Second Interim Report

Child Care Law Reporting Project

Dr Carol Coulter *October 2014*

Contents

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Preface

I am very grateful for the support and wise counsel of the members of my Advisory Board, who have always been available to offer advice and observations on the work of the project.

The work of attending court, writing reports and collecting data was carried out by myself and my three colleagues, Lisa Colfer MA, Kevin Healy BL and Meg MacMahon BL, over the past 12 months. I am also indebted to Lisa, Kevin and Meg for their valuable observations on the proceedings they attended and the child protection process generally, which have gone to inform this report. However, the comments and conclusions contained in it are my responsibility alone.

Special thanks to Gillian Kernan of FLAC for her work on the statistics in this report.

Carol Coulter

Director

Child Care Law Reporting Project

Introduction

This is the second Interim Report of the Child Care Law Reporting Project, updating the overview of the reports published on the website and publishing the results of the data collected since the first Interim Report, that is, between September 2013 and mid-July 2014. During that time we attended child care proceedings in 29 courts, presided over by 35 different judges. We recorded data from 486 cases, involving 864 children. We published four further volumes of reports on child care proceedings, bringing to 160 the total number of reports on the website.

The first Interim Report, which can be found on www.childlawproject.ie, outlined the legislative framework and background to the project, so this is not necessary again. The third and final report of this phase of the project, based on our first three years' work, will be published next year and will contain conclusions and recommendations drawn from all the reports published and the data collected in that time.

Our methodology is based on attendance at child care proceedings, reporting the main cases heard and collecting data on all cases dealt with in court, including those disposed of briefly. It does not include structured interviews with participants – judges, social workers, parents, etc. While we have had a number of informal discussions with members of the judiciary, the legal representatives of both the Child and Family Agency and parents, guardians *ad litem* and others, they do not form part of the reports and nothing discussed in any informal setting is published in any form. Rather they inform the context in which the reports are written and the data is analysed.

Therefore the essential work of the project is attending court, writing reports for the Publications section of the website and collecting data on data sheets which is then analysed and published in these reports. That can be found in Appendix II of this report, and we publish a commentary on these results in Chapter I. The main issues that emerge from the reported cases are examined in Chapter 2. We publish some interim observations and suggestions for improvements in child care proceedings in Chapter 3, but our final recommendations will not come until next year.

We used the Courts Service statistics for child care applications as a guide in the allocation of our reporting resources to courts, seeking to report from them according to the volume they dealt with. We are also grateful to the Child and Family Agency for providing us with the statistics of Arthur Cox Consultancy Services on the applications obtained by solicitors acting for the CFA around the country, which provided a second source for the volumes of cases dealt with according to geographical area. Both of these sources showed that approximately one third of all applications were sought and obtained in Dublin. However, the statistics from Arthur Cox, and other data from the Child and Family Agency, are based on former HSE

regions, which do not accord with District Court areas. This makes direct comparisons difficult outside of Dublin.

Our statistics in our first year of operation, which covered the eight months from December 2012 until July 2013, were heavily weighted in favour of Dublin, the location of 80 per cent of the cases we attended. We sought to correct this in the current year, and we succeeded, with Dublin accounting for only 34.8 per cent of this year's cases. The remaining 65.2 per cent of cases were spread over 29 District Courts and 35 judges, including a number of "moveable" judges, who are not tied to a specific District. We are therefore satisfied that this year's statistics are more representative of national trends than last year's.

While we sought to ensure that the time spent in the various courts corresponded as closely as possible to the volume of cases that court had processed in the previous year, this did not necessarily translate into a similarly proportionate number of cases being recorded. Inevitably some cases take much longer than others, and this sometimes meant that a court visited many times yielded a small amount of data. In contrast, there were some courts that dealt with ten or 15 child care cases in one family law day, which increased their representation in our statistics. However, both lengthy contested cases and brief appearances which involve renewal of existing orders or consents to the orders sought form part of the global experience of the child care courts, and we are confident that this year's statistics represent a fair cross-section of all the child care cases that came before the courts during the last legal year.

The much greater representation of courts outside Dublin this year means that there are some significant differences in our statistical analysis between last year's figures and this year's due to regional variations in the practice of both the CFA and the courts. This is discussed further below.

According to the last available complete statistics from the Child and Family Agency, in December 2012 there were 6,332 children in care, of whom 2,666 were in voluntary care and 3,664 in court-ordered care. It is unlikely that these figures varied significantly in 2013/2014, the year examined here. The 486 cases we analyse here, dealing with a total of 864 children, include 10 per cent where the child is the subject of a Supervision Order and therefore at home rather than in care.

Deducting this 10 per cent of the children from the total we recorded, the cases we attended dealt with approximately 780 children in CFA care with 86 under the supervision of the CFA. Thus we estimate the cases we analyse here represent about 21 per cent of the total number of children in State care.

Chapter 1: Data Analysis

In this chapter we analyse the results of the data collected from the 486 cases we attended between September 2013 and mid-July of this year (section heads refer to data in Appendix 2). The total number of children involved was 864. This data includes that drawn from the cases we reported on in our case histories, analysed in Chapter 2, and cases we did not report on as they were dealt with rapidly by way of consents, adjournments, or reviews of existing orders, or because they were cases resembling other cases in the issues they raised. Thus they include the very lengthy cases we reported on during the year, as well as brief proceedings.

We must stress that we are dependent for the information we record on what is said in court. We are not present during any of the decision-making process leading to the court application, and we may attend a case when it has already progressed beyond the stage of an order being made. Much fuller information is given during longer hearings and when initial applications are made (typically during applications for Interim Care Orders or full Care Orders) than when orders are renewed or reviewed, or an application is made under Section 47. This means that some matters, particularly those relating to respondents or to the siblings of the child in the case, may be under-represented in the statistics.

1.1.1. Applications

Overall, the largest single category of court applications is for extensions of Interim Care Orders, which account for 32.3 per cent, or almost a third, of all applications. This compares with 42.3 per cent last year, when Dublin cases predominated. The second largest category was extensions of Care Orders (19.1 per cent), which did not feature at all in last year's statistics. This reflects the fact that in some courts outside of Dublin short-term Care Orders are made, varying from three months to a year, during which time the family may be asked to work to resolve certain issues and the CFA may carry out assessments and provide supports and therapies. When the short Care Order expires it may then be extended for a further period. Taken together, extensions of existing orders make up more than half of all court applications.

Care Orders accounted for 11.3 per cent of the total, similar to last year, but this includes both the short Care Orders, referred to above, and full Care Orders until the child is 18. Given the number of short orders that are made (we can only guess, as they are not recorded separately), the proportion of full Care Orders made until a child is 18 is relatively small, probably between five and seven per cent of all applications.

The review of existing Care Orders, though they are not actual applications, accounts for over 10 per cent of all the court appearances by the CFA, almost the same as last year (11.1 per cent). Supervision Orders make up 9.1 per cent this year, compared with

8.4 per cent last year, so again there is no significant difference. Emergency Care Order hearings accounted for 2.9 per cent of the cases we attended this year, a slight reduction on the 3.9 per cent last year.

This is explained by the fact that Emergency Care Orders can be sought at any District Court hearing, not just those devoted to family law. The only court sitting full-time to hear family law is in Dublin, so Emergency Care Orders sought there will go to that court, which we are attending three days a week, while we are unlikely to be present when such orders are sought in courts outside Dublin. This is reflected by the fact that in Dublin 5.3 per cent of the applications attended were for Emergency Care Orders, with only 1.5 per cent in the rest of the country.

1.1.2. Reasons for seeking order

Our data collection form does not encompass the full complexity of the issues that lead to children being taken into care, where many factors are likely to interact. This is particularly the case when we gather data from a case that has already been substantially heard. Thus the statistics for the reasons applications are made should be read with caution, as there is rarely a single reason. In addition, our form includes both problems experienced by parents (for example, disability, drug or alcohol abuse) and the impact of parental problems or behaviour on children (for example, neglect or abuse). It can be difficult to isolate a single main reason for the making of the application.

When recording the data, we note the major issue highlighted in the evidence given in support of the application. Often more than one problem is present – the parent may suffer from a disability and abuse alcohol or drugs or both, and the child may suffer both neglect and abuse – though we only record one main reason.

With these caveats, it is striking that the highest single category, as recorded by our reporters, is parental disability (15 per cent), or almost one in six. While physical, mental and intellectual disabilities are not distinguished, the reporting team has observed that the overwhelming majority, if not all, of disabilities suffered by parents is either a cognitive disability or mental illness, occasionally both and very occasionally combined with a physical disability.

This is closely followed by drug abuse (13.2 per cent) and alcohol abuse (12.3 per cent), though, as stated above, both may be present. However, these factors are not always present when a child suffers from neglect or abuse. If the focus of the CFA evidence is on the neglect or abuse suffered by the child this is the category we record, even if another factor is also present. Given the prevalence of parental disability and substance abuse and their likely impact on people's ability to parent adequately, the 12.6 per cent figure for neglect is likely to be an under-representation of this problem. It should be noted that the HSE's own figures show this is the issue in 28.6 per cent of cases where children are in care (including voluntary care).

We noted "multiple" reasons (12.3 per cent) when it was difficult to distinguish a predominant element. When emotional or physical abuse is recorded (9.3 per cent, almost one in 10) it is usually so striking as to merit being the predominant reason for the application, and the same is true of sexual abuse (4.7 per cent). Again, it should not be assumed that these exclude alcohol or drug abuse, parental disability or neglect.

The Child and Family Agency – Tusla has its own detailed analysis of the reasons why children are in care, though its figures do not distinguish between voluntary and court-ordered care. The categories differ from ours, as its review does not include issues affecting the parents (for example, disability or substance abuse), instead focussing on the children's problems. Thus "child welfare concern" accounts for 53.9 per cent of the children in CFA care. Full details are contained in its publication, *Review of Adequacy for HSE Children and Family Services 2012*, available on its website.

1.3. The Respondents

In the majority of cases (57.4 per cent) both parents were cited as respondents. The mother was the sole respondent in just under a third (31.1 per cent). However these figures do not mean that in the majority of cases the parents were parenting together. That was only the case in one in five cases (10.9 per cent were married, 8.9 per cent co-habiting). In over 70 per cent of the cases the parent, normally the mother, was parenting alone, either because she was single, following the breakdown of a relationship, or because the child's other parent was dead, in prison or missing. In the remaining 10 per cent both parents were dead or missing, the issue did not arise in the specific application, or could not be recorded.

One of the issues this raises is the protection afforded by the Constitution to the families coming before the child care courts. Only one in ten families involves a married couple, the only family type recognised by the Constitution, and whose rights are therefore the subject of constitutional protection.

The concern that the Constitution inhibits the ability of the State to protect children, while well-founded in relation to the children of married parents in long-term foster care, who face great obstacles in being adopted, therefore does not apply to the vast majority of the children who come before the District Court in child care proceedings, according to these statistics. There is no way of knowing how many children in care come from married families, as no distinction is made in the CFA figures or Courts Service child care statistics between married and unmarried families.

It should also be said that our reporting team has not detected any difference in treatment of respondents according to their marital status by the courts or the CFA in bringing applications. We do not, and cannot, know whether there is any distinction made between the two types of family in social work practice prior to seeking a court order. When and if the Children's Amendment becomes part of the Constitution, the constitutional difference between the children of married and unmarried families will diminish.

While the majority of respondents are Irish (70.4 per cent), as is to be expected, this is substantially less than the proportion of Irish-born people in the population as a whole. Seven per cent of the respondents are European, and we have observed that the vast majority of these come from Eastern Europe. The next largest category is "mixed", meaning that at least one parent is not Irish, and it includes two or more non-Irish parents from different backgrounds as well as Irish and non-Irish parents.

Almost four per cent of the respondents are recorded as Irish Travellers, which is probably an under-representation, as we only record this ethnicity when it features in the evidence, for example, due to conditions on a halting site. Eight Roma families were recorded, representing 1.6 per cent of all respondents.

In our statistics this year 5.3 per cent of the respondents are African, compared with 11.4 per cent last year. This reflects the fact that we have a much higher representation of non-Dublin cases in this year's figures. When we isolate the Dublin figures, we find that almost one in eight (11.8 per cent) are African. While this is down on last year (14.2 per cent in Dublin) it is not a significant reduction, and still means that African children (some of whom are abandoned) are disproportionately represented in the child protection statistics. According to the 2011 Census, only 2.5 per cent of the under-19 population is of African origin.

Taken together, one in four child protection cases involve families where at least one parent is a member of an ethnic minority. This compares to a non-Irish population of 14 per cent of under 19-year-olds, according to the 2011 Census, quoted in the CFA-Tusla 2012 *Review*, cited above. This high proportion of non-Irish children coming before the child care courts is likely to pose challenges for Irish social services that they may not be prepared for.

Almost 54 per cent of the respondents are represented by solicitors from the Legal Aid Board, with a further 9.3 per cent represented by private solicitors. In 26.7 of cases the respondents had no legal representation, but this included a large number where an initial application was made for an Emergency Care order or an Interim Care Order, which was likely to be adjourned while the respondent obtained legal representation, frequently on the urging of the judge.

1.4. The Children

One of the most striking issues about the children who were the subject of applications was the high proportion who had special needs. Almost one in three cases (30 per cent) involved a child or children with special needs. Last year the figure was 27.3 per cent. This year we created a new sub-division of educational as well as physical and psychological special needs, as some children coming into care suffer from developmental delay and require educational support. These accounted for eight per cent of all cases, children with physical disabilities also accounted for eight per cent, and the remaining 23 per cent involved children with psychological special needs. There is some overlap, as in 33 cases a child or children had more than one type of special need, and in seven cases a child had physical, educational and

psychological special needs. It is very likely that the 14 per cent of children who suffered emotional, physical or sexual abuse are included in these figures.

