressed by the imposition of a standard bail condition ordering young people to stay away from Court 55 unless appearing at the Children's Court, consideration is also being given to moving sittings of the Children's Court to areas of the city from where many young people who appear before the Court live. While an apparently attractive proposition which would prevent the congregation of young people outside the court, and relieve young people from the long journey to Smithfield, it should nonetheless be given very careful consideration before action is taken.

In particular, once the problems relating to the length of the list and the waiting times are addressed, the advantage offered by retaining the Court in Smithfield comes into sharper focus. As this research indicates, the operation of the Dublin Children's Court represents much in the way of best practice and in particular, boasts a level of professionalism and expertise among court personnel that could be lost if the court were moved to different locations. While it is undeniable that the building requires structural improvement - particularly the waiting area - it is not apparent that dividing the court list and moving it to other locations like Clondalkin, Tallaght and Ballymun would in itself solve existing problems with the operation of the Children's Court. Indeed, it may in fact add to those problems by diversifying judicial practice further and undermining the expertise that has been built up in the Dublin Children's Court. Accordingly, it is recommended that provided the problems identified throughout this report are addressed, this change should not be undertaken at this time.

CONCLUSIONS AND RECOMMENDATIONS

The practical layout of the courtroom, the organisation of the list and the management of the court's hearings create obstacles of various levels of seriousness to the full implementation of the principles set out in the Children Act 2001 and in international standards. Some of

these concerns will only be fully addressed by overhauling the operation of the Court, others may be alleviated by taking the following practical steps:

- The management of case lists in the Children's Court needs to be urgently addressed with consideration being given to staggering cases by listing them at hourly intervals. This would avoid the problems associated with requiring young people and their families to wait at the Children's Court for long periods;
- In light of the seriousness of the problems faced by the Dublin Children's Court, special consideration should be given to ways of shortening the list in this court preferably by appointing more judges as a short-term measure to clear the back-log until other long-term measures take effect;
- A place within each Children's Court should be designated for the young person to sit and stand, accompanied by his/her parent or guardian. The young person should be shown to this position by an officer of the Court on his/her arrival into the courtroom;
- Everyone in the Court should be encouraged to occupy the front benches of the courtroom: this will reduce the effective size of the court and facilitate communication with and involvement of young people in the process;
- The Court should issue frequent reminders of the need for quiet in the courtroom;
- Security measures designed to ensure strict adherence to the *in camera* rule and protect the young person's right to privacy should be reinforced in all Children's Courts. A Garda should be positioned permanently at the door of each court to check that only those involved in the proceedings enter the courtroom and any windows should be covered up for the duration of the Children's Court. The public call-over in the Children's Court in Cork should be replaced with a procedure that respects the privacy of young people and the Court;
- Only those parties involved in the case before the court should be allowed to remain in the courtroom. The relevant member of An Garda Síochána should be called along with the defendant;
- Separate waiting areas should be made available for children and adults attending court in all districts. These should be clean, comfortable and incorporate substantial indoor seating;
- Consultation areas must be made available in all courthouses as a matter of urgency.

INTRODUCTION

The judge plays a central role in the Children's Court both in the administration of the Court and the vindication of the rights of young people. Accordingly, this Chapter evaluates the role of the judge in the light of international and national standards and considers how exercise of the judge's functions and powers might be changed to improve the effectiveness of the Court and to protect the rights of young people. The principal issues examined in this Chapter are: case management, judicial consistency, the lack of an holistic approach to cases, and the judges' treatment of young people in the Children's Court.

THE CHALLENGING NATURE OF THE ROLE

In the adversarial criminal justice system, the function of the Children's Court judge is to determine each criminal charge against a young person. Accordingly, he/she hears details of the charge, considers applications of prosecution and defence parties regarding matters of legal aid and bail, determines the young person's guilt or innocence of the charge and, on conviction, chooses the penalty to be imposed. However, this description disguises the truly challenging and complex nature of the role of the Children's Court judge. He/she must identify workable solutions to the range of social, health, educational and psychological problems which young offenders frequently present to the Court. In the absence of an alternative administrative body, the judge co-ordinates the various state agencies involved in the administration of youth justice, and orders enquiries about the availability of places of detention, temporary accommodation, access to assessment, treatment and therapeutic facilities, and vocational and educational programmes. He/she is required to be an efficient administrator, capable of sorting through and managing often dozens of charge sheets, and must be able to absorb quickly the numerous reports and assessments of the young person's situation. On a personal level, the judge may also be expected to act as mediator between the young person and his/her parents and, in the absence of an alternative complaints mechanism, to listen to the grievances of young people about their treatment in custody, by the Garda Síochána or by their solicitor.

Responsibility for vindicating the rights and freedoms of young people before the court also falls to the judge in his/her role as the administrator of justice. The Children's Court judge thus has responsibility to ensure that the young person's due process rights are observed, and that they enjoy the right to be treated in a manner which takes into account their age and is

consistent with respect for their welfare. In addition, the judge has a duty to vindicate the right of the young person to understand and participate in the proceedings and must also ensure that any sanction imposed is proportionate to the circumstances of the young person and the offence. Vindication of the young person's right to privacy in the criminal process also falls to the judge of the Children's Court.

This combination of functions means that the role of the Children's Court judge extends beyond the traditional one of determining a criminal charge. Instead, it demands that the judicial function be combined with that of counsellor, manager and administrator of youth justice: this makes his/her role not only the most influential and central position in the youth justice system, but also the most challenging.

SPECIALISATION AND TRAINING

INTERNATIONAL STANDARDS

While few international standards specifically address the role of the judge in the court process, those setting out requirements of specialisation and training in the youth justice system have particular relevance to the judicial function. For example, Rule 22 of the Beijing Rules recommends that professional education and on-going training is recommended to establish and maintain the necessary professional competence of all personnel dealing with juvenile cases and a minimum training in law, sociology, psychology, criminology and behavioural sciences is recommended, particularly for the judiciary. This is reinforced by recommendations of the Committee on the Rights of the Child.¹

A flexible approach to juvenile proceedings, which takes into account the different and special needs of children in conflict with the law involves the exercise of considerable judicial discretion. International standards highlight the importance of this discretion and the need to put in place sufficient accountability to ensure that those who exercise it are specially qualified and trained to do so judiciously and in accordance with their functions and mandates. They recommend the formulation of specific guidelines on the exercise of discretion and the provision of systems of review, in order to permit scrutiny of decisions and accountability.²

1. See further Chapter 1.
2. Rule 6 of the Beijing Rules.

THE CHILDREN ACT 2001

The Children Act 2001 makes little reference to the role of the Children's Court judge or the experience, training, expertise or attributes the person undertaking this role should have. However, section 72 of the Act provides that a judge of the District Court (appointed subsequent to the Court and Court Officers Act 1995) must participate in any relevant course of training or education required by the President of the District Court before transacting business in the Children's Court. This provision clearly envisages, therefore, that judicial training and education should precede a person taking up position in the Children's Court. Given the challenging nature of the judge's work, this is a prudent requirement.

Section 96 of the Act is also important here because it sets out mandatory principles which must guide the Court when dealing with children charged with offences. The pertinent part of this provision (set out in more detail in chapter One) requires that the Children's Court have regard to the rights of children before the law and in particular, the right to be heard and to participate in any proceedings of the court that affect them. It also sets out the principles which must apply with respect to the choice of sanction or penalty imposed on a child for an offence. Taken together, these are onerous legal duties, whose fulfilment is dependent on the full resourcing of the Children Act 2001.

Implementation of these Standards

While the provisions of the Children Act, taken individually, set important standards for the training and exercise of the functions of a Children's Court judge, their objectives are also connected by the fact that adherence to the mandatory sentencing principles can only be achieved with judicial training and education. For example, it is difficult to envisage how judges are to ensure that detention is a measure of last resort and to vindicate the right of the young person to participate in the proceedings without training or guidance.

Yet, no secondary materials or guidance have been developed as to how section 96 of the Children Act 2001 might operate in practice. The fact that no reference was made to this statutory provision during the course of this research, and that the judges observed rarely referred to any of the factors set out in therein during sentencing, suggests inadequate awareness of section 96 and its relevance to the sentencing process. However, a judge's failure to adhere to the requirements of section 96 may constitute or substantiate an argument based on irrationality or disproportionate grounds if a decision or order of the Children's Court is appealed or judicially reviewed.³

3. McDermott & Robinson, *Children Act 2001* (Roundhall 2003), p 112.

No preliminary or preparatory training appears to have been undertaken by assigned judges before taking up their position in the Children's Court, and judges do not appear to have received any in-depth training or continuing professional development on the implementation of the Children Act 2001, the principles of youth justice or in any of the disciplines necessary to allow them to meet the challenges of their work. It is unclear, therefore, how the procedural and practical requirements of international standards are to be implemented in the absence of judicial training. Similarly, it is unclear how the duty to listen to children can be fulfilled without judges receiving training on how to communicate with young people and facilitate their voices being heard in court.

Recommendations

- In-depth training is necessary to allow Children's Court judges to fully consider the provisions of the Children Act 2001 and their implications for judicial practice.
- Those assigned to the Children's Court should also be required to undertake training on the principles of youth justice, and related fields of psychology, sociology and criminology before taking up such an appointment. Training on effective models of communicating with young people should also be included.
- This training should be included in the continuing professional development of existing Children's Court judges.

CASE MANAGEMENT

Case management is one of the principal tasks of the Children's Court judge and, for a variety of reasons, it is also one of the judge's most significant challenges. For many young people, their first appearance in the Children's Court marks the beginning of a period of long, drawn out interaction with the criminal justice system, which is characterised by continuous adjournments and long delays. The lack of a co-ordinated system for managing cases in the Children's Court compounds this problem, which is exacerbated by the failure to prioritise the expeditious determination of charges.

ADJOURNMENTS

During this research, the vast majority of cases heard in the Children's Court resulted in either adjournment or remand. Statistically, no resolution was reached in approximately 82% of the cases observed and as a consequence, court appearances frequently involved little or no progress towards a final determination of the charge against the young person.

The rate at which charges against young people are continuously and persistently adjourned in the Children's Court is thus a matter of very serious concern. Frequent adjournments create delays in the system and waste resources. In the current system, they also reflect a failure to prioritise the expeditious handling of cases. While further research into the reason for and rate at which adjournments are made in the Children's Court is needed, the impact of such adjournments on the system and the young person is already clear. With regard to the latter, adjourning a charge may result in the young person re-offending, when, in between court appearances, they are offered little incentive or support to check their offending behaviour and observe the conditions of their bail. Failure to determine charges in an expeditious manner can thus contribute to the young person facing a longer list of charges as he/she is locked into a cycle of offending and court appearances. Moreover, the frequent adjournment of their case can mean that the connection between the offence and the resulting penalty is lost and for many young people this creates the perception that their criminal behaviour has no or few consequences. However, adjournments at the current rate also have serious consequences for the efficiency of the court process: they duplicate the work involved as cases must be rescheduled for a later date with nothing to guarantee that avoidable problems will not prevent it going ahead again. The effect is, therefore, that cases may drag on without final determination for many months with serious implications for the efficiency and effectiveness of the court system and deleterious effects on the lives of the young people involved.