This year also we included a new age category of children under one year of age, which obviously included new-born babies. Seventy-seven children of this age were the subject of applications, representing almost 16 per cent of all applications, and 8.9 per cent of all children. The largest single age-group were those aged between 10 and 14, but this was not significantly greater than other age groups. Last year applications involving children aged between 0 and four, and between five and nine, exceeded those for older children.

In just half the cases the children were represented by a guardian *ad litem* (GAL). The children's charity, Barnardos, provided the GAL service in more than half of these (55 per cent) with independent GALs working in 37 per cent of the cases. We were unable to ascertain whether the GAL was working with Barnardos or independently in 7.5 per cent of the cases. In seven cases the judge ordered the child to be represented by his or her own solicitor. In the majority of cases (almost 82 per cent) the guardians *ad litem* were represented by a solicitor, and in 6.6 per cent also by a barrister. They were not represented in 7.1 per cent of cases.

The majority of cases (60.5 per cent) concerned one child, with two or three children from the same family featuring in another 27 per cent.

1.5. Care of children

In almost three-quarters of the cases (73.4 per cent) the children went into foster care or already were in foster care. In another 10 per cent of cases the children were at home under Supervision Orders. In five cases (one per cent) they were in hospital. In 12 per cent of cases the children were in residential care, including a small number in secure units or in a special unit abroad. We were unable to obtain the information in 11 cases (1.9 per cent).

Most children in care are in foster care with non-relatives (57 per cent), but 16.7 per cent in care under court order are in relative foster care. This figure is likely to be greater for children in voluntary care. According to the 2012 HSE *Review*, 62 per cent of children were in general foster care and 29 per cent in relative foster care, with just six per cent in residential care, indicating that a higher proportion of children in voluntary care are with relatives and a lower proportion in residential care compared with court-ordered care.

1.6. Court hearing

The largest single category of case outcomes was consent to the application, with the parents consenting to the order sought in 40 per cent of cases. In 20 per cent one or both parents contested the order, but it was granted despite their opposition. In 15.6 per cent of cases the issue of consent did not arise, because the matter was the review of an existing Care Order or

a Section 47 application where an issue concerning the care of the child was discussed. In 13.2 per cent of cases the case was adjourned.

Parents were most likely to consent to an extension of an Interim Care Order and consent was offered in 70 per cent of the cases where these were sought. Consent was also likely to a Supervision Order (57 per cent). Care Orders were consented to in almost half of the cases where they were sought (45.5 per cent). The highest level of opposition to orders was to applications for Interim Care Orders, where 41.2 per cent were granted despite the opposition of the parents. Interim Care Orders are normally in place before Care Orders are sought, so these are likely to be the occasion for the main dispute between the parents and the CFA. Of the 14 Emergency Care Orders sought while we were in court, five were consented to, three were granted, three were refused and one was withdrawn.

In the vast majority of cases (80.5 per cent) the only witness was one or more social workers. In another 9.5 per cent of cases there was no witness and the solicitor for the CFA presented the matter to the court. This was likely to happen with a review of an order or a routine adjournment. Thus in only eight per cent of cases was there any witness other than the social worker in the case. These included members of the Garda Siochana, doctors, psychiatrists or psychologists, public health nurses and teachers, and in three cases we recorded "multiple" witnesses.

While the proportion of cases where there are additional witnesses is small, these cases were lengthy and complex. Three cases took more than ten days, and five more cases took four days or more. These are approximate figures, in that some of these cases included cases which took up dozens of partial days, or they overlapped with other cases. We know from the reports on our website that we attended at least eight very lengthy cases during the past year. One case has taken 22 days so far and is still not over.

However, the majority of cases (85 per cent) took less than an hour. This corresponds to the proportion of cases that were extensions of existing orders, reviews of Care Orders or were adjourned.

2.1. Regional variations

This year we sought to ensure that the courts outside Dublin were adequately represented in our work, and we largely succeeded. We used the Courts Service statistics for child care applications in 2012 (the most recent available) as our guide in choosing courts to attend, and the frequency with which we attended them, but this did not always translate into a proportionate number of cases attended.

Sometimes a court sitting would get through a dozen or more child care cases in one day, where, for example, there was consent to extensions of Interim Care Orders or short-term Care Orders. We have also attended a number of cases in rural towns where single cases went on for days.

For reasons of space we could not publish separate data from all 29 courts we attended, so we decided to publish the breakdown of our statistics from the seven District Courts, including Dublin, where we recorded data from the largest volume of cases. For the reasons above, this does not encompass all the courts which process a large volume of child care cases, though all seven selected are busy, and Cork, Waterford and Limerick feature in the Court Service statistics as major centres for child care applications.

This corresponds generally with the Child and Family Agency 2012 figures for the incidence of children in care in various parts of the country. Cork, Waterford, Limerick and Louth, along with four of the seven Dublin areas, have a higher proportion of children in care per 10,000 children than the national average. However, direct comparison with the CFA figures is not possible, as they include children in voluntary care and the former HSE regions do not correspond with District Court areas.

2.2.1. Applications

The statistics do show significant variations in the types of orders sought in different parts of the country, and lesser variations in other matters. For example, Supervision Orders were more common in Munster than in Dublin or the rest of the country, accounting for 13.6 per cent of the applications sought in Cork, 14.3 per cent in Clonmel and 24 per cent in Waterford. Only 4.1 per cent of Dublin applications were for Supervision Orders, with 11.9 per cent in the rest of the country.

Extensions of Interim Care Orders and of Care Orders accounted for almost two-thirds of all applications in Dublin. Extensions of Interim Care Orders were also very significant in Clonmel, Drogheda and Dundalk, where they made up three out every four cases we attended.

Only a very small number of full Care Orders were sought in Dublin, just under two per cent of all cases. In contrast, 30 per cent of the Limerick applications were for Care Orders, 12 per cent of the Waterford applications and 6.1 per cent of those in Cork.

In all these cities short-term Care Orders are common, which are then reviewed and/or renewed. This is reflected by the fact that in Cork half of all the cases attended (classified as "Other" in Table 2.2.1) concerned the review of existing Care Orders, and Care Orders were extended in a further 15.2 per cent of cases.

2.4. Respondents

It is not clear why there is a wide variation in the make-up of respondents in different District Courts, with both parents being cited as respondents to a much greater degree in some courts than in others. This may be because some cities and towns have a greater number of single

parents coming to the attention of social services than others; it may be because some social service departments make more effort to engage both parents in the process than others do.

It does not appear to be related to the status of the parents, as, for example, Dundalk, where almost 82 per cent of the cases involve both parents, has the largest proportion of single respondents, at 68.2 per cent, with a further 22.7 per cent divorced or separated, and only nine per cent married or co-habiting. In Dublin only half the cases involve both parents, and just under 14 per cent are either married or co-habiting. However, Dublin also has a higher proportion than other cities of cases where one or both parents are dead, missing or in prison.

Dundalk also emerges as a town with a high proportion of parents from minority communities, with less than half (40 per cent) from Irish backgrounds. However, it must be stressed that the total number of cases was only 22, so this is unlikely to be representative of all cases heard in Dundalk last year. Of the 22, nine were Irish, two each from Irish Traveller and European backgrounds, three were Roma and five were multi-ethnic. In contrast, in Clonmel all but two of the cases concerned Irish parents. After Dundalk (where our snapshot may not be representative) the highest number of non-Irish respondents was recorded in Dublin, with more than a third of all parents coming from minority communities. This included 11.8 per cent African, 5.9 per cent European, 4.7 per cent Traveller and 5.9 per cent multi-ethnic.

One of the most striking variations we saw was in the engagement of guardians *ad litem* (2.5). They were much more likely to be appointed in Dublin than in most other cities and towns, with 68 per cent of all cases in Dublin involving GALs. In Dundalk over 80 per cent of cases had GALs, in Drogheda it was 68 per cent and in Limerick 50 per cent. That contrasts with only 27.3 per cent in Cork, 17.9 per cent in Clonmel and 36.6 in the rest of the country. In Waterford 44 per cent of the children had a GAL. Barnardos' GALs were more likely to be appointed outside Dublin. The relatively low number in Cork, for example, may be linked to the high number of reviews of existing Care Orders, as a GAL may have been engaged in an earlier part of the proceedings.

2.6. Nature of Care

When it came to foster care (2.6), Limerick and Clonmel emerged as the most likely courts to see the children going into the care of relatives, with almost a third doing so in Clonmel and more than a third being cared for by relatives in Limerick. However, there were no relative foster carers for any of the children in Dundalk. This may be related to the fact that so many children in the Dundalk cases came from ethnic minorities, while almost none did in Clonmel.

The nature of the applications was reflected in the witnesses called (2.7.2). In Cork, which featured a very large number of Care Order reviews, there was no witness in 40 per cent of cases and the solicitor updated the court. In Cork also 95 per cent of the cases attended by the project took less than an hour, though one case took several days (2.7.1).

There was a wide variation also in the outcome of cases (2.7.3). Consents were much more common in some courts than in others, with almost 82 per cent of respondents consenting in Dundalk, 71.4 per cent in Clonmel and 63 per cent in Drogheda. In contrast, only 28 per cent consented to the order in Waterford. This figure was 12 per cent in Cork, but this must be seen in the context of half of all cases involving reviews of Care Orders, where the issue did not arise.

3.5. Family status and ethnic background of respondents

We also looked at how the reasons for the CFA seeking an order related to the family status and the ethnic background of the respondents. As stated above, the reason we recorded was the main issue we identified in the evidence, and did not exclude others.

For example, Table 3.5.2 does not record alcohol abuse as the main reason for seeking the order in any of the cases involving Travellers, though "multiple" is recorded in three of the 18 cases and we know from reporting on cases for the website that alcohol abuse did feature in many cases, but other more pressing, issues overshadowed it. With this caveat, we saw Travellers disproportionally represented in cases where sexual abuse was alleged, representing over one in five of all such cases. Neglect and "multiple" reasons featured in five and three Traveller cases respectively.

Domestic violence was the dominant cause of the care application in almost half (four out of nine) of the UK cases. Physical or emotional abuse featured in over a quarter of all the African cases, with parental disability the main issue in four of the 26 cases. We know from reporting these cases that this usually meant mental illness.

Four African children came to the courts because they had been trafficked or abandoned. Among the multi-ethnic families physical or emotional abuse featured in more than one in four cases, with allegations of sexual abuse in another five of the 31 cases and neglect in a further five.

When it came to considering the status of the families, we found that sexual abuse was five times more likely be a cause of a care order application in married families than in families with a single parent, featuring in six of the 53 cases involving married parents (11.3 per cent). Physical or emotional abuse featured in 15 of the married family cases. Thus sexual, physical or emotional abuse was the main reason for seeking a care order in married families in 40 per cent of all such cases, with parental disability featuring in another 20 per cent.

In contrast, allegations of sexual abuse featured in only four of the 174 cases involving single parents (2.2 per cent) and physical or emotional abuse in only 13, a total of less than 10 per cent. There drug or alcohol abuse or neglect was much more likely to prompt an application for a care order (half of all cases), with parental disability accounting for a further 16 per cent.

There are various possible reasons for these disparities. It may be that problems in married families are more hidden, and allegations of sexual or physical abuse, of their nature, prompt the intervention of social services where alcohol abuse or suspicions of neglect may not.

It may also be that the life-styles of single parents are under closer scrutiny than those of married or co-habiting couples, and concerns about their alcohol or drug abuse more likely to give rise to concern. Given the higher poverty rates among single parents, it is also likely that their children are more likely to be at risk of inadequate food and clothing, which feature among the criteria for assessing neglect.

All of these variations in child care applications and outcomes – regional, ethnic and in family status – require further research to determine the reasons for the variations and to see how more targeted interventions can, where possible, ensure that the level of intervention is the most appropriate.

Chapter 2: Case reports

The cases reported on the website reveal what happens in court in a way statistics cannot. They show what case is made by witnesses for the Child and Family Agency, almost invariably through the evidence of social workers; the opposition, if offered, from the respondent families; the role of the guardian *ad litem*, where there is one; and the intervention of the judge along with the reasons he or she gives for the decision, if any are given.

For this chapter we examined the cases published on the website since the last Interim Report in order to identify themes, issues and variations in practice. This includes the third volume of cases of 2013, though our last Interim Report included an examination of some of the cases we had written up for that volume, but not yet published. The cases reported on the website do not exactly reflect all the cases analysed in our data analysis, though these are included in those figures. We only write of cases where there is something to write, and in many cases in the data collection discussed in Chapter 1 there is very little, as they deal with extensions of existing orders, they are just mentioned in court pending further preparation of the case, or they are brief reviews of existing orders.

The four volumes published since October 2013 contain 94 reports, including some very long ones. This does not equate to 94 cases. Four cases are updated in later reports as they developed over the months, so they feature in two or three reports. Other reports are composites of a number of short hearings in a single family law day. Thus the total number of cases reported on in these four volumes is 108. The cases analysed in Chapter 1 number 486, so the cases reported make up 22 per cent of all those attended.

They include nine applications for Emergency Care Orders, four for Supervision Orders, 15 for Interim Care Orders, 13 for extensions of Interim Care Orders, 32 for Care Orders (including a significant number of short Care Orders) and 12 reviews of Care Orders. Other matter dealt with include six relating to access matters, four family reunifications, four after-care plans and a number dealing with legal issues.

The issue of parental consent did not arise in 47 (43 per cent) of the cases, including those dealing with reviews of existing orders, access, legal issues or where the order was refused. In six cases the parents were not present and did not have legal representation, so it was not possible to say whether or not they consented.

Where the cases concerned the making of orders, the respondent parents consented in a small majority of the cases (32, or 29.6 per cent), and they opposed the making of the order in 29 cases (26.8 per cent). Taken as a percentage of the cases where consent was an issue, parents consented in 52.5 per cent of cases and opposed the orders in 47.5 per cent.

Consents here therefore represent a smaller percentage than in the total number of cases in the statistics in Appendix II and described in Chapter 1, but this is because many of the cases where there were consents did not merit a detailed report and therefore did not feature on the website Publications.

Consents were more likely to occur in cases involving Supervision Orders (three out of four) or extensions of existing Care Orders (10 out of 13), though in 11 of the 32 applications for Care Orders the parents consented to the making of the order. In the majority of these the Care Order was for a short period, not until the child or children were 18. Thus in 21 of the reported cases Care Orders were contested, as they were in nine out of the 15 applications for Interim Care Orders.

The legislative context

These cases show a wide variation between different courts, not only in the orders sought and made, but in the thresholds applied for the taking of children into care and the evidence required to support an application. They also reveal the extent to which other issues become central to the case, and the difficulties sometimes experienced in getting a case concluded at all.

It is worth recalling the provisions of the Child Care Act 1991, under which applications for various Care Orders and for Supervision Orders are made. At the outset the Act states that it is the function of every health board to promote the welfare of children who are not receiving adequate care and protection, and it must take such steps as it considers necessary to identify such children. Having regard to the rights and duties of parents, it must regard the welfare of the child as the first and paramount consideration, give due consideration to the wishes of the child, and have regard to the principle that it is generally in the best interests of a child to be brought up in his own family. The health board (now Tusla-the Child and Family Agency) should provide child care and family support services. The Act then goes on to make provision for a health board applying to court for orders to protect children where that becomes necessary.

An Emergency Care Order may be sought when there is "an immediate and serious risk to the health or welfare of a child which necessitates his being place in the care of a health board", or if there is likely to be such a risk if the child is not removed from his current situation. An Interim Care Order is sought where an application for a Care Order has been or is being made, and where there is "reasonable cause to believe" that the child is in danger of being assaulted, ill-treated, neglected or sexually abused, where his or her health, development or welfare has been or is being avoidably impaired, and if this is likely to happen without such a care order. Thus an Interim Care Order is envisaged as a precursor to a Care Order, providing for the safety of the child while the case for a "full" Care Order is prepared.

A "full" Care Order (as it is often referred to), is made when the court is *satisfied* that these conditions exist. Therefore such evidence of these risks as will satisfy the court must be

presented. A full Care Order is envisaged as placing a child in the care of a health board (now Tusla-the CFA) until he or she is 18, but the legislation provides for "such shorter period as the court may determine".

As we saw in Chapter 1, this provision is widely used in some areas. The threshold for a full Care Order is considerably higher than for an Interim Care Order, requiring evidence to satisfy the court of the need for the order and that nothing less will do to protect the child. However, if a Care Order is made for a very short period, almost as an alternative to an Interim Care Order, it raises the question as to whether the difference between the required thresholds is being blurred.

A Supervision Order may be sought where a Care Order is not considered necessary, but it is thought desirable that the child be visited by the health board in his or her home. The court may make directions relating to the care of the child and his or her attendance for any necessary assessments or treatments. It had become the practice of the HSE/CFA sometimes to require the parents to undergo assessments and attend various therapies as part of Supervision Orders, but this was recently struck down by the High Court, as it is not provided for in the Act.

In addition, the court may, while the Care Order is being determined, make directions about the care and custody of the child or make a Supervision Order. Thus once the case comes before the court, the court has considerable powers to direct what happens to that child until the final order is made. Indeed, even after an order is made and the child is in State care, the court may, on its own motion or on the application of "any person" give directions on any question affecting the welfare of the child, or vary any previous orders.

It should follow from the legislation that the focus of all proceedings is on whether the child has been, or is being, abused, neglected or mistreated, or whether his or her health and welfare are being avoidably impaired. The behaviour of the parents is only relevant insofar as it impacts on this. The CFA needs to convince the court that the only remedy is taking the child into care – and not, for example, any less intrusive measure or by transferring the care of the child to the other parent. It is not always the case that these provisions are the focus of the proceedings.

Variations in Thresholds

There appeared from our published reports to be considerable variation in the thresholds both for seeking orders on the part of the Child and Family Agency, and in granting them by the courts. Circumstances that would not have met the threshold in some courts allowed for orders to be made in others, and evidence of quite severe abuse and neglect did not satisfy the court of the need for long-term Care Orders in certain courts.

In some cases the court granted the application made by the HSE/CFA, even when the focus of the case was not on the welfare of the child, but on the behaviour of one or other parent,

and little or no evidence was adduced of the impact of this behaviour on the welfare of the child. This was the case where an Emergency Care Order was sought and obtained after a mother was hospitalised with her baby following suspected carbon monoxide poisoning and she tested positive for cannabis in the hospital.

She protested vehemently that she did not use cannabis or any other drug, and there was no evidence before the court of previous drug use, though the child's father, who did not live with her, was a long-term drug-user. No evidence was adduced of neglect of the child. While the child was returned to this mother a few weeks later, this case contrasts with many others in different parts of the country where children remained in the care of parents who were abusing drugs, while they were given a chance to address their drug use and ensure it did not impact on their children.

In other cases the focus of the judge appeared to be more on the needs of the parent than on those of the children, despite the stipulation in the Act that the welfare of the children be the paramount consideration. In one case in a provincial town a judge declined to make long-term Care Orders for six children, and made Care Orders for seven months instead, saying when he came to review the matter after that time he would consider returning the three younger children to the mother, despite a lot of evidence of abuse and neglect.

This included evidence that the younger children were strapped in their buggies for lengthy periods while their mother was very drunk. She herself spoke about one young child being sexually abused (by another person). An older child, who was reported to be very traumatised, had revealed serious physical abuse by his mother. The principal of the school also gave evidence of disturbed behaviour on the part of the children, and a doctor said that the three-year-old child in the family was the most bruised child she had ever seen, with bruises at his nipples, back, neck, thighs and under his eyes.

The judge in this case said he was prepared to give the mother a chance with the three youngest children. He did not relate this decision to any discussion of the threshold required for an order or any examination of whether it had been met.

In a number of cases we attended the courts ruled that the HSE had not met the thresholds set down in the Act for the order sought. This was the case, for example, where the HSE (as it then was) sought an Emergency Care Order for an African girl who had come to Ireland with close family members in search of their father. She and the other children considered themselves to be siblings. They were united with the father but the girl was taken into care because a DNA test showed she was not the man's daughter, though she was a close relative. Both the girl and the other children were extremely upset to be told they were not siblings, and the court was highly critical of the HSE handling of the case.

The judge ruled that the child, who had been treated as the man's daughter all her life, was not at "immediate and serious" risk, pointing out that the HSE had no problem returning the other children to his care.

In another case in a provincial city the court refused an Interim Care Order when an Emergency Care Order, obtained when two young children had been left alone for about an hour, expired. The judge found the threshold had not been met, saying: "She reared this child for five years and hasn't come to the attention of the social services." She asked the CFA to apply for a Supervision Order instead.

Evaluation of risks to very young children

The establishment of the threshold for making one of the orders provided for in the Act requires an assessment of the risk to the child, which is made by the social work team working with the family. In the case of older children, that can be obvious from the circumstances in which they are living, or arise from allegations of abuse. However, it may be more difficult with very young children.

According to our statistics, 77 children under the age of 12 months were the subject of applications for Care or (occasionally) Supervision Orders. Some of these were members of families where all the children were taken into care because of evidence of risk to all of them, but a significant number were single children taken into care at or shortly after their birth, before any evidence could emerge of specific neglect or abuse. In some cases their health or welfare had been impaired by, for example, exposure to drugs or alcohol *in utero*, but in others the only evidence of risk was the previous behaviour of one or other of their parents. Often this entailed having a previous child taken into care.

This can be problematic, as the conditions giving rise to a child going into care in the past may not persist. The mother will inevitably be older and may be more mature. She may be in a different relationship, with a person who is more supportive of her and protective of the child. The jurisprudence of the European Court of Human Rights imposes a very high threshold on a state institution seeking to take a new-born baby into its care.

Yet in two cases the fact of having a child previously in care seemed to be the major factor in the decision to make the Care Order application, and much of the evidence adduced was historic, concerning the other child, the circumstances leading to him or her going into care, and the relationship between the parents and the HSE thereafter, rather than evaluating the risk to the child who was the subject of the current proceedings. In both cases the court refused the order after an extremely contested hearing.

Parental behaviour

In some highly contested cases, where the social work team is strongly convinced the children need to be taken into care, the main focus of the case is on the character and behaviour of the parents.

In one such case, where a baby had suffered a serious non-accidental injury and the HSE (as it then was) sought Care Orders until they were 18 for her and her toddler brother, who has special needs, a breach of the access conditions led to a breakdown in relations between the social work team and the family. This led to the replacement of the previous reunification plan by full Care Order applications for both children until they were 18.

In that case, heard over 17 days spread over six months, the judge made an order for one year, during which a detailed programme of rehabilitation was to be worked through by the family, including the extended family, and the HSE/CFA. He said the approach taken by the parents at the outset brought them into conflict with the social workers and this "led to the very entrenched positions manifested by both sides throughout all court appearances. It has to a very significant extent curtailed the ability and the willingness of the social workers to countenance an alternative to full Care Orders. It is deeply regrettable that this should be the case as it has greatly prolonged these proceedings."

Referring to the older child, who had not been injured, he said that the suggestion he had been damaged by being shouted at and present during parental arguments (made by the HSE during the proceedings to support its application for a Care Order) "went nowhere near establishing that the threshold under [the Act] had been reached." Less than a year later, following the working out of the proposed model, these children were reunited with their parents and on a recent family law day the court was told that reunification had been completed over the summer and that everything was going extremely well.

In another case the HSE/CFA sought a full Care Order for a new-born baby where both parents had previously had children from other relationships taken into care a considerable number of years after they were born. As the case proceeded it emerged there was much controversy about the circumstances whereby one of these children was in care, as she had been placed for a time with a person against whom credible allegations of child sex abuse had been made.

Neither of the parents abused drugs or alcohol and there were no allegations of domestic violence in this relationship, although there had been some such allegations in the past, which were denied. However, the relationship between the parents, especially the father, on the one hand, and the social workers on the other was one of deep mistrust and, on his part, hostility and aggression. This appeared to play a significant role in the decision of the CFA to seek the order.

Following very contested proceedings, including a High Court challenge, the order was refused and a Supervision Order was then sought by the HSE and granted. It is understood that the Supervision Order has now expired and is not being renewed.

Role of fathers

It is a condition of the Child Care Act that a Care Order can only be granted when the child's welfare cannot be secured without it. Most of the children are in the care of their mothers when they come to the attention of social services, and even when both parents are respondents they are likely to be single or separated with the mother acting as the primary carer. However, it does not appear that the CFA routinely considers whether the non-resident parent, usually the father, could care for the child who is suffering abuse or neglect in the care of his or her mother.

In one case the father, who was separated from the mother, had taken redundancy to be free to care for two young children who were in foster care under Interim Care Orders. One was his and he regarded the other child as his own child, though he was not her biological father. He was seeking approval as their carer, but this was not under consideration by the social work team and his access had been reduced. Following a robust case being made in court by his solicitor, the judge made a Care Order for a year to allow this option to be explored.

In another case the CFA sought an Interim Care Order for a baby born prematurely whose mother had various serious difficulties and had another child in care. The child's father had no such difficulties and his parents had offered the young couple a home and help in caring for the baby. During the case the judge said: "One of the factors here is that we have a father. You can't bring a Care Order unless both parents are inadequate. The CFA will have to prove his inability to look after the child as well. Will we be hearing this evidence from the CFA? The law as I understand it is, if the father is capable of looking after the child, that's the end of the story."

In this case the Interim Care Order was refused and a Supervision Order granted instead, on condition that the baby live with the couple and the father's parents. The CFA later supported an application for joint custody for the father, as the couple's relationship appeared to unravel and the mother left the father's home.

In another case reported last year a judge in Dublin granted the care of a young child, who had suffered injuries in the care of his mother and her new partner, to the child's father, from whom she was estranged, on condition that he receive help from his family in caring for the child.

Ethnic Minorities

As we have seen from Chapter 1, members of ethnic minorities are disproportionately represented among the families coming before the child care courts. However, this is a very heterogeneous group and the issues that bring them to these courts vary widely, so there is no single approach that could reduce this proportion.

For example, Irish Travellers are very poor and marginalised and have suffered historic discrimination; asylum-seekers may suffer problems specific to their situation, especially if in direct provision, that impacts on their children; and other immigrants may be highly educated and economically independent, but culturally unintegrated and unaware of Irish child-rearing norms.

In relation to Travellers, who are already over-represented in the statistics, it appears that the threshold for intervention in Traveller families may sometimes be higher than for families in the settled community. In some of the cases we have seen the children came to the attention of social services following allegations of sexual abuse. However, evidence was then given of severe neglect that clearly had been going on for years, including poor school attendance, malnutrition, head lice and other indicators of extremely poor hygiene.

Physical discipline emerged as an issue for children from some other immigrant communities, including, but not restricted to, African families. This raises issues of the need for early involvement of appropriately trained family support workers with immigrant families and community leaders.

Issues related to GALs

The role of a guardian *ad litem* is not clearly defined in legislation, and this can lead to different roles being adopted by different GALs in various situations. Under the legislation the court may appoint a GAL if it is satisfied it is necessary "in the interests of the child and in the interests of justice." This is obviously open to a wide interpretation, and it means that there is a wide variation in the practice of the courts in appointing GALs to children involved in child care proceedings. Some courts do so up to 80 per cent of the time, while others do so in less than one case in five (see Table 2.5.3).