Reasons for Adjourning Cases

Reason	Number of Cases	As % of all Cases Adjourning
Preparation of a Probation and Welfare Report	105	14%
Awaiting Hearing	78	10%
No Accused (Bench Warrant)	62	8%
Awaiting DPP Directions	47	6%
Attention of another judge	32	4%
Awaiting Plea/Instructions	30	4%
Enquiries to be made	20	3%
Attendance of Parent	13	2%
Attendance of Garda	9	1%
Other ⁴	221	28%
Reason not known ⁵	158	20%

4. This category includes adjournment to facilitate the assessment or treatment of the young person, where a placement for the young person is awaited or where enquiries regarding the young person's education or identity must be made.

5. This category represents the cases in which the reason for the adjournment was not apparent from observing the proceedings. It is likely to refer to the initial remand which takes place when details of arrest, charge and caution have been given to the court.

The above table highlights the most common reasons for the adjournment of proceedings in the Children's Court during the period of this research. It illustrates in general terms at least that the practice of postponing decisions is a widespread and accepted part of the Court's business.

Adjournments can thus be divided into those that are avoidable and those that are unavoidable (although their length of the delay caused, which is not measured in this research, could be reduced). With regard to the latter category, the most common reason for adjourning or remanding a case, during the period of this research, was to enable a Probation and Welfare Report to be prepared. This is an inevitable part of the system which relies on the expertise and contribution of Probation and Welfare Officers to propose an appropriate and practical response to the young person's offending behaviour and related circumstances. While providing greater resources for the Probation and Welfare Service would reduce the time needed to prepare this report - approximately 6-8 weeks - it would not eliminate the need for an adjournment for this purpose altogether. Other common reasons for adjourning a case in the Children's Court were to allow preparation for a hearing and to await the directions of the DPP. While greater availability of court time and increased efficiency in the office of the DPP may reduce these delays, the need for such remands is unlikely ever to be eliminated altogether.

However, other adjournments must be considered avoidable, including adjourning the case to secure the attendance of the child's parent, a particular Garda, or to bring it before a particular judge. Moreover, while it may be necessary to adjourn cases to secure the attendance of the young person, the current rate of such adjournments (9% including bodywarrants) clearly identifies a problem worthy of urgent attention.⁶

Moreover, the adjournment of cases for other reasons highlights the poor coordination between relevant agencies. For example, during this research cases frequently had to be adjourned to allow queries to be made regarding the assessment or treatment of the young person, the availability of a placement or enquiries regarding education or identity. This illustrates the lack of a proper infrastructure in the youth justice system.

Overall it is clear from this research that the rate of adjournments in the Children's Court is a systemic problem which both wastes resources and causes delays in bringing cases to a speedy conclusion.

RECOMMENDATIONS

- Urgent investigation is required to establish clearly the rate at which cases are adjourned in the Children's Court, the length of such adjournments and their underlying

6. Court Service figures for 2001 suggest that in the Dublin Metropolitan District the rate of bench warrants issued is twice that for adults. Courts Service, Statistics, 2001. See www.courts.ie.

ing causes. Administrative practices which tolerate or promote successive adjournment of cases must be carefully scrutinised in this context.

While it may not be possible to eliminate the need for adjournments altogether, implementation of the following recommendations may help to eliminate unnecessary adjournments.

- Judicial consensus should be reached on a set of principles to inform the granting of adjournments in the Children's Court: this would encourage judges to scrutinise requests for adjournments very carefully and to balance the basis of the request with the need to deal with the charges against a young person without unnecessary delay. Rather than granting adjournments as a matter of practice, therefore, every individual request for an adjournment should be given serious consideration in light of the need to deal expeditiously with the charge against a young person. This would ensure that the need to determine a charge without delay takes priority over, for example, the need to adjourn the case to ensure a parent's attendance.
- With regard to other adjournments, the adoption of measures identified elsewhere in this research should help to improve the efficiency of the process. For example, the development of greater consistency among judges and the establishment of a judicial panel for the Children's Court would help to eliminate any forum shopping among young people.⁷ The introduction in all Children's Courts of a single prosecuting Garda should help to reduce the adjournments associated with Garda attendance.⁸

Given that the lack of inter-agency co-ordinating structures may contribute to the need for and length of adjournments in the Children's Court, consideration should be given to establishing a body with a mandate to communicate and liaise between government and non-governmental agencies with regard to meeting the needs of young people before the Children's Court. Consideration might be given to expanding the remit of the Special Residential Services Board in this context. Streamlining this process would not only reduce the need for adjournments, but it would also minimise the delays involved, expediting the process overall.

CONSISTENCY IN JUDICIAL PRACTICE

The consistent application of standards and approaches in the Children's Court is essential both to ensure that all young people are treated equally and to maximise the effectiveness of the court process. Issues of inconsistency in approach are not only problems in themselves

7. See further Chapter Three.

8. See further Chapter Six.

they also add to forum shopping where young people, with perceptions of lenient or harsh judges, decide not to show up in court on a particular day adding significantly to delay in the Children's Court system. It is clear from observing proceedings in the Children's Courts in Limerick, Cork, Waterford and Dublin, where twelve different judges presided during the research period, that inconsistency is a serious problem throughout the system.

Notwithstanding the need for flexibility in the accommodation of the varying needs and circumstances of young people, practice among the judges of the Children's Court displayed a variety of different and sometimes contradictory approaches: while inconsistency was evident with regard to the granting of bail and the award of legal aid, it was particularly prevalent with regard to judicial responses to the attendance of parents and young people. The impact of inconsistencies in style and approach is also discussed below.

ATTENDANCE OF PARENTS

Despite the requirement under section 94 of the Children Act 2001 that a child's parent or guardian must attend court, this research found a parent/guardian to be present in only two thirds of cases.⁹ Moreover, the judicial response to this problem is variable and could be said to exacerbate the problem by obscuring parents' legal duty to attend, and the consequences for them of failure to do so.

Attendance of Other Family Members

While a parent or guardian is required to attend the hearing some young people bring other family members to court. However, judicial practice is inconsistent as to whether their presence is permitted. The research shows that for the most part, judges tend to pay little attention to who, apart from the child's parent/guardian, attends court with the young person and will only be forced to enquire as to the identity of additional family members present where they attract attention by their number or behaviour. While judges were observed during this research asking family members to leave, such as where they were distracting the accused or the court, generally, judges appeared tolerant of the presence of such parties in court.

Noting Parents' Absence

During this research, the absence of a parent or guardian from the Children's Court was not always noted by the judge: this was the case in the larger courtrooms of Limerick, Waterford and Cork, where several adults were often in attendance. In contrast, the size of the Dublin Children's Court and the close proximity of the parties meant that judges there were more likely to notice that the child's parent was absent.

9. See further Chapter Two above.

Questioning Young People about their Parents' Absence

Where it was noted, judges' responses to the absence of parents varied. Some judges asked the young person's solicitor to explain the whereabouts of the missing parent while others directed this question directly to the young person. The former approach appeared more effective insofar as it allowed the solicitor to explain, for example, that the parent had been in court three times recently and had difficulty appearing that day, or that the parent normally attended but was ill on this occasion. Other judges addressed queries regarding the parents' whereabouts to the young person. This was less effective and tended to cause embarrassment or discomfort for the young person, particularly where the judge's approach lacked sensitivity. For example, in one case, the judge asked the young person directly where his mother was. 'In hospital' he answered. 'And where's your father?' the judge continued. 'Dead' said the young person who was clearly very embarrassed by the interaction (Case 631). In other cases, it appeared that the young person was not only expected to answer for his/her parents who had failed to attend Court, but also bore the brunt of their lack of attendance by being shouted at by the judge or having to listen to disparaging remarks being made about their mother or father (eg 'totally irresponsible parents', 'is it any wonder their child is in trouble?' etc).

Consequences of Parents' Failure to Attend

The parents' failure to attend had different consequences depending on the judge. Some judges merely warned the child and their solicitor about the failure to attend announcing, when adjourning the case, that 'the parent should be here next time' (Case 595). Other judges refused legal aid, where that application was before the court, stating that they would not grant legal aid where the parents were not in court (Cases 614 and 619). Another response was to adjourn the case to another day to ensure the parents' attendance. In some cases, for example, the judge required that the parents be notified that they must come to court for the next appearance and then adjourned the case for a fortnight to allow them to attend (Cases 170, 176, 313 and 314). In another case, the judge demanded to know, immediately, where the parents of the young person, who was serving a custodial sentence in Trinity House, were. Not satisfied with the solicitor's response that they were at work, the judge, despite the solicitor's plea that the young person was anxious to have the matter dealt with, remanded the case for a week to have the parents appear in Court. 'You're in Trinity House, you're not going anywhere' the judge replied (Case 616). Other judges appeared flexible in moving a case down the list where the parent had difficulty attending in the morning, for example, but could attend in the afternoon (Case 467).

The requirement for parents to attend also appeared to be more important when the judge was contemplating a custodial sentence. So, as one judge put it, 'if he runs the risk of custody I

won't do it without his parents having an input' (Case 630). This appeared to offer a sounder rationale for a parent's attendance. Some parents who attended Court, having been absent on the previous occasion, encountered hostility from the judge and were called forward to account for themselves. One mother, for example, was lectured by the judge who told the Court that he was not surprised that her children were in trouble given her own failure to attend court on their behalf. Other parents were reprimanded by the judge for failing to attend, or attend on time (Cases 154 and 422).

On occasion, the judge issued a bench warrant to secure the parents' attendance at the Court (Case 417) although this was sometimes vacated if the parent appeared in Court later in the day. Moreover, the threat of a bench warrant was used more frequently to warn parents, who weren't there, of their consequence of failing to attend. As one judge put it to the defendant's solicitor, 'if the mother doesn't show I'll issue a bench warrant and you can tell her that from me' (Case 631).

Overall, the research identifies a wide variety of judicial approaches and responses to a parent's failure to attend the Children's Court. It is clear that no common approach has been agreed between the judges in this regard. Accordingly, this fails to send a clear message to parents about the consequences of their failure to accompany their child to court. It also highlights a further dilemma as to how the conflicting objectives of having the parent present and dealing with the case expeditiously should be managed. This is dealt with further below.

Recommendations

- Where a parent does not attend Court, questions regarding his/her whereabouts should be directed with sensitivity to the young person. Alternatively, such queries could be directed at the young person's solicitor who, with knowledge of the case, should be able to give a more complete account of the parent's whereabouts as well as their history of attendance.
- Care should be taken not to victimise the young person whose parent is absent from the Children's Court, and to ensure any such parent is warned of the serious implications of any future failure to attend.
- Efforts should be made to establish consistency regarding the approach to attendance of family members. For example, judicial consensus as to how many family members can attend with a young person in the Children's Court would reflect the importance of keeping the number of people in the courtroom to a minimum respecting the intimate atmosphere of the proceedings while at the same time recognising the support family members provide to young people, particularly those in custody.

ATTENDANCE OF YOUNG PEOPLE

Almost 10% of all cases observed during this research were adjourned due to the absence of the defendant: the majority of these were in the Dublin Children's Court. Failure of young people to attend court is thus a serious problem. In addition, however, this research observed inconsistent judicial responses to the young person's failure to attend court, which varied from the issuing of a bench warrant for their arrest, offering them time to arrive, and adjourning the case to another date. As with parents, it is likely that inconsistent and unpredictable judicial responses exacerbate the problem caused by the young person's failure to attend.

Some judges appeared to issue a bench warrant for the arrest of the young person as soon as it was apparent that he/she was not in court: this was frequently done despite solicitors' pleas to allow the young person a few minutes to arrive and when no such request was made by the prosecuting Garda. For example, one judge, having started proceedings in the Dublin Children's Court at 10.30 am, issued several bench warrants for the arrest of young people who had failed to appear between 10.30 and 10.35 am. In one such case, the warrant was issued notwithstanding that the prosecuting Garda was not in court either and had asked a colleague to request that the matter be let stand to allow him to attend later in the day (Cases 603, 605, 607, 608). In such cases, priority appeared to be given to 'getting through the list' and facilitating Gardaí, who might be 'anxious to get away' (Case 603). In this regard, young people were given little opportunity to show up in court, while the late arrival of Gardaí was accommodated. In some cases, the prosecuting Garda showed flexibility by declining the judge's offer of a bench warrant to give the young person time to arrive.

Where young people appeared in court after a bench warrant had been issued earlier in the day for their arrest, judges did not always accede to solicitors' requests to vacate the warrant and proceed with the case. Inconsistent practice was observed with some judges choosing to deal with the case in such circumstances, while others refusing to do so. While some judges appear to be motivated by the need to get through the list (one judge commented that he/she would not vacate the warrant otherwise 'we won't get through the list', Case 703) others appeared to be motivated by the need to teach the young person a lesson ('he should have been here', Case 355). One child who arrived late into court was told off by the judge for not coming into court sooner. When the young person explained that he didn't hear his name being called, the judge replied that he should 'keep yourself within shouting distance or you might end up in St Pat's' (Case 250).

Several other judges were observed taking a more flexible approach and in particular, they appeared willing to let the matter stand, sometimes until the end of the day, to give the young person every opportunity to arrive (Case 413). Others showed latitude by simply adjourning the case to another day (Case 594).

The failure of young people to attend is a problem in all courts: it is particularly serious in the Dublin Children's Court where the fact that several different judges sit every week encourages forum-shopping by young people. Regardless of its causes, re-arranging the cases of those young people who fail to show wastes the resources of the Court, and the Garda Síochána where bench warrants are issued. While hearings should never take place in the absence of young people, urgent action is required to tackle the problem of non-attendance.

Recommendations

The problem of non-attendance by young people could be addressed in a variety of ways:

- Efforts should be made to explain to young people that failure to attend court will not assist their case and may, in fact, make their situation worse. This should be undertaken by the judge and could also be undertaken by the court liaison officer recommended in Chapter Two. It should also be a feature of young people's consultation with their solicitor.
- Forum-shopping should be addressed by implementing the recommendations below regarding the assignment of judges to the Children's Court and eliminating inconsistencies in their approaches.
- Efforts should be made to establish a common approach between the judges of the Children's Court as to how best to deal with young people who do not attend. Priority should be given to dealing expeditiously with such cases and late - and non-attendance should be treated with leniency where it is reasonably explained. Cases should be heard on that day where possible or rescheduled for the next available date to prevent delay. Bench warrants should be used only as a last resort - to enforce the duty to attend court - where specifically requested by the prosecuting Garda.

LACK OF AN HOLISTIC APPROACH

International standards require that the response to the offending of young people take into account their personal circumstances and background. In particular, Rule 5 of the Beijing Rules provides that any reaction to young offenders should always be in proportion to their circumstances as well as the offence. Moreover, Rule 16 recommends that, in all cases except minor offences, the background and circumstances in which the juvenile is living or the conditions under which the offence has been committed must be properly investigated by means of a social report in order to facilitate judicious adjudication of the case. Together, these rules advocate that an holistic response be taken to the offending of a young person, which views

their circumstances and the charges they face in an integrated manner. Similarly, a White Paper published in England and Wales in 1997 recognised that the purpose of the Youth Court needed to develop beyond simply deciding guilt or innocence and then issuing a sentence: it noted that an offence should trigger a wider enquiry into the circumstances and nature of offending behaviour.¹⁰

INDIVIDUALISED APPROACH

One of the established practices in the Children's Court (as in other District Courts) is that the judge who hears details of arrest, charge and caution of the accused retains seisin or jurisdiction over that particular charge sheet. This means, effectively, that the judge who hears the initial charge against the young person must see that charge through to its conclusion, with no other judge intervening or taking a decision relating to that charge. While the merits of this practice are not in doubt, it causes significant problems for the way in which the cases of young people are dealt with by the Children's Court, particularly where the presiding judge changes on a daily or weekly basis. In particular, it agitates against the adoption of a holistic approach.

Where different judges take different approaches to the same case, the resulting incoherence undermines any potential the Court has to change the young person's offending behaviour. It also sends out mixed messages to young people as to how they will be treated by the Children's Court and has the potential to undermine their faith in the system. For example, on one occasion in the Dublin Court the judge, having spent time talking to the accused, decided to give him one final opportunity to sort himself out. A few days later, a second judge, who had seisin over previous charge sheets in relation to the same accused, was about to take the same approach on reading the file when he noticed that he had, some months previously, imposed a suspended sentence on the accused. Subsequent offending having activated the suspended sentence, the young person received six months detention: this was regardless of the earlier judge's preference for a more lenient approach (Case 906). While the tradition of retaining seisin is not without value it appears to generate more problems than it solves where more than one judge is involved in the determination of separate charges against young people. Moreover, practice between judges appears to be inconsistent with some judges more willing than others to intervene. For example, in one Court, the judge hearing the case commented that although it was 'wrong for a judge to deal with (a case) when he doesn't know the facts' he decided to intervene and give the accused a chance. He applied the Probation Act commenting that 'he hoped she had the sense not to come back' (Case 602). In another case, the same judge noted that he wanted nothing to do with it (another judge) considering

10. 'No More Excuses': A New Approach to Tackling Youth Crime in England and Wales CM 3809 (Home Office 1997).

detention. However, when the Garda informed the judge that there was in fact a new charge sheet in the case, he agreed to deal with that (Case 604).

Thus, the practice of retaining seisin over charge sheets is clearly not an immutable one, and judges' adherence to it is inconsistent. For example, when it became apparent to one judge that he would not be in court on a later date to hear details of the report from the Probation Officer he commented: 'I do not retain. Whoever is here can do whatever he likes' (Case 423). Other judges, particularly those who sit in the Children's Court on a regular basis, value the importance of seeing cases through to their conclusion and were observed to express annoyance where other judges intervened inappropriately for example by imposing a custodial sentence where that was being avoided by the judge with greater familiarity with the circumstances of the accused (Cases 302 and 309).

A further consequence of this approach is that no single judge retains an overview of the young person's circumstances; nor is any effort made to ensure that the Court's overall response to the young person's offending and circumstances is consistent, proportionate or effective. Thus, each judge deals with each charge on its own merits without reference to the preferred approaches or stated objectives of other colleagues with regard to the young person's offending. This lack of a coherent response to young people before the Court is exacerbated by practical difficulties such as a judge's poor administration or illegible handwriting which makes it difficult for other judges to read the young person's case file. Together, therefore, these factors reduce the likelihood that the court's approach to a young person's offending will be coherent: it may also mean that a more or less harsh sanction is applied than would be the case if a collective approach to the charges was taken.

Examples illustrate the effect of this practice more clearly. On one occasion in the Dublin Children's Court, a 16 year old young person was tried on a charge of assault. Following witness testimony which explained that there had been alcohol involved in the incident, the judge convicted him and fined him E 120 (he admitted to earning E 250 per week) (Case 473). The following day, the accused appeared in the Children's Court again, this time on a charge of dangerous driving: alcohol was clearly involved on this occasion also. A different judge presided, a different Garda prosecuted and a different clerk was also in attendance. The judge convicted the young person and asked whether the accused had any previous convictions; the Garda replied in the negative. The Garda responsible for security in the court remembered the accused from the day before and informed the Court, via his colleague, of the defendant's conviction for assault. The judge, apparently uninterested in the connection between the offences, questioned whether the accused had any previous road traffic convictions. He/she received a negative reply and proceeded to disqualify the defendant for two years (Case 491).

The failure on the part of the Court to take an holistic approach to a young person's offending behaviour is patently clear from this example. Moreover, the failure to identify a connection between the two charges (ie alcohol) and to respond, for example, by ordering a Probation

and Welfare Report to look further at potential reasons for the young person's offending goes some way to illustrating why the system as a whole is ineffective. The problems caused by frequent changes in court personnel and the lack of coherence in record keeping are also apparent here.

ASSIGNMENT OF JUDGES TO THE CHILDREN'S COURT

Judges are assigned to the Children's Court by the President of the District Court and are drawn from the District Court lists of assigned and unassigned judges. In the Children's Courts in Limerick, Cork and Waterford, the assigned, and thus permanent, District Court judge presides. While he/she may need to be replaced by a colleague on occasion, the fact that this is the exception rather than the rule ensures significant consistency and predictability in the process. No judge is assigned permanently to the Children's Court in Dublin, however, and this raises serious problems for the listing of cases and the administration of the court generally. By way of illustration, during the period 2 January to 26 July 2004, there were only 5 weeks in which the same judge presided from Monday to Friday. More commonly during this period, at least three or four different judges were assigned to the Court in the one week, and in some weeks, a different judge sat in the Children's Court every single day. This failure to ensure long-term stability and consistency in the assignment of judges leads to long, avoidable delays as the adjournment of cases is determined inter alia by the date on which the judge is next available, and not the nearest, appropriate day for all parties. In addition, however, the irregular and unpredictable assignment of judges to the Dublin Children's Court means that several different judges may be involved in determining separate charges against a young person. The fact that each judge, with his/her own individual style and approach, takes a decision on the charge over which he/she has jurisdiction, encourages a fragmented rather than an holistic response to the young person's offending behaviour and circumstances.

RECOMMENDATIONS

- There is a vital need to establish consistency in the appointment of judges to the Children's Court. The recommendation made below that a panel of judges be drawn up for the Children's Court would facilitate this process and ensure that less judges are assigned to the Children's Court but for longer periods.
- It is also recommended that efforts be made to establish a common understanding between judges as to the most effective responses to offending by young people. This forum could also look strategically at ways in which the system could be changed to ensure that the jurisdiction a judge retains is over the young person, and not the individual charge sheet. However, this will clearly only be possible where the former problems of inconsistency are addressed.

INTERNATIONAL STANDARDS

Legislative and international standards recognise the right of young people to be heard and to participate in criminal proceedings against them. This is set out in Article 12 of the Convention on the Rights of the Child, and is also the established case law of the European Court of Human Rights. This principle is also reflected in section 96 of the Children Act 2001. While a matter of right for young people, the need to engage young people in the criminal process has also been linked to the effectiveness of responses to offending behaviour. For example, the 1997 White Paper in England and Wales on the reform of the Youth Court identified the need to encourage magistrates to talk directly to young offenders and their parents.¹¹ This understanding of the need for judges in youth courts to engage defendants and their families by using more accessible language and explaining their decisions more clearly is also at the centre of the Youth Court Bench Book developed by the Judicial Studies Board, and the Practice Direction issued by the Lord Chancellor in response to the European Court's judgments in the cases of T and V.¹²

These approaches recognise that engaging with and listening to young people in court is important because it implements their right to understand and participate in the process, while also improving the effectiveness of the court process in reducing offending behaviour. One way in which it does this is by promoting the functioning of the youth court as a moral reference point for the offender.¹³ For example, Weijers explains that communication has three principal dimensions: the first relates to the explanation of rituals and legal jargon, the second concerns the more subtle approach of focussing on the young person instead of their lawyer or other professionals, and engaging with them in a meaningful way, and the third relates to the dialogue with the young offender about the moral consequences of their wrongdoing. These concepts are all entirely consistent with international standards on the child's right to understand and participate in the process, which are also reflected in the requirements of section 96 of the Children Act 2001. Despite the strength of this guidance, however, little consideration has been given to how the exercise by young people of their right to participate in the criminal process should be facilitated in the Children's Court. While other chapters in this research highlight the significance of the physical environment of the courtroom and the role of the Solicitor in this process, it is clear the judge's role is most influential.