Different GALs may also have different interpretations of what their role is, and it can mean in some cases the matter under discussion may stray beyond whether the threshold has been reached to make an order for a specific child.

For example, in one case in a rural town a Care Order was granted for a baby whose young mother lived in an unsafe family situation. The mother's two younger sisters had already been taken into care. The child's parents were not contesting the application and the only parties in court were the CFA and the GAL for the baby, along with both sets of lawyers.

The GAL supported the application for a Care Order, and the remaining source of contention was the circumstances by which the child came into care in the first place and then remained in care. The GAL said she believed no opportunity was afforded the young mother to build a relationship with the social workers, and no parenting assessment had been carried out. Eventually, after a number of days in court discussing this issue, the parties agreed to refer the matter to an independent review. It is not obvious how the welfare of this particular child was being served by the lengthy contest on this matter and the setting up of a review into the past behaviour of the CFA.

However, in other cases the intervention of a guardian *ad litem* was crucial in providing the court with expertise that enabled it to chart an optimum way for the children's needs to be met. One example is the non-accidental injury case referred to above. There a proposal from the GAL, that two very young children with special needs who were under Interim Care Orders with their extended family should remain with them while a family reintegration plan was worked through, formed the basis for the judge's order.

The CFA is now, at the time of writing, proposing to discharge the one-year Care Order in this case. Its original proposal was for Care Orders until the children were 18 in what the GAL warned was a non-relative foster care arrangement, which given all the circumstances, in particular the children's special needs, had a high chance of breaking down with adverse outcomes for the children.

Voice of the child

The Amendment to the Constitution on the rights of the child, passed by referendum a year ago but still at the time of writing before the courts, provides for the voice of the child to be heard in all proceedings concerning him or her. This principle, which is already known to the courts through international covenants, is interpreted unevenly. Some judges meet the children in their chambers, as well as appointing a guardian *ad litem*. Some, when dealing with an older child, appoint a solicitor for that child. Others routinely appoint a guardian *ad litem*, who is expected to express the views of the child to the court.

As can be seen from our statistics, some courts rarely, if ever, appoint a GAL and the views of the child are not expressed at all or are reported by the social workers. This does not guarantee that the child's views are fully represented, as the child may not convey their views to the social workers. In addition, where a GAL is appointed he or she is also mandated to represent the welfare of the child, which may not coincide with the child's views.

Thus the representation of the views of many children who are the subject of child care proceedings remains unsatisfactory, and is unlikely to be resolved until the amendment is inserted into the Constitution and the principle contained in it translated into legislation.

Hearsay evidence

One difficult aspect of representing the voice of the child is the reporting of what he or she says to the GAL that relates directly to the proceedings, especially where they touch on allegations of abuse or mistreatment. The child may also make such allegations to foster carers or therapists.

This raises issues concerning hearsay evidence and whether it is admissible in child care proceedings, which have many characteristics of an inquiry, rather than a full civil legal contest. But Ms Justice O'Malley has found that such proceedings are, as a matter of fact, adversarial, and therefore they must be subject to the rules of fair procedure. There have been a number of cases in which there has been extensive legal argument on the admission of evidence from children, either through a GAL, as a DVD of an interview with a Garda for the purpose of a criminal prosecution, or with a professional providing therapy for the child, or by a foster parents giving evidence.

In one area the CFA lawyer stated that foster carers are never required to give evidence, but this is not national practice, and two foster carers were examined at length in another case. The content of the evidence can also be contested if, for example, the person conducting the interview is alleged to be prompting the child or otherwise leading the evidence.

In practice, different judges treat hearsay evidence differently. The President of the District Court, Judge Rosemary Horgan, has given a written judgment on the admissibility of such evidence, but this only applies to the Dublin Metropolitan District and to the moveable judges. The Law Reform Commission has recommended that the rule against hearsay evidence be reformed in civil cases, but this recommendation has not been acted upon. Until it is, or there are national guidelines, this issue is likely to continue to be the subject of legal argument in the child care courts.

Assessments

It is clear from the reports we published that in some cases assessments of both children and parents play an important role in deciding whether or not to grant orders. There are a plethora of different assessments that can be sought – cognitive assessments, parenting capacity assessments and risk assessments for the parents; cognitive assessments, psychological assessments and assessments for sexual abuse for the children.

Some of these assessments, particularly parenting capacity assessments, may be carried out by social workers. However, it might be necessary to conduct a cognitive assessment to establish whether the parent can understand what is required in parenting, and whether he or she can learn to meet this requirement and, once proceedings are brought, whether the parent can fully understand and participate in them. These are not always carried out when they may be needed.

Risk assessment, especially where sexual abuse is involved, is much more difficult, as generally such risk may only be assessed where there has been an acknowledgement of or conviction for sexual abuse and future risk is being assessed. In one case a professor in psychology gave evidence that it would be remiss of her to conduct an assessment as to the allegations of CSA in the absence of a charge, conviction, admission or finding of fact in relation to the allegation. This then required the court to make a finding of fact relating to the allegation prior to her making the assessment. In another case, however, a risk assessment of a parent formed part of the court's decision on the facts.

A suspicion of sexual abuse, if the child has not made a disclosure, is often based on the behaviour of the child, who may be exhibiting sexualised behaviour. This may prompt the bringing of care proceedings. However, as the child sex abuse charity CARI points out (and as has also been stated by experts in cases we reported), sexualised behaviour in itself is not necessarily evidence of sexual abuse.

Given the highly emotive nature of this issue, and the high stakes for all involved, it is important that expert assessments of the child are available in all cases where child sex abuse is suspected. This is not always the case. The availability of experts to carry out assessments on the children varies depending on where the child is living. Many parts of the country have no access to specialist sex abuse clinics and assessment units, and assessments of allegations of sexual abuse have to be carried out by social workers while awaiting appointments in over-stretched units outside the area.

More general psychological assessments have also been shown to be contentious on occasion, with an independent psychologist in one case criticising the CFA psychologist on the basis that he modified a second report on a mother to produce different conclusions from his first, "viewing it through not believing what [the mother] had said. There is quite a lot of judgment in it." This followed a breakdown in the relationship between the CFA and the parents.

The whole issue of expert evidence in child-care cases is a complex and often contested one and psychological evidence has been particularly contentious in the UK, where it is much more widely used.

Court availability and delays

Outside of Dublin large volumes of family law cases, including child care cases, may be listed on one day. Various problems may then arise: the court may be reluctant to hear a contested case at all if it is likely to take up a lot of court time, and such cases will be put back repeatedly; there will be pressure on respondents to consent in order to bring an end to the matter; a case may begin and then be adjourned repeatedly, with new problems emerging or being created for the family because of the repeated adjournments.

In one case in a rural town the judge said he could not hear a case due to take two or three hours as he had 79 family law cases on the list, of which seven were child care cases, and there

was no way a long case could be heard. In another rural town the same Interim Care Order hearing was adjourned over 20 times. In this case on two occasions at least the CFA social workers, the parents, the guardian *ad litem*, the legal teams for the CFA, the parents and the GAL, along with the CCLRP, assembled but the case did not get on at all. During the case new issues arose with the children and the family, so that the nature of the case changed as it progressed, and the original reason for the Care Order being sought was replaced with another one.

This can give parents the impression that the CFA is determined to obtain an order on any basis it can, thus exacerbating mistrust between them and the social workers involved. However, it is important that the public and parents in vulnerable situations understand that the CFA, which has a statutory obligation to promote the welfare of children, cannot "un-know" risks to children it learns about after they come into care. This does not remove the obligation to ensure that any intervention in the family is proportionate to the needs of the children and the rights of the parents and to adhere to the principle that it is generally in the best interests of children to be brought up in their families.

By publishing the exchanges in court on these issues and the conclusions they lead to we hope we can promote a better understanding of them by all those involved and by the public at large, allow an informed debate to take place which can feed into the formulation of policy, lead to greater consistency in policy and practice, and help bring about changes in such policy and practice where this is thought necessary.

Chapter 3: Observations and Suggestions

Our final report will contain our conclusions and recommendations from almost three years' reporting and collecting data, but in the interim we feel we can make some observations and suggestions, especially as we now have a data bank that covers most of the courts in the State.

Vulnerable parents

The first observation, which we also made last year, is that a high proportion of the respondent parents suffer from cognitive impairment or mental illness. This year the figure is 15 per cent, or almost one in six. This is an approximate figure, as it is based on evidence given in court rather than any assessment of the respondents, but it raises many issues for the CFA and for the courts.

Any limitation on a person's cognitive abilities or mental health may impact on their ability to understand what is required of them as parents, or their ability to cope with the demands of parenting. It may also impact on their ability to instruct lawyers, particularly if they do not have access to an advocate. It underlines the need to provide for supports tailored to the needs of people with such specific vulnerabilities.

In addition, a high proportion of the children coming to the attention of social services have special needs, which place an extra burden on parents, whether or not they are particularly vulnerable themselves. It should go without saying that the parents of children with special needs should have access to all appropriate supports.

Another category of parents who require special consideration and specific supports are those from ethnic minorities, including Irish Travellers. They account for one in four of all cases coming before the child care courts. Of course, the problems of these communities are not the sole concern of the CFA. Nonetheless, the fact that such a high proportion of at-risk children come from these communities underlines the need for cultural sensitivity, focused integration policies and for cultural mediation services, which have not been a priority in recent years.

This year's figures show that 30 per cent of the children who were the subject of applications had special needs, slightly more than 27.3 per cent last year. Thus a very high proportion of all the children who end up in care have special educational needs or mental health problems. This reality needs to be integrated into the wider discussion on the provision of educational and psychological services for children with special needs, and again such services are not the sole responsibility of the CFA.

All of this suggests an urgent need for more coordination between the Child and Family Agency, adult mental health services, support services for people with intellectual disabilities, agencies working with ethnic minorities and the Department of Education.

Every effort should be made to ensure that families who are vulnerable or isolated because of the above circumstances receive early intervention and appropriate support, that care proceedings are only taken as a last resort when other interventions have failed, and that children needing special supports can access them before their problems escalate to a level where they will require much greater support, including care proceedings, or end up in the criminal justice system.

Wide variations

Because this year we were able to attend cases in most of the courts across the state, we have reports and statistics from a much more representative sample. This shows a wide variation both in the practice of the HSE (now Tusla-the Child and Family Agency) and that of the courts in how child protection issues are dealt with. This is already apparent from Tusla's own figures, which show a great regional differences in the numbers of children in care per 10,000 of the child population across the State (see Tusla: *Review of Adequacy for HSE Children and Family Services 2012*).

The sheer pressure on court time affects the way child care cases are conducted outside Dublin (where there are specialist child care courts) and the other major cities (where there are designated child care days) on the one hand, and on the other courts where there is no special provision for child care cases. Inevitably in these courts there is pressure to dispose of cases speedily. In some courts, where there is consent, no evidence is heard other than the social worker confirming the contents of his or her report. In some such cases the judge does not state whether he or she has read the report. Therefore we do not know on what evidential basis the order is made.

While it can be argued that in these cases the parents consent to the order and presumably assent to the contents of the report (assuming they have read and understood it) it is difficult to understand how a court can be "satisfied" that a child is at risk as outlined in the Act, and that nothing short of a Care Order will ameliorate that risk, without any examination of the evidence.

Where a case is strongly contested in a court in a rural town it is extremely difficult for the court to accommodate it. Sometimes the judge may request a "moveable" judge to sit and hear such a case, but even then the moveable judge will have other demands on his or her time and if the case is adjourned it is likely to be for some time. Repeated adjournments take place as the Courts Service, the judge and all the different parties juggle their diaries. If a special judge does not take over such a case it is likely to get bogged down in the list of the regular judge and could face dozens of adjournments and partial hearings,

while relations between the CFA and the parents deteriorate to toxic levels, making a resolution of the issues ever more difficult.

For child care cases alone there is a compelling case for a specialist family court to be established as a matter of urgency. Those embroiled in private family law proceedings are experiencing similar difficulties. Before his resignation the former Minister for Justice, Alan Shatter, said he considered it possible to do this by legislation, and without the constitutional amendment he previously thought necessary. Legislation was in preparation in his Department. While that department has experienced recent difficulties, these should not stand in the way of this urgently needed reform.

Greater consistency

Even without a specialist family court, greater consistency could be brought to proceedings. The Practice Direction for Dublin Metropolitan District Court spells out various steps that must be taken in child care proceedings, but these only apply outside of Dublin where there are moveable judges.

Other judges have imposed similar conditions in certain courts, but they are not universal, and it has sometimes been necessary for visiting judges in some courts to insist that they and the respondents have all reports at least two days in advance of the hearing. Some legal practitioners outside Dublin have expressed concern that aspects of the Practice Direction are not practicable where child care cases are heard intermittently. However, it is difficult to see how solicitors for parents can represent their clients without receiving all relevant documentation well in advance and having an opportunity to go through it properly with the client, especially if the clients have difficulty understanding the proceedings.

There is little knowledge within the legal and social work community of what happens in courts other than those in which they operate, which contributes to inconsistencies. The President of the District Court has organised a number of seminars on child care issues for District Court judges, though these are voluntary. In addition, a number of District Judges have written incisive and insightful judgments in child care law cases, which are published on the Courts Service website, www.courts.ie. Others have prepared papers for their colleagues. It is important that these judgments and papers are disseminated and discussed as widely as possible so that these insights can be shared.

More systematic ways needs to be developed of ensuring that all involved in child care proceedings – judges, legal practitioners, social workers, guardians *ad litem* – are aware of key developments in the literature of child protection, best practice in social work and legal developments both here and in relevant international jurisdictions.