11. 'No More Excuses', above.

12. See further Chapter One.

13. Weijers, 'Requirements for Communication in the Courtroom: A Comparative Perspective on the Youth Court in England/Wales and the Netherlands' 4(1) *Youth Justice* (2004) 22-31 and Weijers, 'The Moral Dialogue: A Pedagogical Perspective on Youth Justice' in Weijers & Duff (eds) *Punishing Juveniles Principle and Critique* (Hart Publishing, 2004), pp 133-154.

LACK OF COMMUNICATION BETWEEN JUDGES AND YOUNG PEOPLE

Different types and levels of communication between judges and young people were observed during this research. However, the majority of cases involved no communication of any kind between the judge and the young person. In particular, it was clear that despite the duty to have regard to the child's right to be heard, judges in the Children's Court did not routinely speak to the young people before them. During the course of this research, 55% of cases involved no communication at all between the judge and the young person, and in these cases, the judge neither greeted the young person on his/her arrival in court, made eye-contact or any form of non-verbal communication with him/her at any stage of the process, nor informed him/her of the outcome and that he/she was free to leave. Such judges frequently referred to the accused indirectly as 'he' or 'she' and tended to look at the young person but address themselves to their solicitor. It was frequently observed that when a judge addressed a young person directly, the intervention was prompted by a request for information, rather than an interest in engaging or communicating directly with them. Thus, in some cases, the judge directed questions about the young person's age or details of their background or present circumstances to the solicitor first, only asking the young person him/herself when the solicitor was not in a position to provide the information sought. In many cases, it was in these circumstances only that the questions or dialogue was directed at the young person personally notwithstanding that she/he was frequently in a better position to respond. In other cases, the judge refused to hear the young person directly notwithstanding their desire and willingness to be involved. More than one judge was observed telling a young person to be quiet, to put their hand down, or to let their solicitor do the talking on their behalf (Cases 297 and 612).

The marginalisation of the young person, which results from this approach, was clearly visible throughout this research from the vacant stares of many young defendants (eg Cases 90, 97, 648, 650, 721, 791). This failure to acknowledge the presence of the young person and to involve them, even to a minimum extent, in the proceedings, thus served to promote the isolation of the young person from the court process. Their treatment, whereby the judge and others talked around and about, rather than to them, appeared to reinforce the irrelevance of the process to young person many of whom left the court without any understanding of what had just happened in their case. Taken together, poor acoustics in the court, the physical distance between the parties and the failure on the part of the judge to actively engage with the young person meant that frequently, the young person was isolated completely from the proceedings.

SHOWING COURTESY TO YOUNG PEOPLE

While many judges did not actively engage young people, some judges showed courtesy and respect for young people by acknowledging their presence and keeping them informed as to

what was happening with their case. Such judges were observed speaking directly to young people on their arrival in the courtroom and, while they did not address them directly during the proceedings, they frequently thanked them as they left the court. Occasionally, judges were observed explaining what was happening to the young person. For example, one judge was observed telling the child that he/she was going to come back to his/her case later before letting it stand (Case 165). The presence of parents, frequently ignored by the court, was also noted by such judges who thanked them for coming to court.

In a worrying number of cases, however, communication observed between the young person and the judge was considered to be highly inappropriate. Some judges raised their voices when speaking to young people and used sarcasm and rhetorical questions when addressing them. For example, judges were observed ordering young people about the courtroom, telling them to 'come up here', 'stand up straight', 'take the gum out of your mouth' or 'take off your baseball hat'. In some cases, this extended to family members also.

More seriously, a small number of judges were observed using threatening language. One judge, for example, told a young person that 'She won't see prison this time but she'll see prison some time' (Case 198). The same judge warned another young person: 'any word I hear about you on the streets you will most certainly go to prison' (Case 246) having convicted him/her of public order offences. And on another day, warned a young person: 'If I see you again, it won't be nice' (Case 336). Other judges used rhetorical questions asking the young person (or their solicitor or guardian), for example, what they thought they were doing or whether they ever intended to cop on.

Some young people appeared to be reprimanded by the judge quite unnecessarily. For example, where a young person arrived late into court the judge demanded an explanation ordering him to 'come up here, stand up straight' and 'tell the court why he was late'. The young person explained and apologised, red faced, before returning to his seat. In another case, a young girl was shouted at by the judge when she explained that she had gone to the wrong court. She was then asked where her mother was and when it appeared she was not in court, the judge issued a benchwarrant for her mother's arrest. This was later cancelled when her Solicitor explained that her mother's serious illness prevented her from attending court.

AGE APPROPRIATE LANGUAGE

Direct and meaningful communication between young people and the Children's Court judge is arguably required by the Children Act as well as international standards whose requirement of effective participation must presuppose that the young person understands and is part of the court process. A number of important issues arise in this context. First, it is clear from this and other research that court procedures which are not adapted to take into account the age and development of young people do not meet these international standards. In the vast majority of cases observed during this research, no attempt was made to use age appropriate

language, to refrain from legal jargon or terminology or to explain the proceedings or their outcome to young people. This was most obvious with regard to electing trial in the Circuit Court, and with respect to bail conditions.

Electing Trial in the Circuit Court

The question most frequently posed to offenders - whether they wished to be tried by jury in the Circuit Criminal Court or judge only in the Children's Court - was not adapted in any way to make it comprehensible to children notwithstanding that some of them may have a learning or intellectual disability. Certain young people - generally, it appeared, those who had heard the question before or were prepared for it - knew to reply 'this court' or 'here'. For others, however, the question was greeted with a confused look, a request to the judge to repeat it, and/or a searching look to his/her solicitor or guardian for assistance. While this question is relatively straightforward and largely without controversy - no young person in this study requested trial by jury - the failure to adapt procedures and the language used in the Children's Court is a more widespread and serious problem. Thus, in many cases discussion of the young person's legal or practical situation was not only out of earshot of the young person but was also clearly beyond their comprehension. Moreover, the fact that many young people were observed leaving the court without any clear understanding of what had happened in their case demonstrates the failure to make the proceedings accessible to them. This is important not just as a matter of legal requirement - those on trial must be able to understand the sense of what has happened in their case - but is also a factor which is central to the effectiveness of the legal process in criminal cases involving young people.

Explaining Bail Conditions

A further problem, related to the factor of delay, is caused by the fact that the risk of re-offending in this time is high for many young people, particularly those without family, community or state support. This is compounded by the fact that many young people may not understand their bail conditions fully or appreciate the consequences of breaching them or committing further offences while on bail. Nor can they always be said to have the capacity or the maturity to understand the seriousness of their situation and to take corrective action unsupported.

It is clear during this research that many young people did not understand the bail conditions imposed by the judge. For example, on one occasion a young person was asked by the judge whether he accepted that he was in breach of his bail conditions one of which was to stay away from a certain area. The young person replied that he was 'just hanging around' and 'was only walking through', suggesting a clear lack of understanding of this particular condition of his/her bail (Case 323).

In the absence of age appropriate explanations of the terms of a bail or probation bond, very few judges were observed undertaking to explain these conditions to young people: others did so but without using language that they understood. This is notwithstanding the very serious implications for young people who break these conditions. This was clearly illustrated in a number of cases where the judge, having listed out the bail conditions to the court (frequently not directed at the young person directly) asked the young person to repeat the terms of the bail or probation bond to the court. In no case where a reply was given - young people asked frequently could give no answer - could the young person be said to provide an explanation which reassured the court as to his/her understanding of conditions being imposed. Thus, for example, some young people repeated that they had a 9 am to 9 pm curfew but, when asked what that meant, could not explain its implications or consequences. This is a very serious issue not only given that compliance with bail conditions is perceived to be poor,¹⁴ but also because it strongly suggests that young people currently fail to understand the court process with knock-on effects for its effectiveness and legitimacy.

ENGAGING WITH YOUNG PEOPLE

It is clear from this research that a small number of judges already explain court proceedings directly to young people and their families using appropriate and accessible language. One particular judge observed during this research welcomed every young person and his/her guardian to his/her court by name, involved them directly in the proceedings throughout the process and explained the outcome - including any bail conditions or conditions attaching to the probation bond - in age appropriate language. At the conclusion of the proceedings, he/she always took a few moments to make sure the young person understood the process and what was to happen next, before wishing them well and/or warning them as to the consequences of future offending or non-compliance with bail conditions. The remarkable nature of this approach was apparent from the response of young people who at first appeared surprised to be addressed by the judge at all, but who gradually adjusted to the direct nature of the communication and began to respond in a positive manner. Other judges were observed taking time to explain the conditions of their bail or probation bond to young people and articulated clearly to young people what to do if they had difficulties with these conditions or making appointments with the Probation and Welfare Service.

In addition to securing the legal right of the young person to understand and participate in the process, it is clear from this and other research that an approach which both includes and engages the young person directly in the process has far greater potential to impact on the young person's behaviour. This engagement of young people and their families in the court

14. See for example the AGSI submission to the Department of Justice, Equality and Law Reform, 24th December 2004.

process also contributes to the mutual respect and goodwill which it is essential to generate between the court and the young people and their families if the potential of the court process to alter the path of offending behaviour is to be maximised. It is similarly vital to the court's role as a moral gauge and a key point of communication within the criminal justice system that the judge treats young people and their families as worthy of both his/her respect and attention.

THE COURT AS INDEPENDENT ARBITER

In the absence of any other independent advocacy or support system within the justice system, it is important that channels of communication between young people and the court are open so that young people feel able to bring complaints and concerns regarding their welfare to the attention of an impartial person with the power and duty to respond. While the judge is clearly not in a position to resolve the grievances of young people against the police or their solicitor, it is important that they show an impartial willingness to listen to such complaints and advise young people as to what they might do in response. It is also important for judges to note where trends appear in such complaints. For example, during this research several young people complained about the hostile and on some occasions abusive experience they had had in St Patrick's Institution. Young people from outside of Dublin were frequently observed pleading with the judge in Limerick and Cork Children's Courts not to be returned to the unit and some alleged they had been assaulted there.

REASONS FOR DECISION ON SENTENCING

In the rare cases where the judge was involved in the determination of sentence, the reasons given for the sentence chosen were not always clearly articulated or explained to the young person. The reason for the judge's choice - say between a probation bond and a custodial sentence - was rarely explained in terms other than that the judge had 'had enough' or there was no other alternative. Again, it is clear that such approaches do nothing to maximise the effectiveness of the process to challenge the offending behaviour of young people. It may also be argued that this is in breach of Article 6 of the European Convention on Human Rights, which incorporates the right to reasons for decisions.

It is clear from this research that the potential of the Children's Court to check the offending behaviour of young people is not being maximised. The failure to communicate with young people and to engage them in the process not only marginalises young people from the process, but also allows them to remain detached from the court experience. This isolation means that they are not confronted with the seriousness of their situation, particularly the consequences of their offending, and reduces the impact of the court appearance on their behaviour.