Making proceedings less adversarial

It is the duty of the Child and Family Agency to promote the welfare of children and, where it is necessary, to do so by bringing applications to court. The CFA has no duty towards parents, and the Child Care Act makes only a perfunctory reference to the rights of the family in Section 3 (2) of the Act. These are expressly stated in our Constitution and in the international instruments to which we are signatories, particularly the European Convention on Human Rights.

Under the Child Care Act, therefore, the only way parents can assert their rights is in court, and the only upholders of their rights are the courts and their own legal representatives. In seeking an order the CFA will present its evidence of the need for the order and the parents, if they do not consent, must challenge that evidence. As stated by Ms Justice O'Malley in *HSE v OA [2013]*, this means that the process is of its nature adversarial.

Under our Constitution and present law, that cannot be eliminated. But it could be reduced by a more nuanced approach in many situations. The jurisprudence of the European Court of Human Rights (which binds all public institutions) outlines the principles that should operate when dealing with child protection, based on the principle of proportionate intervention. It includes an emphasis on the need to take all possible measures to avoid separating a mother from her new-born baby. *(K. and T. V. FINLAND, (2003) EHRR 255)*

In care proceedings involving older children it stresses the necessity to plan for the reunification of the family (which is also an obligation under Irish law). For example, it found Finland to have violated Article 8 of the Convention when it effectively reduced contact between parents and their children when they were taken into care to a degree that rendered reunification virtually impossible. It stated: "The Court could not discern any serious and sustained effort on the part of the social welfare authority to facilitate a possible family reunification during the many years during which the children were, or had been, in care." (*K.A. v. FINLAND*, application no. 27751/95, 2003)

When bringing Care Order applications, following a decision by a social work team that this is necessary, it is natural that the CFA witnesses focus on the negative aspects of the respondents' parenting in order to obtain the order, in which they usually succeed. This can produce anger and despair among the parents, which will make it difficult for them to have a good relationship with the social work team afterwards, and could mean repeated visits to court to challenge matters like access. Sometimes such anger and frustration is itself presented by the CFA as evidence of the need for a Care Order.

On the other hand some courts are reluctant to accept the total sundering of the parent-child relationship and grant orders until a child is 18, instead making successive short orders. This can make it difficult to ensure stability for the child and to promote positive relationships between the parents, the foster carers and the CFA. All of this intensifies the adversarial nature of the proceedings.

This could be reduced by making applications based on evidence which presented both the positive and negative aspects of the respondents' parenting, identifying the risks to the child, demonstrating what the CFA intervention was to date and how it had failed to reduce the risks, and outline how the balance of the child's and the parents' rights required a Care Order (much of this is outlined in the Tusla 2013 *Best Practice Guidelines "Explanatory notes for the Completion of the Social Work Report"*). An application should include an outline of what steps would be necessary to bring about a reunification of the family.

This would give hope to the parents and chart a path for them to follow (even if in many cases it may be unrealistic to expect success). It would also make such applications more compliant with ECtHR jurisprudence. In addition, it could lead some judges towards making orders until a child was 18 where they believed the CFA was committed to family reunification if and when the conditions for it were met, and where it was in the interests of the child.

Mediation could also have a role in improving the relationship between parents and social workers both prior to making an application and when a child is taken into care, as much conflict is created by disputes around matters like access and the attitude of foster parents towards the birth family. It has been stated by GALs in cases we attended that children in care do best when there are harmonious relationships between their birth family, foster carers and the state institutions dealing with them.

Consistent thresholds

There is at present inconsistency in the thresholds applied in the bringing and granting of applications. Sometimes the focus is on the behaviour of the parents rather than the situation of the child. For example, as we saw above, in one case in a rural town the suspicion that a mother had used cannabis was the basis of a successful Emergency Care Order application. The CFA did not present, and the judge did not ask for, evidence of neglect or abuse of the child, or that her health, development or welfare were being avoidably impaired, other than the assumption that they would be if the mother was using cannabis (which was denied).

There needs to be a discussion in both society in general and among the professionals involved in child care proceedings as to what constitutes a serious and avoidable risk to a child, and what level of risk is inevitable and acceptable before a child is taken from his or her family.

There is little consistency around the country in the evidence brought forward by the CFA witnesses, almost invariably social workers. Some offer a clear outline of the family's circumstances, the supports offered, their impact on the welfare of the children and the situation that led to the application being made. Others focus on the past behaviour of

the parents, perhaps when a previous child came into care, often stressing their relationship with the social work team around this time. A poor relationship sometimes appears to prompt or hasten the bringing of a care application.

The Tusla *Best Practice Guidelines for Court*, published in June 2013, do not appear to be applied uniformly. The recent document, *Thresholds for Referral to Tusla Social Work Services (March 2014)* is in the process of being implemented, which should provide a baseline for making the various decisions provided for in the Child Care Act.

Guardians *ad litem*

The legislation governing the appointment of guardians *ad litem* is vague, and there is very wide variation in their use. This is likely to be clarified by legislation, following the enactment of the children's rights constitutional amendment. However, in the meantime, it would improve services to children and their families facing child care proceedings if guidelines could be agreed for use by the courts in the appointment and role of guardians *ad litem*. This should include specifying what is required of the GAL, the elements to be contained in his or her report, the circumstances in which a GAL needs legal representation and the role of such a representative.

Conclusion

Child protection and welfare in Ireland is undergoing great change with the passing of the Children's Rights Amendment, the establishment of the Child and Family Agency/Tusla, the opening up of the family and child care courts to reporting and the proposed setting up of a special family court. There are opportunities to learn from the past and from the greater transparency now pertaining in child care proceedings in order to ensure that children and their families receive the supports and interventions they need, and that such supports and interventions are proportionate, available in all areas and consistent and that court Orders, when sought, are soundly based on both national and international law and on best practice. The Child Care Law Reporting Project hopes to be able to contribute to that objective.

Appendix 1: Glossary

Access: Meetings between a child and members of his or her family, usually parents and siblings, when the child or children is in care. Access may be supervised when contact with the parents is considered to be a risk to the child's welfare

ADHD: Attention deficit hyperactivity disorder is a neurodevelopmental disorder where the child has significant problems of attention, is hyperactive and acts impulsively. It can be associated with neglect and abuse in childhood and often results in problems in school

Alternative dispute resolution: This is a term used to describe ways of resolving disputes outside of court, and includes mediation, conciliation, arbitration and collaborative law.

Attachment disorder: This is a disorder arising in children who have had very disrupted care in their infancy, where they have been unable to form a secure attachment to a parent figures, affecting their emotional development and ability to form relationships.

Brussels II: This is an EU Convention which seeks to regulate family law where two or more EU member states are involved, for example, if two people in dispute live in different countries.

Care Order: This is an order made by the courts permitting the State to take a child into care, either on an interim or long-term basis, where the court decides the child is in need of care and protection.

Case conference: These are conferences concerning children and families involved with the Child and Family Agency where the various professionals can co-ordinate their approach and make recommendations. Parents are not entitled to attend, but may be invited to, especially when their cooperation is required with a care plan.

Children First guidelines: *Children First: National Guidance for the Protection and Welfare of Children* outlines how child protection should be at the centre of all organisations working with children, including educational and recreational organisations.

CSA: An abbreviation of "child sex abuse".

Emergency Care Order: This is an order made taking a child into care where he or she is considered to be at immediate and serious risk. Unlike in other care applications, the application can be made without notifying the parents if the safety of the child requires it.

Foster care: The great majority of children in State care are in family homes in the care of foster parents, who are contracted by the HSE to provide for their welfare. Recently a number of private organisations have emerged who offer a private foster care service to the CFA.

Guardian ad litem: Section 26 of the 1991 Child Care Act allows the court to appoint a guardian *ad litem* for a child in child care proceedings where it is necessary in the interests of the child and in the interests of justice. No criteria are laid down for who can act as a guardian *ad litem*, though in practice they are usually qualified social workers.

High support units: These are residential units for children in need of special care and protection who are unlikely to receive it in a foster care placement or a residential unit. The District court can order a child to be placed in a High Support unit. The child is not detained there, however, and can leave, unlike when he or she is detained by order of the High Court in a Special Care Unit.

Non-accidental injury: This is the term used to describe injuries sustained by a child while in the care of his or her parents, and which cannot be explained by an accident. They are usually inflicted deliberately or through negligence concerning the danger posed by actions of the parent towards the child.

Placement (of child): This refers to the placement of a child in foster care or residential institution.

Risk assessment: Risk assessment involves assessing the probability of a particular adverse event happening to a child within a specific period or in specific circumstances, and requires evaluating the circumstances known to create such a risk.

Section 47 application: This section of the Child Care Act enables the District Court, on its own motion (own initiative) or on the application of any person, to give directions or make orders affecting the welfare of the child. It is often used by guardians *ad litem* or parents to obtain specific services for a child or change aspects of the child's care.

Seisin (of a case): A court is "seised" of a case when documents are lodged with that court. If different judges sit in a particular court, sometimes a specific judge will be "seised" of a particular case, meaning he or she, and not one of the other sitting judges, will hear it. The issue of "seisin" is also often discussed in the context of the Brussels II Regulation, when the jurisdiction of different courts is in dispute.

Special care units: These are units where children with severe emotional and behavioural problems may be detained for therapeutic purposes. Children can only be detained in them by order of the High Court.

Supervision Order: This is an order made by the District Court under Section 19 of the Child Care Act where the court has reason to believe that a child's health, development or welfare are at risk, and authorises the Child and Family Agency to visit the child in his or her home to ensure the child's welfare is being promoted.

Unaccompanied minor: These are children under the age of 18 who are found entering Ireland or in Ireland without a responsible adult.

Welfare of the child: This is not defined in the 1991 Act, though the courts have defined it to include health and well-being, physical and emotional welfare and moral and religious welfare, as well as being materially provided for. The "best interests of the child" is often used in the same context.

Appendix 2: Tables

1 Overview – July 2014

2 Regional Analysis – July 2013

3 Reasons for Court Orders

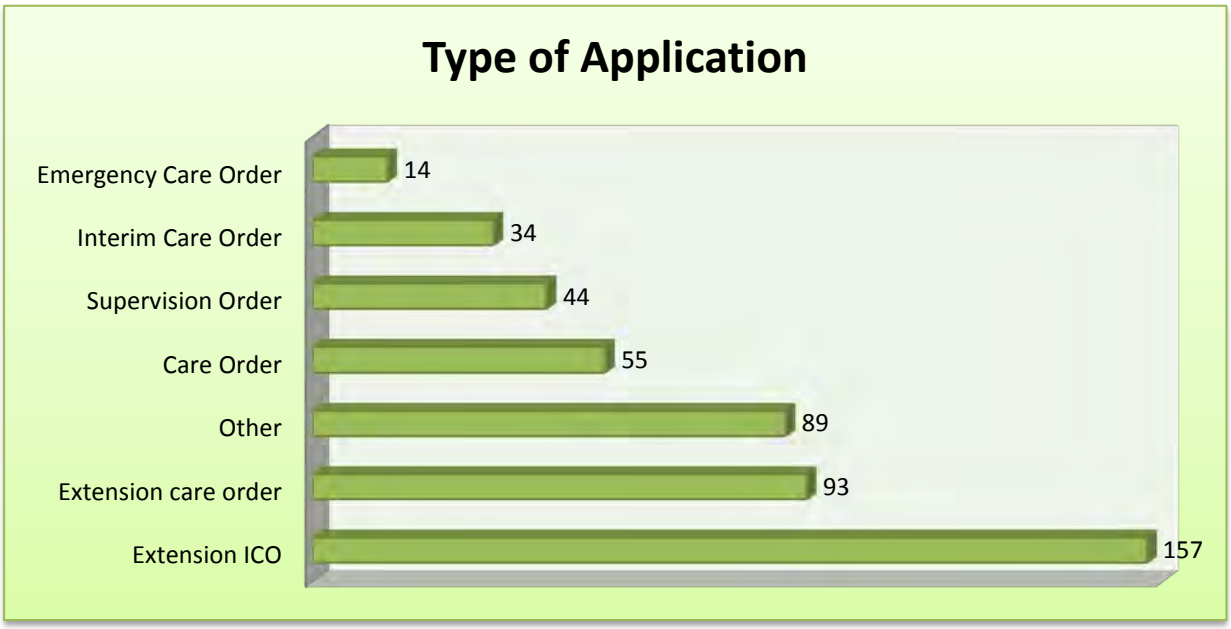
1 Overview – July 2014

1.1 Court Order Applications

1.1.1 Type of application

Where an order is granted, it may be for a Care Order for a limited period, typically one or two years. If the problems in the family are resolved in that time, the order lapses and does not feature in the statistics as a discharged order. The statistics capture a relatively small number of Emergency Care Orders as, because they are emergency, they do not normally feature in scheduled family law days.

Type of Application	Number	% of all applications
Extension ICO	157	32.3
Extension care order	93	19.1
Other	89	18.3
Care Order	55	11.3
Supervision Order	44	9.1
Interim Care Order	34	7.0
Emergency Care Order	14	2.9
Total	**486**	**100.0**
Other includes:		
Review care order	50	10.3
S 47	10	2.1
Approve after-care plan	8	1.6
Various	7	1.4
Access	6	1.2
Review supervision order	4	0.8
Not recorded	2	0.4
Discharge order	1	0.2
Placement issue	1	0.2



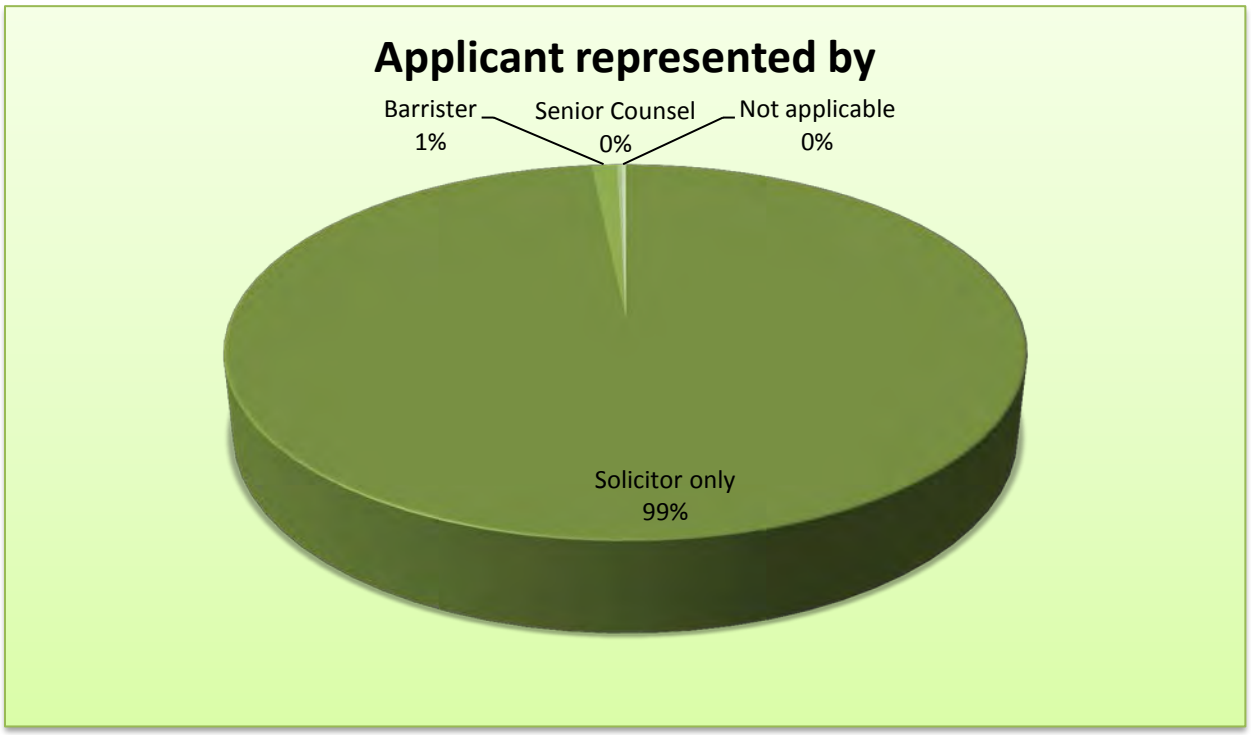
1.1.2 Reason for seeking order

Reasons	Number	% of all applications
Parental disability (intellectual, mental, physical)	73	15.0
Parental drug abuse	64	13.2
Neglect	61	12.6
Multiple	60	12.3
Parental alcohol abuse	50	10.3
Physical / emotional abuse	45	9.3
Other	27	5.6
Parent absent/deceased	24	4.9
Sexual abuse	23	4.7
Childs risk taking	18	3.7
Not recorded	15	3.1
Domestic Violence	13	2.7
Trafficked/abandoned	6	1.2
Not applicable	5	1.0
Abuse (before data form separated abuse categories)	2	0.4
Total	**486**	**100.0**

1.2 The Applicant

1.2.1. Applicant represented by

Representation	Applications	% of all applications
Solicitor only	478	98.4
Barrister	6	1.2
Senior Counsel	1	0.2
Not applicable	1	0.2
Total	**486**	**100.0**

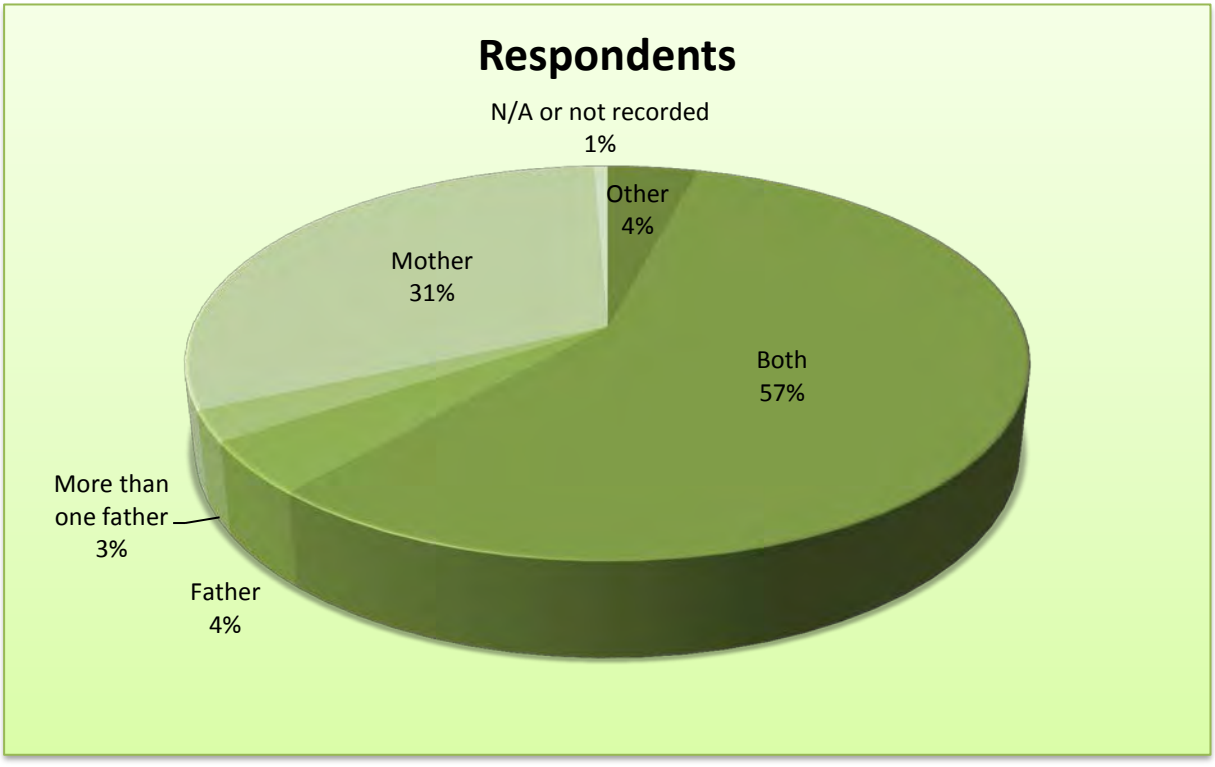


Note: Pie chart has rounded the percentage of Senior Counsel representation down to 0% because it is less than half a percentage.

1.3 The Respondent

1.3.1 Respondents

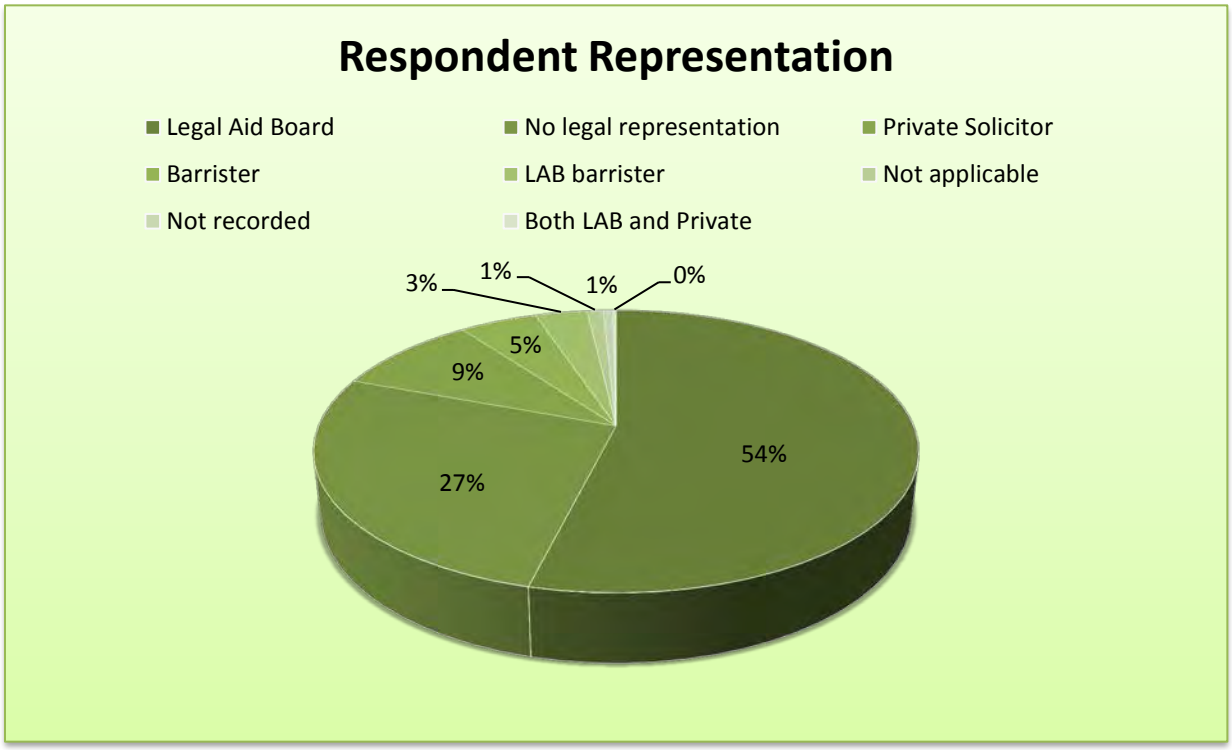
Respondents	Number	% of all respondents
Both	279	57.4
Mother	151	31.1
Father	21	4.3
Other	20	4.1
More than one father	12	2.5
Not applicable	2	0.4
Not recorded	1	0.2
Total	**486**	**100.0**



1.3.2 Respondent representation

Representation	Number	% of all respondents
Legal Aid Board	262	53.9
No legal representation	130	26.7
Private Solicitor	45	9.3
Barrister	24	4.9
LAB barrister	16	3.3
Not applicable	5	1.0
Not recorded	3	0.6
Both LAB and Private	1	0.2
Total	**486**	**100.0**

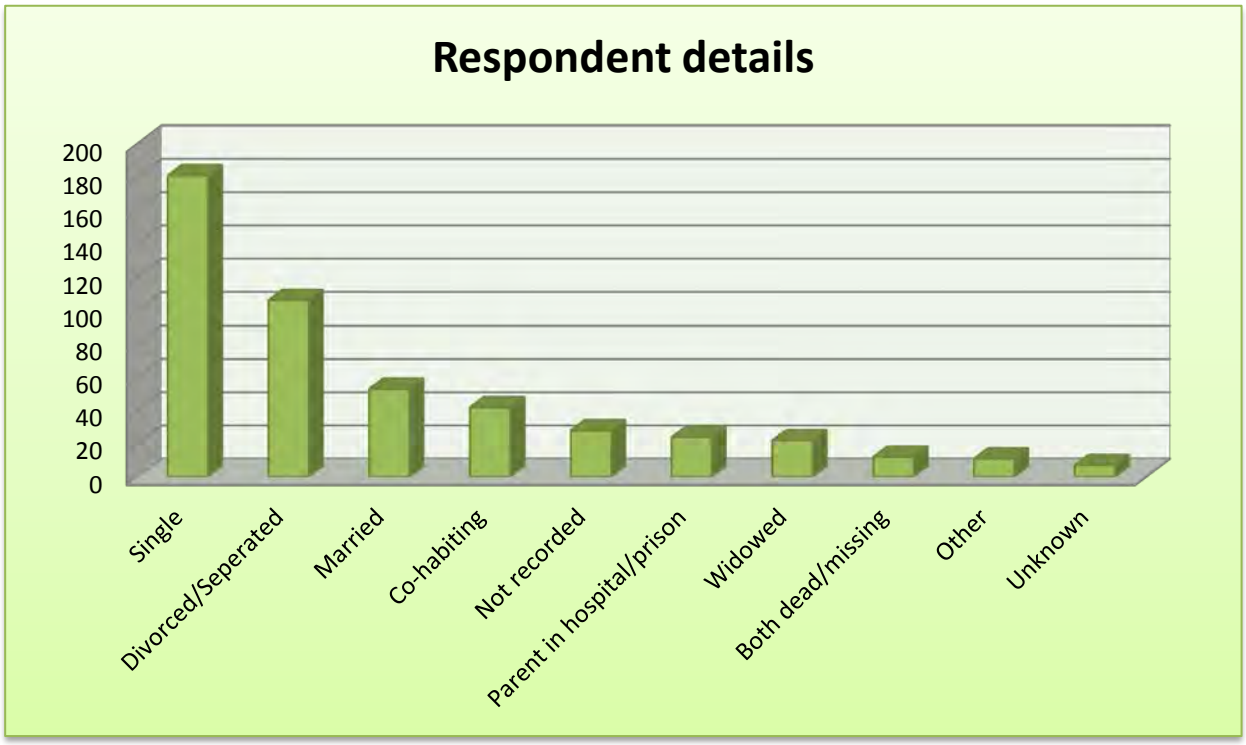
In a number of cases respondents had not obtained legal representation and were urged to do so by the judge, who adjourned the case. In others the respondent stated that they did not want representation or they were not present.