RECOMMENDATIONS

It is vital that measures be taken to address this situation without delay. In particular:

- Judges of the Children's Court need training to ensure that the rights of young people to participate in criminal proceedings are vindicated. In particular, they should receive training on ways to engage young people and the development of skills to this end. As a minimum, young people should be treated with courtesy and kept informed throughout the proceedings of any decisions made in their case.
- Specific attention should be given to developing a range of age appropriate explanations to ensure that young people understand the conditions of their bail or probation bonds, the consequences of breaching them and the reasons for any sanction imposed or adjournment ordered. Such formulations should take into account the young person's age and potentially limited development.

CONCLUSIONS AND RECOMMENDATIONS

This Chapter identifies a number of serious problems with the operation of the Children's Court. Poor case management, a high rate of adjournments leading to delay and inconsistencies in approach all contribute to a court system that is failing to meet its potential to check the offending behaviour of young people. This is compounded by the fact that few judges communicate directly with or engage young people before the court leaving them marginalised from and at best, largely unaffected by the process. While these problems are very serious and must be considered endemic within the Children's Court system, it is submitted that the implementation of the following recommendations could yield positive benefits within a reasonable time with the expenditure of only modest resources:

- A panel of Children's Court judges, equipped with the aptitude, necessary skills and training to undertake what is clearly highly specialised work should be put in place as a matter of urgency. This would introduce consistency to the operation of the Children's Court, ensure the streamlining of best practice and the maintenance of the highest standards in this area. A dedicated panel would also allow experiences, concerns and approaches to be shared among judges of the Children's Court and would contribute to the establishment of a broad consensus regarding how the Court should best operate in line with national and international standards and fill its full potential as a mechanism of responding efficiently to a young person's offending behaviour.

- Judicial training in the area of youth justice, children's rights and other areas including communication with young people and the use of age appropriate language, should be carried out as a matter of priority. This is directly related to the need to maximise the potential of the court process to check the offending behaviour of young people.
- It is important also to develop practical assistance for judges on the exercise of their discretion in the Children's Court. Guidance in this area is available from the Judicial Studies Board of England and Wales' Youth Court Bench Book whose objective is to assist judges in their duties, to foster consistency of approach and provide a ready reference for practice.¹⁵ The Bench Book sets out best practice in relation to a whole range of issues such as case management, including listing and the granting of adjournments (identified as crucial to the reduction of offending), taking a structured approach to sentencing (including weighing up the seriousness of the offence and the risk of re-offending), and providing detailed, age-appropriate wording on pronouncements (designed to enhance the effectiveness of communication in the court). It is a valuable practice guide for judges and magistrates working in the Youth Court, and it also represents an agreed and consistent approach, based on best practice and consistent with the objectives of youth justice, to the hearing of criminal charges against children.
- It is strongly recommended that a forum be established in which all the judges of the Children's Court can exchange views and experiences, and establish consensus with regard to the practices of case management, sentencing and communicating with young people in the Children's Court. This is essential to maximise the effectiveness of the Children's Court to challenge and reduce offending behaviour.

15. This can be found on the website of the Judicial Studies Board of England and Wales at www.jsb.co.uk.

INTRODUCTION

Young people, like adults, have a right to legal representation and to adequate time and facilities for the preparation of their defence. Indeed, the vulnerability and special circumstances of young people in conflict with the law, combined with their lack of maturity and familiarity with the legal process, make the provision of timely and quality legal assistance particularly important. In many ways, the legal representative provides the vital link between the criminal process and the young defendant. Not only does the solicitor convey the young person's instructions and wishes to the court, he/she is also there to explain the process to the young person and his/her parents, while being central to whether the young person undertakes and participates in the legal process. For these reasons, the solicitor is crucial in influencing both the process and the outcome of the criminal proceedings, and in vindicating the rights of the young person in the criminal process. This Chapter evaluates this role including the extent to which young people enjoy their right to legal representation.

THE ROLE OF THE SOLICITOR IN THE CHILDREN'S COURT

While the judge has ultimate responsibility for ensuring that young people enjoy their right to a fair trial, the practical task of securing the rights to the young person in the Children's Court falls to his/her legal representative. In particular, the solicitor has a key function with respect to guaranteeing to the young person his/her right to be heard and to participate and understand the criminal process. To ensure effective protection of this right, the solicitor must prepare the young person for court by explaining the process to him/her in advance and guiding him/her through it in both practical and legal terms. As experienced legal representatives intimately familiar with the court and criminal processes, as well as the approach of each individual judge, it falls to him/her to ensure that the young person is adequately prepared for the court experience and understands its seriousness and likely consequences. This is vital in order to maximise the young person's comprehension of the process as well as to ensure that the young person behaves appropriately in court. Thus, young people should be advised by their legal advisors of the importance of their behaviour and demeanour in court, including how to address the judge and the prosecuting Garda during proceedings.

Representing young people accused of breaking the criminal law is a challenging job. In addition to their lack of maturity and development, such young people may lead chaotic lives, have addiction, developmental and other personal problems, may lack family support including permanent accommodation, and suffer from the negative influence of peer and other pressure. For many young people, these factors combine in a way that has a seriously detrimental impact on their behaviour making them immature, unreliable and demanding clients. Taking instructions from such young people - sometimes in the face of conflicting instructions from a guardian - and representing them in court thus requires specialist communication and other skills. In addition, the emergence of youth justice and child law as specialised disciplines within the criminal law means that those representing children must also have specialist legal knowledge to represent their clients effectively. The need for continuing education is compounded by the fact that the Children Act 2001 is a lengthy and detailed piece of legislation, which is being implemented on a phased basis.

TRAINING AND SPECIALISATION

INTERNATIONAL STANDARDS

Lawyers working in the area of youth justice need specialist training; this is confirmed by international standards. Rule 22 of the Beijing Rules recognises the need for all personnel in the system to receive adequate training while the Committee on the Rights of the Child has singled out lawyers as one of several professional groups which need systematic and on-going training. In particular, it has recommended that the Convention on the Rights of the Child be incorporated into training curricula and that the Convention's basic values be reflected in relevant codes of conduct.¹

THE IRISH LEGAL PROFESSION

Despite the particular skills and knowledge which representing young people in criminal cases requires, Irish lawyers are not required to have any particular qualifications, training or skills to undertake this work. Unlike other jurisdictions,² solicitors do not specialise other than through experience and there is no children's panel to which they are either appointed, or

1. See further Chapter One.

2. For example, the Law Society of England and Wales operates an accreditation scheme for solicitors wishing to join the children's panel to represent children in public law cases. These solicitors must complete a range of stringent tests, examinations, interviews and role-play assessments and have their fitness and suitability to be children panel members investigated and confirmed by the Law Society. The criteria used by the accrediting panel can be downloaded at www.lawsociety.org.uk. The Scottish Law Society also has an accreditation solicitor scheme for those working in the area of child law. For details see www.lawsocot.org.uk. Specialist children's legal services also operate within the framework of legal aid in other jurisdictions such as Australia. See for example the service in New South Wales at www.legalaid.nsw.gov.au.

nominate themselves. They are not required to undergo police vetting; nor do they have to be accredited as suitably skilled or appropriately qualified to represent children.

It is apparent that most solicitors who represent young people in the Children's Court do so as part of their criminal legal aid work. While an element of specialisation has clearly been built up particularly within the Dublin Children's Court, solicitors in the regional courts of Waterford, Cork and Limerick represent both children and adults. No special training is provided by the Law Society or the Bar Council on the special skills required to defend young people in criminal cases.

QUALITY OF LEGAL ADVOCACY IN THE CHILDREN'S COURT

While many of the solicitors practising in the Children's Court carry out their work efficiently and with due respect for the rights and the dignity of their young clients, widely varying standards of advocacy were observed during the course of this research. The quality of legal advocacy observed in the Children's Court can be divided into three categories - legal representatives who demonstrated the highest levels of advocacy, those who carried out their work efficiently but without particular reference or regard for their client's age and special circumstances, and those who could not be said to offer an adequate level of representation or advocacy to young people.

HIGH STANDARDS OF LEGAL ADVOCACY

This research observed that several solicitors, many of whom work in the Dublin Children's Court, offer their clients the highest standards of legal representation. Meticulously familiar with the young person's background and circumstances, well informed as to their client's instructions regarding the charge before the Court and with a clear sense of their client's right to independent advocacy, these solicitors appeared to demonstrate the highest levels of skill in representing young people. Combined with a detailed knowledge of the relevant law, these solicitors emerged during the research as the standard bearers against which legal practitioners in other Courts were measured.

The impact of the quality of legal advocacy on the proceedings was clear during this research. For example, solicitors' familiarity with their client's circumstances meant that they were well placed to explain the situation to the judge and to answer directly the judge's questions about the child's background, home situation or general activities. It allowed the solicitor to offer a detailed and genuine explanation for the child's behaviour, and to make meaningful mitigating submissions to the judge on the young person's behalf, with respect to bail and sentencing issues. Thus, one solicitor was able to explain to the judge that her client was 'a bright young man in need of training' and that he had spent one month in St Patrick's Institution and

got 'a rude awakening' there. As a consequence, the judge noted that he/she was considering a suspended sentence for the young person and ordered a Probation and Welfare Report (Case 479). On several occasions, it was clear that, but for the solicitor's positive intervention, the judge would have sent the young person to custody. This occurred in one case, for example, where the young person was in court for failure to attend on a previous occasion. The Garda sought detention on remand given his/her 'history of non-appearance'. However, his/her solicitor interjected that the young person had not been in trouble since these incidents (although he/she admitted that the Probation Report was poor) and that he had not picked up any new charges. Consequently, the judge granted a short remand on bail and while warning the young person that he/she would put him in custody if he broke one bail condition, admitted that he/she was only granting bail 'because your solicitor is asking' (Case 494).

Such solicitors were observed consistently advocating on behalf of their clients, with whom they clearly had a good relationship, in relation to bail/remand, issuing of benchwarrants, bail conditions, type of sentence being imposed and the length of the custodial sanction. They were frequently observed challenging the judge's observations and conclusions about their client, and generally representing their position to the court in as favourable terms as possible. Young people, particularly in the Dublin Children's Court, appeared in no doubt that this solicitor was *their* legal representative and was on their side.

Further examples of good advocacy were seen in the extent to which young people were prepared for and guided through the court process. During this research, some solicitors were observed advising their clients and the accompanying guardian as to where to sit. Another approach, observed in the Dublin Children's Court, was for the solicitor to check the date of any adjournment with the young person and his/her guardian before having it set by the court. While routine, this simple practice demonstrated respect for the accused and his/her guardian and reflected their centrality to the proceedings. In contrast, in other Courts, the availability of the solicitor and the prosecuting Garda was noted and the date of the next appearance was merely notified to the young person and his/her guardian as they left the courtroom.

POOR STANDARDS OF LEGAL ADVOCACY

In contrast, this research also observed solicitors who were poorly prepared and demonstrated an inadequate knowledge of the young person's background and circumstances. In the worst cases, solicitors' complete lack of respect for their clients was manifest. A small number of solicitors appeared to have neither interest in nor aptitude for representing children.

In some cases observed, the problem appeared to be one of inadequate consultation, demonstrated by a solicitor's lack of familiarity with his/her client's circumstances and background and/or an ignorance of his/her wishes and instructions. Thus, on one occasion a solicitor was

overheard asking the Garda at the door of the court who he was supposed to be representing (Case 582). On another, a solicitor frequently called his/her client the wrong name when putting questions to her under oath (Case 734). More commonly, however, solicitors were observed unable to answer the judge's questions regarding the young person's age (Case 598), whether they attended school (Cases 278 and 573) and, in some cases, why they were in custody. Throughout the research, solicitors were observed consulting with their clients within the earshot of members of the public, on the steps of the courthouse or in the waiting area. In the worst cases, solicitors were observed taking their clients instructions while standing in the middle of the courtroom in the minutes before the judge began hearing the case.

On other occasions, the solicitor admitted to the court that he/she had not yet had an opportunity to consult with his/her client and thus sought an adjournment for this purpose (Case 196 and Case 737). While this approach clearly reflects a greater respect for the solicitor's duty to adequately represent his/her client than the solicitor who proceeds to represent his/her client unprepared, adjournments in such situations are nonetheless inappropriate insofar as they contribute to the delay in resolving the case against the young person in an expeditious manner. Yet, this happened in several of the cases observed such as where one solicitor told the judge 'from what I can gather ... having spoken to him outside this morning ... he seems willing to address his problems' (Case 130).

In other cases, the manner in which some solicitors were observed treating their clients was extremely worrying. For example, some legal representatives showed a lack of basic respect for their client - ordering them in a forceful manner to stand up straight or address the judge in a particular way. In other cases, the solicitor was observed adopting an unnecessarily antagonistic or confrontational approach to his/her client. On one occasion, for example, a solicitor abruptly corrected his/her client who referred to 'theft' when giving evidence under oath with the reminder that the word was 'larceny' (Case 12). Far from putting their client at ease when providing testimony in his/her own case, this solicitor undoubtedly added to his/her client's anxiety.

More frequently, the solicitor was observed correcting the manner of the young person's response to the judge's questions or otherwise ordering him/her about in an extremely curt and sometimes rude fashion ('say yes judge', 'stand up straight', 'go outside I will speak to you later' etc (Cases 417-418, 548). In other cases, the solicitor was observed threatening their client in the courtroom. For example, on one occasion, a solicitor said to a young person with raised voice 'did you hear the judge, one more chance and then it's jail' (Case 114). The lack of respect shown by a small number of solicitors to their clients was a matter of serious concern. So too was their failure to object to the imposition of a custodial sentence on conviction or detention on remand (Case 108 and 104). This suggests that some solicitors are either confused or ambivalent about their role as independent advocate.

On occasion, a young person's guardian was observed advocating on his/her behalf more vociferously than the child's legal representative. For example, in one case, the judge expressed his intention to sentence the young person to a custodial sentence but, following the father's persistent pleading that this was not in his interests, the judge relented and gave him another opportunity. The solicitor was silent during this lengthy dialogue between the judge and the young person's guardian (Case 104).

The confusion of the role of solicitor, whose function it is to present his/her client's instructions to the court and to advocate on his/her client's behalf, with the role of a guardian (such as a guardian *ad litem*), whose function is to present the court with what is in the child's best interests, undermines the value of the client-solicitor relationship and damages the trust on which that relationship must be based. This can arguably only be justified by considerations pertaining to the child's safety and welfare. Thus, in one case in the Dublin Children's Court, for example, a solicitor asked to address the court before his/her client was brought to the Court from the custody room in order to alert the court to the conflict that existed between the young person's wishes- what he/she was about present to the court in the form of his/her client's instructions - and those of his/her guardian. While of dubious ethical merit, it is at least possible to accept that this unusual step was supported by the fact that to do otherwise may place the young person at risk. However, it is difficult to envisage other circumstances that would justify such a breach of solicitor/client trust.

MINIMUM STANDARDS OF ADVOCACY

In between these two extremes are solicitors who carry out their work efficiently, if without particular regard for their young client's special circumstances. Such solicitors were seen to be well prepared, to have taken their client's instructions and to present these to the court in an impartial and objective manner. On occasion, they were also observed showing their client where to stand or sit in the courtroom and before going forward to be questioned under oath, advising him/her to direct his/her answers to the judge or to answer any questions the judge may have. However, while such solicitors could be said to offer an adequate level of advocacy to their child clients they did not appear to have any specialist knowledge or understanding of the particular issues involved in representing children in criminal cases. For example, some showed little or no awareness of the right of the child to participate in the process and failed to involve the young person in the proceedings when an appropriate opportunity arose. This marginalisation of the young person from the process is compounded in certain courts where poor acoustics make the solicitors' submissions to the judge inaudible. While such solicitors were observed presenting their client's circumstances to the court, they did not appear willing to intervene in defence or support of their client where the judge threatened to detain the young person.

ADVOCACY AND LEGAL REPRESENTATION

Some solicitors observed appeared to struggle to act as independent legal representatives for their clients and instead adopted a paternalistic attitude. In particular, they appeared to confuse what they believed to be in their client's interests with their role as his/her legal representative before the Court. An extreme illustration of this was witnessed on more than one occasion when the solicitor recommended a period of detention for his/her client, or alternatively, agreed with the judge's proposal that it was in the young person's interests to spend some time (usually on remand) in a custodial environment. For example, on one occasion, a solicitor noted that 'a period of detention will steady him up no doubt' (Case 434). On another day, a solicitor recommended the detention of his 12 year old client who had attention deficit disorder (Case 224) while on a third occasion, a solicitor recommended that the court impose a two year sentence on the young person 'so that there might be some hope for him by the time he comes out of prison'. The judge disagreed, however, and imposed a ten month custodial sentence (Case 328).

SPECIALISATION

Despite the demands of representing children in criminal cases, few of the solicitors observed undertaking this work appeared to do so as a matter of chosen or trained specialisation. For the vast majority of solicitors practising in Limerick, Cork and Waterford, their work comprises legal aid cases which involve both adult and child clients. For these solicitors, the fact that their client is under 18 years is frequently incidental, rather than a matter of choice or design.

By contrast, many solicitors in the Dublin Children's Court represent children exclusively. This has a number of consequences. First, it means that a natural specialisation has developed among these solicitors who work in the Children's Court every day. The experience and expertise collected on the job is augmented by the support of their colleagues who work alongside them in the Court on a permanent basis. Second, the fact that the same solicitors work daily in the Children's Court adds a strong element of consistency to the operation of the Court. Third, from a practical perspective, the fact that these solicitors work exclusively in the Children's Court maximises their availability both on the day and for the purpose of adjournments.

These practical considerations are influential in the smooth running of the Court as well, it has been observed, as the quality of representation enjoyed by young defendants. In contrast, a particular problem exists in Cork due to the fact that the District Court sits at the same time as the Children's Court meaning that solicitors frequently attempt to fulfil commitments in both courts simultaneously. This leads to delays in cases being heard in the Children's Court where the judge is asked to let a case stand awaiting the solicitor's return from the court

opposite. For the young person, this means having his/her case called, but being sent out of the court again only to be recalled when his/her solicitor is available (Case 186). Notwithstanding the practice of the judge to call all cases listed according to solicitor to avoid such delays, they still occur. It is also of concern that the workload of the solicitor - and not any considerations pertaining to the young person who may be in custody or waiting a long period of time for example - is determining the order of the court's list.

RECOMMENDATION

- It is recommended that solicitors receive training on advocacy and how to balance the sometimes conflicting challenges of representing young people. Consideration should also be given to appointing a guardian *ad litem* to young people who would benefit from additional support before the Court.

CONCLUSIONS AND RECOMMENDATIONS

It is apparent from this research that not every young person is receiving quality legal representation and few solicitors are trained or specialised in the area of youth justice. To address these problems, the following recommendations are proposed:

- Solicitors representing children should undergo police vetting and professional education training as a matter of urgency. This should include training on the relevant criminal law - the Children Act 2001 in particular - and the principles and standards of youth justice. Those representing children in criminal cases should also be required to undertake training incorporating child advocacy and communication and should be offered further education in the areas of social policy, child psychology and criminology.
- In order to build up expertise within the profession, it is important that measures be adopted by the Law Society and Bar Council with a view to developing a specialist panel of lawyers from which those representing young people in criminal cases would then be drawn. Only these measures will guarantee that the requisite high standards of advocacy and legal representation are secured to all young people in criminal cases.

INTRODUCTION

An Garda Síochána play an important and influential role in the Irish youth justice system. In addition to their work in the Garda Diversion Programme, Gardaí investigate incidents of offending by young people and where appropriate bring charges against them. In the Children's Court, they undertake the role of prosecutor and are thus largely responsible for the conduct of proceedings over which they have considerable influence. They also monitor security in the courtroom. The objective of this Chapter, therefore, is to consider how the role of the Gardaí may be adapted to enhance the effectiveness of the Children's Court.

INTERNATIONAL STANDARDS

International standards concerning the role of the police in the court process highlight the need for specialisation within the police. Other relevant standards address the behaviour of court personnel and set out the rights of young people before, during and after the court process.

SPECIALISATION WITHIN THE POLICE

Rule 12 of the Beijing Rules provides that in order to best fulfil their functions, police officers who deal with young people or who are primarily engaged in the prevention of youth crime should be specially instructed and trained. Given that the police are the young person's first point of contact with the youth justice system it is important that they act in an informed and appropriate manner. Rule 1.6 recommends that in large cities, special police units should be established to improve and sustain the competence of police personnel, to improve the prevention and control of youth crime and the treatment of young offenders.

Rule 6 of the Beijing Rules highlights the need to use appropriate discretion 'at all stages of proceedings and at the different levels of juvenile justice administration, including investigation, prosecution, adjudication and the follow-up of dispositions'. The Commentary to the Rules recognises the need to ensure accountability of any such discretion and requires that those who exercise it be 'specially qualified or trained to exercise it judiciously and in accordance with their functions and mandates'. Professional qualifications and expert training are specifically mentioned in this context.

POLICE IN COURT

International standards require that efforts be made to reduce the visible police presence in the courtroom by limiting the number of uniformed police officers to those required to maintain security. This is endorsed by the Practice Direction issued by the English Lord Chancellor in response to the judgments of the European Court of Human Rights in *T and V* against the UK. This provides that any person responsible for the security of a young person in custody should not be in uniform, and requires that there be no recognisable police presence in the courtroom save for good reason.

TREATMENT OF YOUNG PEOPLE

The Beijing Rules make specific provision for the rights of young people during the processes of investigation and prosecution. In particular, Rule 10.3 requires that contacts between the police and young offenders be managed in such a way as to respect the legal status of the juvenile, promote his/her well-being and avoid harm to him/her. This is especially important in initial contact between young people and the police, which has the potential to profoundly influence the young person's attitude towards the State and society. Given that the success of any further intervention is largely dependent on such initial contacts, international standards propose that compassion and kind firmness are important in these situations.

THE CHILDREN ACT 2001

The principle that police have a duty to respect young people and their rights is endorsed by the Children Act 2001. Section 55 of the Act requires that in their investigation of an offence committed by a child, members of An Garda Síochána must act with due respect for the personal rights of the children and their dignity as human persons, for their vulnerability owing to their age and level of maturity and for the special needs of any child who may have a physical or mental disability. While this is a welcome statement of principle, it is regrettable that the duty does not extend to all relations between the police and young people in conflict with the law (it appears to be limited to their investigations work as opposed to their work in the community or elsewhere) and that there is no reference to the need to comply with international standards in the area. It is unfortunate, also, that there is no accompanying duty on members of An Garda Síochána to undergo training regarding the fulfilment of this mandatory duty.¹

1. As McDermott & Robinson highlight, this contrasts with s 46(1) of the Act which places a mandatory duty on the Commissioner to ensure that members of the force who act as facilitators in the Diversion Programme receive proper training for their job. See above, p 82.