1.3.3 Respondent details

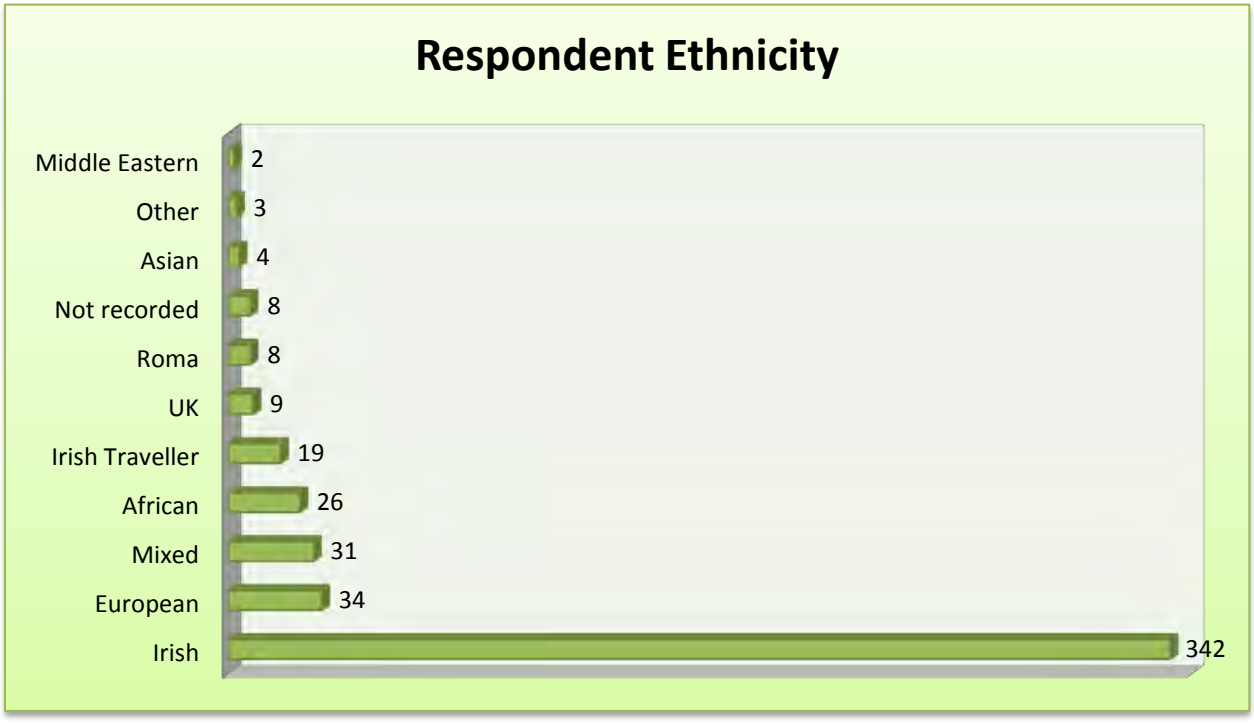
	Number	% of all respondents
Single	181	37.2
Divorced/Separated	106	21.8
Married	53	10.9
Co-habiting	42	8.6
Not recorded	28	5.8
Parent in hospital/prison	24	4.9
Widowed	22	4.5
Both dead/missing	12	2.5
Other	11	2.3
Unknown	7	1.4
Total	**486**	**100.0**

Some respondents came under more than one category. The category most relevant to the case was noted.



1.3.4 Respondent Ethnicity

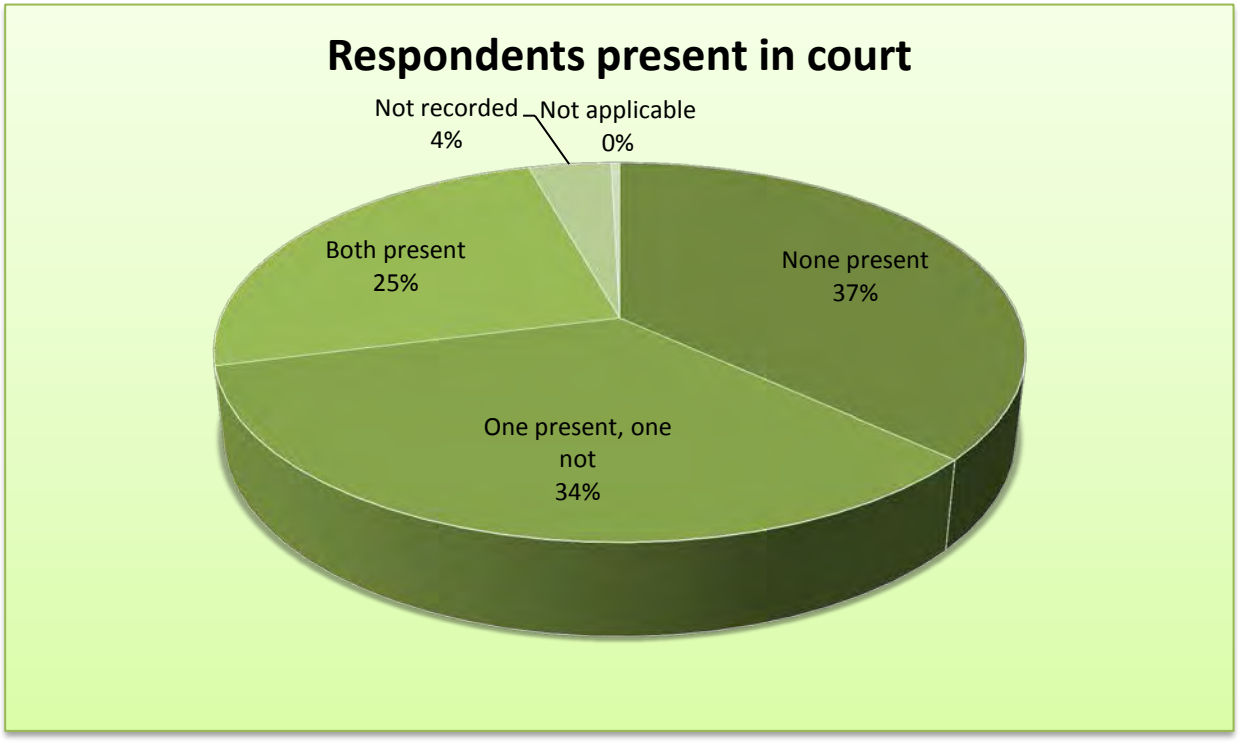
Respondent ethnicity	Number	% of all respondents
Irish	342	70.4
European	34	7.0
Mixed	31	6.4
African	26	5.3
Irish Traveller	19	3.9
UK	9	1.9
Roma	8	1.6
Not recorded	8	1.6
Asian	4	0.8
Other	3	0.6
Middle Eastern	2	0.4
Total	**486**	**100.0**



1.3.5 Respondents present in court

Present	Number	% of all respondents
None present	179	36.8
One present, one not	166	34.2
Both present	120	24.7
Not recorded	19	3.9
Not applicable	2	0.4
Total	**486**	**100.0**

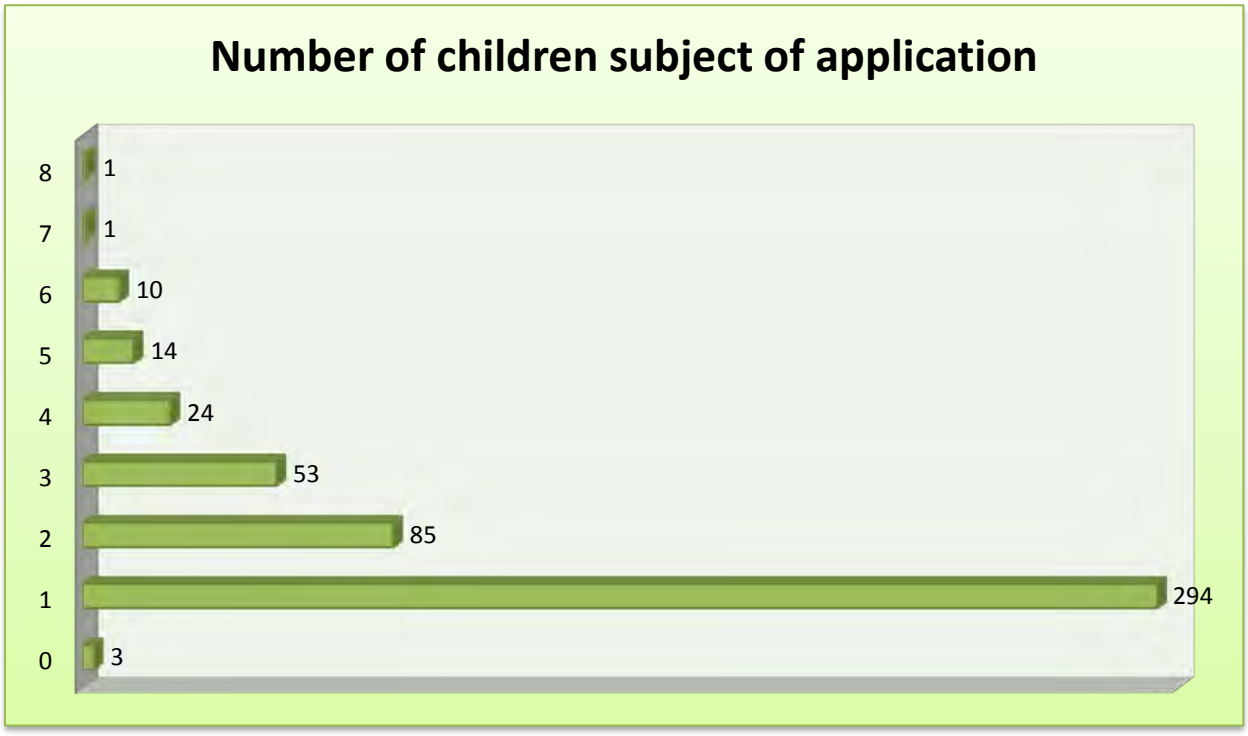
In some cases where the respondent was not present in court, he or she was represented by a solicitor and consented to the application.



1.4 The Children

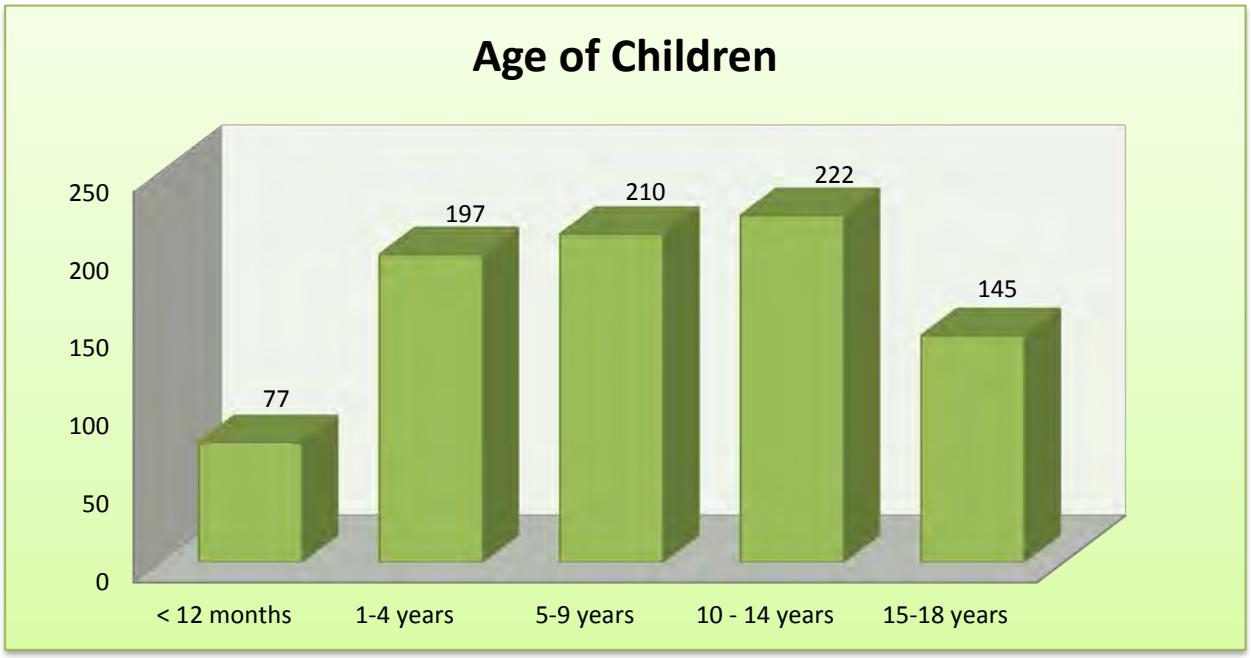
1.4.1 Number of children subject of application (children per respondent)

	Applicants	% of applicants
0	3	0.6
1	294	60.5
2	85	17.5
3	53	10.9
4	24	4.9
5	14	2.9
6	10	2.1
7	1	0.2
8	1	0.2
Not recorded	1	0.2
Total applicants	486	100.0
Total children	**864**	



1.4.2 Age of Children

Age of children	Children	% of applicants	% of children
< 12 months	77	15.8	8.9
1-4 years	197	40.5	22.8
5-9 years	210	43.2	24.3
10 - 14 years	222	45.7	25.7
15-18 years	145	29.8	16.8
Not recorded	13	2.7	1.5
Total applicants	486	100.0	
Total children	**864**		**100.0**