The principal role of An Garda Síochána in the Children's Court is to prosecute charges against young people. Different members undertake this in the Children's Courts across the country. For example, in the Dublin Children's Court, cases are prosecuted by the member with responsibility for the charge being brought. In the regional courts of Limerick, Cork and Waterford, however, the prosecution in every case is represented by a Garda Inspector: the same Garda thus acts for the prosecution in every case. This has a significant impact on the operation of the court as the following sections explain.

A SINGLE PROSECUTOR

Practice in the regional courts is to have the same member of An Garda Síochána (normally a member of the rank of Inspector) prosecute all cases before the Children's Court. In this situation, individual Gardaí with involvement in the case must also be present to give evidence to the court of arrest, charge and caution, along with any other details, such as the extent of compliance with bail conditions. This has a number of implications for the operation of the Court: first, the fact that a single member of An Garda Síochána presents the case for the prosecution helps to ensure consistency and stability in the process. This member also retains an overview of the process, as well as of individual cases. Second, this approach reduces the bureaucracy involved in the prosecution of individual cases because, once details of arrest, charge and caution have been provided, the prosecuting Inspector is in a position to present all relevant information to the court thereby reducing the number of Gardaí required to attend Court. This also makes it easier to adjourn or remand cases to a later date as the availability of the Garda is not a relevant factor.

At the same time, it was apparent during this research that there is value in having a charge prosecuted by individual Gardaí with direct experience of the case and its circumstances. In particular, the Inspector's lack of familiarity with the facts of a case may cause delay in the proceedings. For example, on one rare occasion, a young person was charged with breaking the window of an off-licence to gain access. When the judge asked what time this occurred, the Inspector did not know but offered to request the relevant Garda to attend court to explain further. The judge complained that this was delaying the work of the Court unnecessarily (Cases 578 and 579).

INDIVIDUAL PROSECUTORS

The situation in the Dublin Children's Court is that separate Gardaí prosecute each individual case. While this has the advantage that the Garda prosecuting will have all the relevant information to hand, it was observed to cause a number of problems.

Presence of Gardaí in Court

First, this approach means that a large number of Gardaí are required to attend the Children's Court on a given day creating a substantial police presence in the Courthouse. Second, where a young person accumulates several charge sheets, confusion can arise as to which facts have been read in. For example, particular problems may arise where the relevant Garda, whose facts have not been read in, is not in court; this can cause delays and complications in the working of the Court requiring the proceedings to be adjourned to sort out the charge sheets (Cases 747 and 748).

Inexperienced Gardaí

It is clear from observing the Children's Court that the less experienced members of An Garda Síochána may make mistakes or otherwise test the patience of the judge as they familiarise themselves with their prosecuting role in the Children's Court. During this research, Gardaí had to be reminded to take the oath, were ordered to refrain from referring to their notebook when giving evidence and, more seriously, made mistakes in the prosecution of cases. The latter resulted, on different occasions, in a young person's acquittal on a charge, in the unnecessary attendance of witnesses and in the adjournment of the Court to seek further information. In several cases, it was observed that the prosecuting Gardaí were unable to present the judge with evidence of the amount of injury or damage caused by the young person, which information is necessary to enable the judge to decide whether or not to accept jurisdiction. These cases had to be adjourned to enable that information to be brought to the Court.

Errors were also observed to result in failed prosecution. For example, in one case concerning criminal damage to a car, the prosecuting Garda called the wrong witness resulting in the charge being dismissed (Case 732). On another occasion, a young person was prosecuted under the wrong section of the relevant statute meaning that the charge had to be dismissed by the judge, despite the evidence of two witnesses (Case 857).

There is clearly no guarantee that these problems would not arise were the case being prosecuted by more experienced Gardaí. However, it is apparent that the court experience acquired by a prosecuting Inspector over a period of years minimises the chance for such mistakes to be made.

A further problem that arises with regard to assigning the prosecutorial role to individual Gardaí is the difficulty caused when adjourning or remanding cases. When this occurs the availability of the Garda may emerge as a problem due to annual leave, training courses and other commitments. While other colleagues can stand in on such occasions, this difficulty may be avoided by the presence of a single Garda prosecuting all cases.

Recommendations

- Serious consideration should be given to using a single prosecuting Inspector in all Children's Courts. Such an approach would be fully in line with the development of specialisation, advocated by international standards, and would enable this aspect of the court's operation to be streamlined.

CONFUSION

Confusion over charge sheets appeared, during the course of this research, to be a regular feature of the current youth justice system. Missing charge sheets, or charge sheets which were missing details or incorrectly filled out, were problems observed in all Children's Courts, as was general confusion as to whether particular charges had been 'read in' or not. While the reason for mix-ups was not always clear, (and is clearly a system failure rather than the fault of the Gardaí alone) it appeared to be compounded by the large number of Gardaí involved in individual cases.

Regardless of the cause of such poor administration, judges' efforts to sort out these problems was noted to lead to delays in the court's proceedings. Many times during the course of this research, court personnel were observed having difficulty sorting out the file of a young person and determining the answers to crucial questions concerning the charge against the young person, whether he/she had been convicted and what sentence had been imposed (Cases 76, 102, 144, 432, 435, 812, 875). The following cases illustrate some specific problems observed:

- The relevant charge sheet could not be found and there appeared to have been a mix-up between the Garda, the Solicitor and the judge (Cases 195 and 199);
- A mistake was made regarding the execution of a warrant in respect of a 16 year old boy whereby the wrong person had been arrested earlier in the day (Case 581);
- A stray summons was found half an hour after the young person left the Court. He had to be called back for the charge to be read in (Cases 434 and 444);
- The young person's father informed the Court that he believed the matter had already been disposed of insofar as his son (in respect of whom a benchwarrant was issued earlier in the day) had already served his two year sentence in Trinity House. The judge sent a Garda to check the situation and it emerged that the father was right (Case 249);

- Cases were frequently let stand to enable confusion over charge sheets to be sorted out. On one occasion, there was confusion as to why a case has been re-entered and the matter had to be let stand for over an hour to allow the situation to be clarified (Case 835);
- In some cases, it was not clear to the Court what was happening with a particular case or charge. For example, on one occasion in the Dublin Children's Court, the young person, whose attendance had been excused, faced a variety of charges but it was not clear to anyone in court what had happened before. The case was let stand for two hours and then, finally, adjourned for two months (Case 741);
- In many cases, there was apparent confusion over which facts had been read in. In one case, for example, this was complicated by the fact that there was no Garda in court for some of the sheets for which facts had been read in, and so they were read in by a colleague. The case had to be let stand for over an hour to allow the charge sheets to be sorted out (Cases 747 and 748).

GARDA DIVERSION PROGRAMME

Young people admitted to the Garda Diversion Programme - placed on a statutory basis by Part 4 of the Children Act 2001 - agree to be cautioned in lieu of prosecution. They should thus not come before the courts and should they be prosecuted for offences subsequently committed, the Children's Court is not entitled to hear details of their involvement with the Diversion Programme.²

During this research, however, confusion arose in the Children's Court with regard to the potential involvement of the young person in the Garda Diversion Programme. For example, on one occasion, a serious mix up occurred which the judge, the prosecuting Inspector and the Solicitor tried to sort out in the presence of the 16 year old boy concerned. It appeared that the young person was diverted to the Garda Programme but an error was made and he was prosecuted instead. No-one appeared to know whether the charge could be removed from the computer system. In several other cases, predominantly in the Limerick and Cork Courts, charges appeared to remain in limbo for long periods as a response from the Garda Diversion Programme Head Office was awaited (Case 279; Cases 348 and 349; Case 591 and 595; Cases 267 and 268; Case 486). In other cases, there appeared to be some confusion as to why a

2. Section 31 of the Criminal Justice Bill proposes to change this (amending section 48 of the Children Act 2001) by allowing details of the young person's involvement in the Programme to be admissible as evidence before the Court.

case had not been referred to the Garda Diversion Programme and an adjournment was granted to enable enquiries to be made in this regard generally due to the young age of the accused, or a first offence (Case 486).

RECOMMENDATIONS

- Observations of the Children's Court highlight the need to raise awareness among all court personnel about the Garda Diversion Programme. Judges, solicitors, prosecuting Inspectors and court clerks should receive training on the operation of the Programme including admission criteria and procedures.
- Research should also be undertaken into the relationship between the Diversion Programme and the prosecution of young people before the Children's Court.
- The current proposal, made in the Criminal Justice Bill 2004, to allow details of involvement to the Garda Diversion Programme to be admitted as evidence in proceedings before the Children's Court should be withdrawn given its potential to add rather than lessen confusion in this area.

PRESENCE AND BEHAVIOUR OF GARDAÍ IN COURT

International standards stress the importance of the police showing the highest standards of behaviour in court. Their presence should not be intimidating to the accused, and they should not appear in uniform unless a security presence is deemed particularly necessary.

The Children's Court operates *in camera* with only those parties directly involved in the case entitled to be present, in accordance with the judge's directions. This is the case in the Dublin Children's Court where only those Gardaí directly involved in each case are entitled to be present in the courtroom at that particular time. Thus, as the name of each defendant is called in turn, so too is the name of the prosecuting Garda who comes to court accompanied only by those colleagues directly involved in the case. No other Garda is entitled to be present in the Court unless directly involved.

It was clear from the observation of the Court in session that this practice is well established. In addition to the practical point that the courtroom is too small to accommodate anyone not involved in the case, restricting attendance to those directly involved minimises distractions and allows the Court to focus on the case concerned. It also prevents Gardaí not involved in the proceedings creating an intimidating presence, however inadvertently.

In contrast, adherence to this practice is neither strict nor consistent in the other Children's Courts. Throughout this research, Gardaí who were not involved in the case being heard were frequently present in the Courts in Limerick, Waterford and Cork. Although the public was excluded, therefore, there appeared to be no control on the presence of Gardaí in the courtroom, or on their movements in and out of the courtroom. The problem seems particularly acute in Limerick and Cork where there were frequently up to ten members of An Garda Síochána present during the hearings of the Children's Court. Casual conversations between members sometimes continued throughout the hearing, often making it difficult to hear the proceedings and the presence of large numbers of Gardaí in the courtroom was also noted to create an intimidating presence. For example, on one occasion, a witness and relative of the young person had to walk through a number of Gardaí, none of whom was directly involved in the case, to reach the stand when giving evidence.

RECOMMENDATIONS

- Only those Gardaí directly involved in individual cases should be permitted to remain in the Children's Court at the relevant time. In this regard, current practice in the Dublin Children's Court should be mainstreamed in Children's Courts throughout the country.
- Consideration should be given to requiring Gardaí who attend the Children's Court to appear in civilian clothes as far as practicable in order to reduce their potentially intimidating presence and tension levels in all courts.

COMPLAINTS AGAINST THE GARDAÍ

The occasionally intimidating presence of Gardaí in the Children's Court was observed during this research. For example, members of An Garda Síochána were observed gesturing to young people in a threatening manner, slapping them on the back of the head as they left the courtroom or, as happened on one occasion, writing derogatory notes to each other about the young person during the proceedings (Case 777). However infrequent, this raises a serious issue about the treatment of young people by the Gardaí.

On a number of occasions, young people and/or their guardians complained to the judge that they were or had been intimidated, harassed, bullied or ill-treated by members of an Garda Síochána. Judges appeared to be largely unsympathetic to such complaints and regularly responded to them by asking whether a formal complaint had been made to the Garda Complaints Board. Regardless of the response, the judge generally expressed the view that this was not a problem he/she could address in his/her court. Either a complaint had been

made - in which case it should be left to the Complaints Board to deal with - or it had not - thereby in some way questioning the veracity of the complaint. An extreme example of this occurred on one occasion when the child's parents complained that the Gardaí, who had only chosen to prosecute only their son out of a group of young people involved in criminal activity, were 'picking on their son'. The judge, apparently frustrated by the parents' refusal to accept the truth of the situation, shouted angrily at them that the reality was closer to the fact that their son was a 'little alcoholic' (Case 579). On another occasion, a complaint was made regarding the behaviour of the Gardaí checking compliance with a 9 pm curfew. According to the child's mother, the Gardaí frequently called to the house at 11 pm waking the other children in the house and requiring her to get out of bed to answer the door (Case 548). At other times, young people complained that their property had been removed from their house following their arrest (Case 800) or that they had been mistreated by the Gardaí on the way to or at the Garda station.

Regardless of the merits of these complaints, they are evidence of a poor relationship between an Garda Síochána and some young people and their families. This is exacerbated by the lack of an effective Garda complaints mechanism accessible to young people meaning that the Children's Court is one of few fora in which such complaints can be raised. For this reason, it is vital that young people have the opportunity to raise issues before an impartial person who has the capacity to mediate, in some form, between the young person and the police. Judges should thus be encouraged to engage with young people and their families, for example, by explaining the role and powers of the police with regard to monitoring bail conditions. This was observed during this research where one judge explained to a young person, who had complained about the Gardaí calling to his house, that a 9 pm curfew meant that any member of An Garda Síochána could call to his house any time after 9 pm to check that he was there (Case 821). On another occasion, where a 15 year old boy was charged with assaulting a Garda, the judge identified the clearly negative attitude that the young person had towards the police as the real source of the problem and went on to discuss this issue with the young person (Case 859).

RECOMMENDATIONS

- An effective, independent Garda complaints mechanism must be established with age appropriate procedures which are accessible to young people. Details of such procedures should be brought to the attention of all young people on arrest.
- It is important that judges listen to the complaints made by young people and, regardless of their merits, respond in a way that reflects their impartial role in the criminal process. Judges should also be careful not to ignore or tolerate inappropriate behaviour by Gardaí and to be even-handed with postponing the case to allow the Garda to show up, when no such generosity is shown to the accused. Such impartiality is

important to ensure the young person's trust and faith in the process, and in the independence of the judge.

- Observations of the Children's Court raised questions about the extent to which Gardaí bring their influence from the community to the courtroom and vice versa. In light of the vulnerability of young people in both environments, it is recommended that research into this issue be undertaken.

IN CAMERA RULE

EXCLUSION OF THE PUBLIC FROM THE CHILDREN'S COURT

In each Children's Court, a designated Garda is assigned to the door both to prevent those in custody from absconding and to prevent the entry of those not involved in the proceedings. Given the dedicated nature of the courthouse in the Dublin Children's Court neither problem was witnessed during the course of the research. However, it was frequently apparent from observing the Children's Courts in Limerick, Waterford and Cork that the *in camera* rule was not being effectively policed. While the identity of the researchers for this project was checked on occasion, in contrast, members of the public were frequently observed walking into the courtroom before being asked to leave by either the Garda responsible or, more often, the judge. In this regard, it was apparent from observing all courts that the judge, rather than the Garda, was more actively involved in policing the privacy of the courtroom and in all courts, the judge was observed querying the identity of certain persons in court and reminding the Garda to watch the door.

CALLING LISTED CASES

The other function performed by a designated member of An Garda Síochána in the Children's Courts in Limerick, Waterford and Cork was the calling of listed cases. While this is done by means of a public address system in the Dublin Children's Court, in the other courts, a Garda must leave the court to call the young person for the next case. Apart from the privacy issues involved in calling names loudly from the courtroom door, this practice also appears to be a relatively messy and unstructured way to bring the young person and their family to the courtroom. This is compounded by the fact that the young person, who may have to wait several hours to have his/her case called, may be outside having a break or a cigarette. The fact that he/she is not in the immediate vicinity of the courtroom means that the Garda may have to spend time searching for him/her, or on occasion, may choose to shout louder to attract his/her attention.

RECOMMENDATIONS

- Consideration should be given to developing a more sophisticated method of calling the young people to the Children's Court. While the use of a loudspeaker is only appropriate within the confined setting of a dedicated Children's Court building, calling the accused by number might be one way of calling each case over a longer distance, while avoiding any conflict with the young person's right to privacy.

CONCLUSIONS AND RECOMMENDATIONS

The behaviour and role of members of An Garda Síochána in the Children's Court has not been the subject of any meaningful research to date: nor was it the purpose of this research to observe the work of the Gardaí in this setting. Nonetheless, it is clear from the very basic observations drawn here that relatively simple changes can be made to the role of the Gardaí to increase its efficiency in the prosecution of young people, and improve its compatibility with international standards. In particular, the following measures should be considered:

- Single prosecuting Gardaí should be introduced in all Children's Courts;
- The attendance in Court of uniformed Gardaí should be limited to those cases in which they are directly involved;
- All Gardaí should be trained on international and domestic standards of youth justice and this should also be included in programmes of continuing professional development; further training should be offered to new officers on the prosecution duties in the Children's Court.
- Observations during this research also raise the question of the compatibility of Garda participation in the court process with their work in the community. The extent to which community issues - for example the poor relationship between a young person and the Gardaí - are brought into court, and vice versa, requires further more detailed research with regard to the exercise of Garda influence or discretion in both settings. The introduction of an effective, age-appropriate complaints mechanism, which is accessible to young people is also important in this context.
- The relationship between the Children's Court and the Garda Diversion Programme is also worthy of closer analysis in the light of the apparent lack of awareness among some court personnel as to how the Programme works. Awareness about the Programme should also be raised among all those working in the Children's Court.

CONCLUSIONS AND RECOMMENDATIONS

THE RIGHTS OF YOUNG PEOPLE

The principal objective of this research was to carry out a children's rights audit of the Children's Court. In this regard, observations of the court raise concerns about the rights of young people in the following areas:

- Young people's right to privacy (the *in camera* rule) is not being protected in all courts at all times;
- Young people are not being facilitated to exercise their right to participate in their criminal proceedings and in many cases they do not understand what goes on in the Children's Court. Due to the approaches of judges and solicitors, as well as the physical layout of many of the courtrooms, young people are frequently marginalised from the process. As well as infringing their rights, this is also reducing the potential effectiveness of the process to challenge their offending behaviour;
- All children do not receive quality legal representation;
- Concerns exist over the extent to which children are being detained as a last resort.

THE OPERATION OF THE CHILDREN'S COURT

This research also observed the broader issue of the operation of the Children's Court. While more research is needed in this area, it is an unavoidable conclusion from observations of the Children's Court for this research that its potential to check the offending behaviour of young people is not currently being maximised. The system is currently both inefficient and ineffective and the problems highlighted are as follows:

- Charges against young people are continuously and persistently adjourned by the Children's Court without reference to their impact on the young person or the Court's resources, or the need to deal expeditiously with charges against young people. As well as being an unnecessary waste of resources, it also delays the final determination of the charges against young people, causing many of them to enter a cycling of offending, broken bail conditions and court appearances which is difficult to break without imposing a custodial sanction. The delays which adjournments cause also

reduce the connection between the offence and the sanction imposed meaning that young people are offered little incentive or support to check their offending behaviour. This, together with the lack of meaningful sanctions, has led to a culture of impunity among some young people;

- The exercise of judicial functions in a range of areas – including granting adjournments and ordering benchwarrants – is not consistent within or between Children’s Courts. Judges’ approaches to the absence of young people, their parents and other issues vary, leading to forum shopping by young people, among other problems. It also demonstrates a lack of awareness about best practice in other courts and more generally;
- The practice of individual judge’s retaining jurisdiction (seisin) over charge sheets means that the response to young offending is neither coherent nor holistic. This is compounded by the irregular and unpredictable assignment of judges to the Children’s Court, particularly in Dublin;
- Lack of coordination between agencies and poor management of cases also leads to confusion and delay;
- The serious failure to communicate directly or indirectly with young people in the Children’s Court marginalises them from the process and means that the potential of the court appearance to challenge their offending behaviour is not utilised. The failure to engage with them, to use age appropriate language and to explain bail conditions and the reasons for the choice of sanction imposed compounds this problem;
- The failure to adapt the courtroom for hearings of the Children’s Court further isolates young people and their families from the court process;
- The failure to implement the Children Act 2001, particularly Part 9 which contains a range of community sanctions, means that limited effective sanctions are available to respond to offending behaviour and detention is not always imposed as a measure of last resort.

PRINCIPAL RECOMMENDATIONS

Despite the serious nature of the situation highlighted by the above problems, a number of measures could be taken to improve the effectiveness of the Children’s Court and to ensure that the rights of young people are better protected. While detailed recommendations are made throughout the report, the principal recommendations which have most potential to alter the way in which the system operates are as follows:

- The remainder of the Children Act 2001 should be implemented and resourced in full as a matter of urgency;
- An inter-disciplinary forum should be established between all Children's Court personnel to create a setting within which experiences could be discussed and expertise and best practice shared. This should lead to the drafting of a bench book which would identify how sentencing principles should be applied and how cases should be managed;
- A panel of Children's Court judges should be established by assigning on a long-term basis to the Children's Court those judges with an aptitude and an interest in such work. All such judges should receive on-going professional legal education and training on international standards of youth justice, the Children Act 2001, and other disciplines including psychology, criminology and behavioural sciences. Training on how to engage young people in the court process should also be undertaken;
- Solicitors and Gardaí should also undertake relevant training and specialisation in the area of youth justice. The Law Society is recommended to establish a panel of children's lawyers accredited and trained to represent children in the Children's Court;
- The physical environment of every courtroom should be adapted to facilitate the inclusion and involvement of young people in the process. A place for young people to sit or stand should be identified in all courtrooms and in larger courtrooms, all personnel should be asked to occupy the seating closest to the judge to facilitate communication. Consideration should be given to establishing the post of a court advocate to liaise between the young person and the Court, to explain the process to young people and to prepare them for their court appearance. This would help to maximise its potential as well as to streamline the process;
- Commitment to the *in camera* rule should be reinforced in every court with dedicated personnel employed to check those entering the courtroom. Only those personnel directly involved in proceedings should be in the court;
- A single youth justice agency should be established to co-ordinate the work of all bodies in the youth justice system. Such an agency could also undertake to monitor cases through the system, to set standards and disseminate good practice to collect statistics and commission and undertake research on the effectiveness of responses to offending behaviour. This could be achieved by giving greater powers to the Special Residential Services Board.

In addition, the following measures should be adopted:

- A system of data collection should be established to ensure that detailed and up-to-date statistics are maintained and regularly published on young people before the Children's Court, the offences they commit and the effectiveness of responses to their behaviour.
- The impact of young people's involvement with the Garda Diversion Programme and the Probation and Welfare Service should also be measured, with a view to evaluating the effectiveness of such interventions.
- A longitudinal case file analysis should be undertaken to draw up a profile of young people, their charges, the duration and outcome of their case etc;
- In light of the need to monitor the operation of the Children's Court on a continuous basis, an on-going, expert and public system of reporting cases should be established.