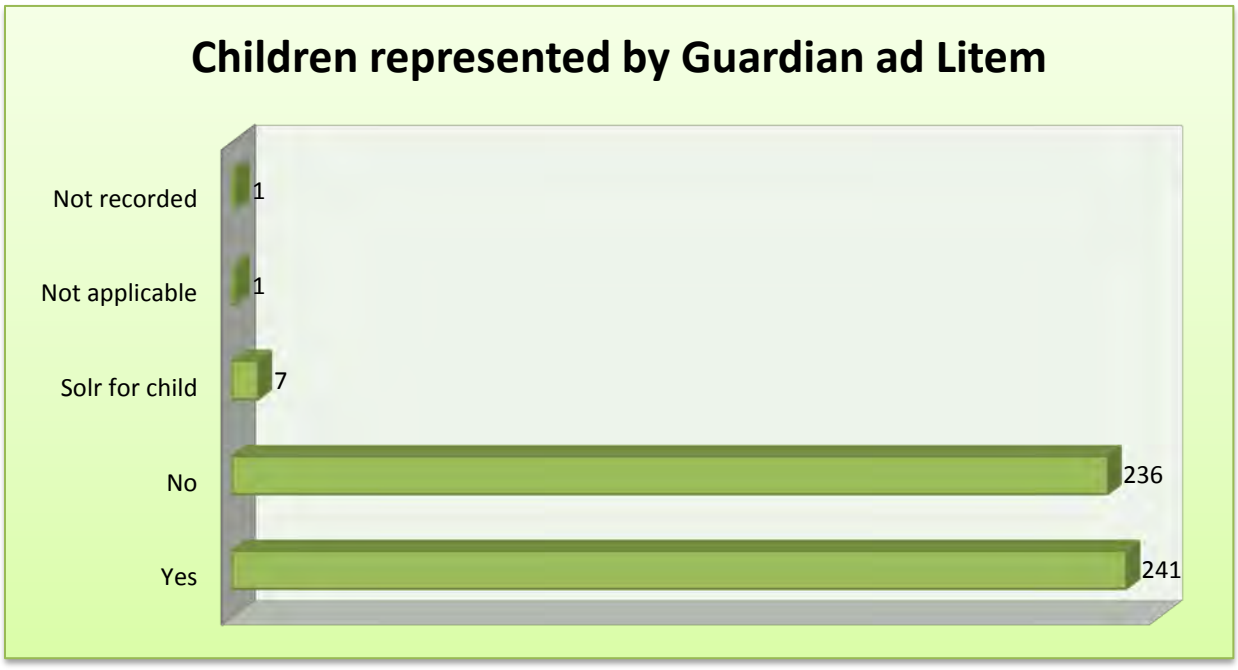
1.4.3 Children with Special Needs

- 147 (30%) cases involved children with special needs (220 children, or 25%)
  - 110 cases involved children with psychological special needs (158 children)
  - 40 cases involved children with educational special needs (64 children)
  - 39 cases involved children with physical special needs (44 children)
- 33 (7%) cases involved a child/children with more than one type of special need (47 children, or 5%)
  - 9 of these cases involved a child with all three types of special need (11 children)

	Physical Special Needs	Psychological Special Needs	Educational Special Needs
1 child	34	80	26
2 children	5	20	8
3 children		4	2
4 children		4	4
5 children		2	
Total cases	39 (8%)	110 (23%)	40 (8%)
Total children	**44 (5%)**	**158 (18%)**	**64 (7%)**

1.4.4 Were the children represented by a Guardian ad Litem?

Yes (241 cases, or 50%), No (236 cases, or 49%), Solicitor for child (7), Not recorded (1), Not applicable (1).



1.4.5 Guardian ad Litem employed by:

Of the 241 cases were the child/children were represented by Guardian ad Litem 55% of were employed by Barnardos. Roughly 37% were independent.

Guardian ad Litem employed by:	Number of cases	% of cases were children were represented by GaL
Barnardos	133	55.2
Independent	90	37.3
Not recorded	18	7.5
Total	**241**	**100.0**

1.4.6 Guardian ad Litem represented by:

Of the 241 cases where the child/children were represented by Guardian ad Litem, over 80% of these Guardian ad Litem were represented by a private solicitor, with less than 7% represented by a barrister. The cases where a barrister was involved were usually the longer and more complex cases.

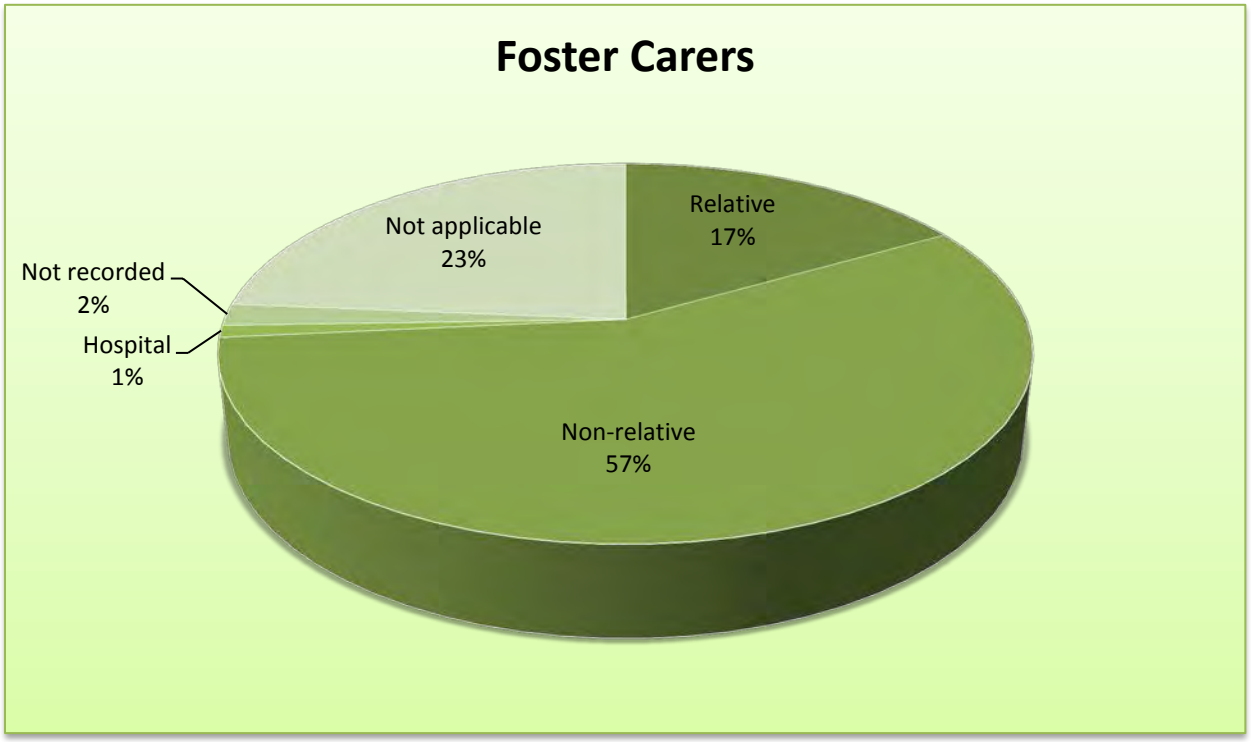
Guardian ad Litem represented by:	Number of cases	% of cases where GaL were represented
Solicitor	197	81.7
Barrister	16	6.6
Not represented	17	7.1
Not recorded	11	4.6
Total	**241**	**100.0**

1.5 The Foster Carers

1.5.1 Foster Carers

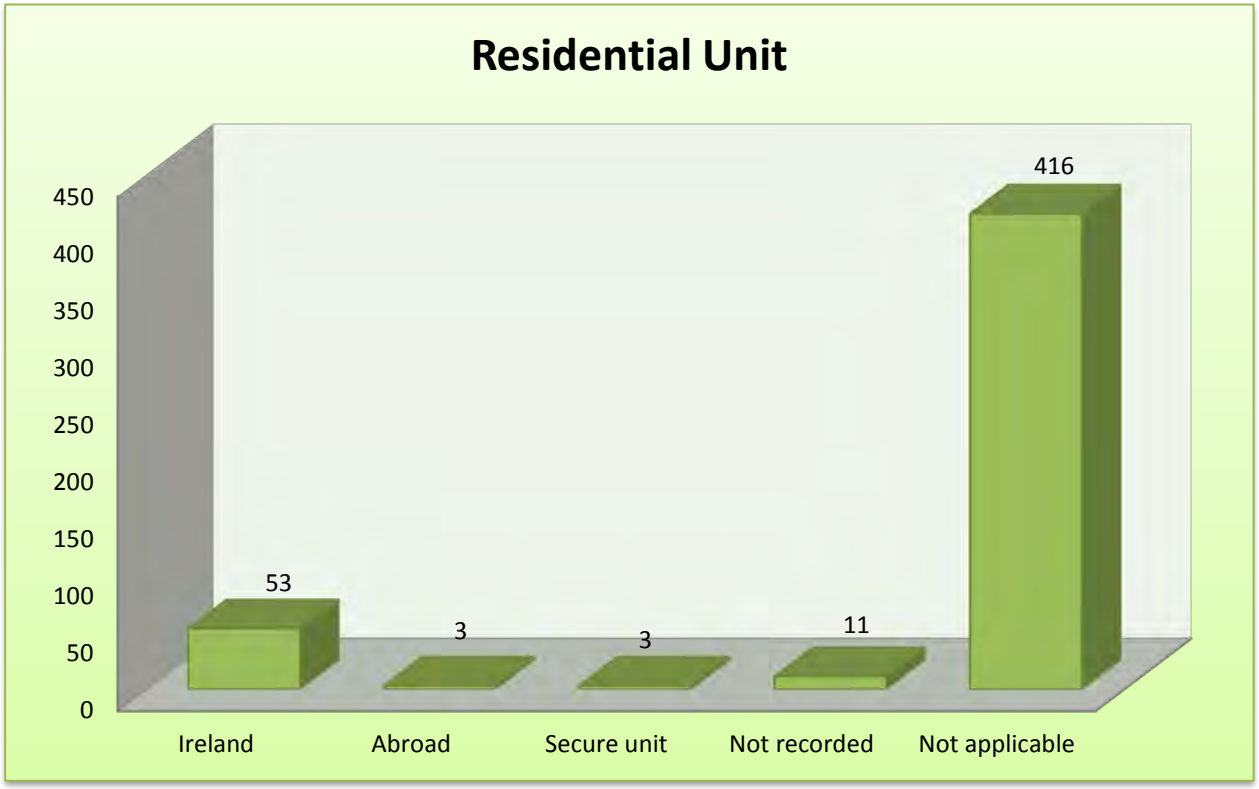
Foster carers are:	Cases	% of cases
Relative	81	16.7
Non-relative	276	56.8
Hospital	5	1.0
Not recorded	9	1.9
Not applicable	115	23.7
Total	**486**	**100.0**

"Not applicable" includes children in residential centres and those at home under Supervision Orders.



1.5.2 Residential unit location

Residential Unit	Cases	% of all cases
Ireland	53	10.9
Abroad	3	0.6
Secure unit	3	0.6
Not recorded	11	2.3
Not applicable	416	85.6
Total	**486**	**100.0**

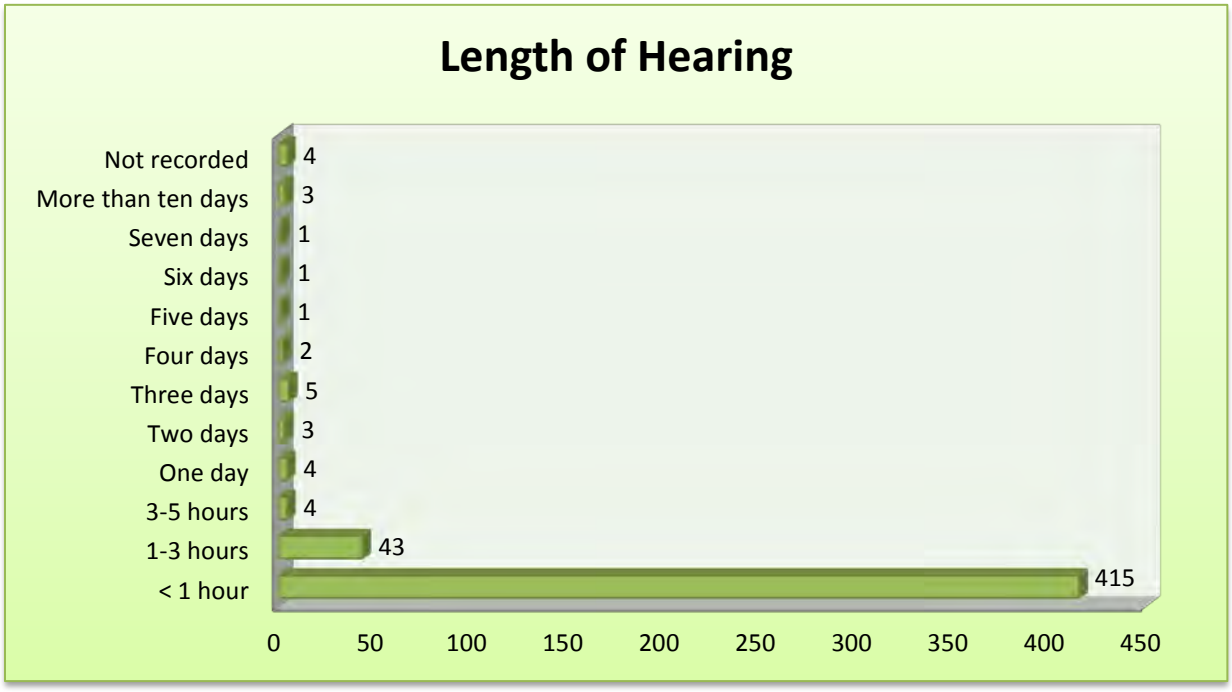


1.6 The Court Hearing

1.6.1 Length of Hearing

While many of the applications were short, as they involved a renewal of an existing order or were adjourned, 16 took two days or more.

Length of hearing	Cases	% of all cases
< 1 hour	415	85.4
1-3 hours	43	8.8
3-5 hours	4	0.8
One day	4	0.8
Two days	3	0.6
Three days	5	1.0
Four days	2	0.4
Five days	1	0.2
Six days	1	0.2
Seven days	1	0.2
More than ten days	3	0.6
Not recorded	4	0.8
Total	**486**	**100.0**



1.6.2 Other witnesses

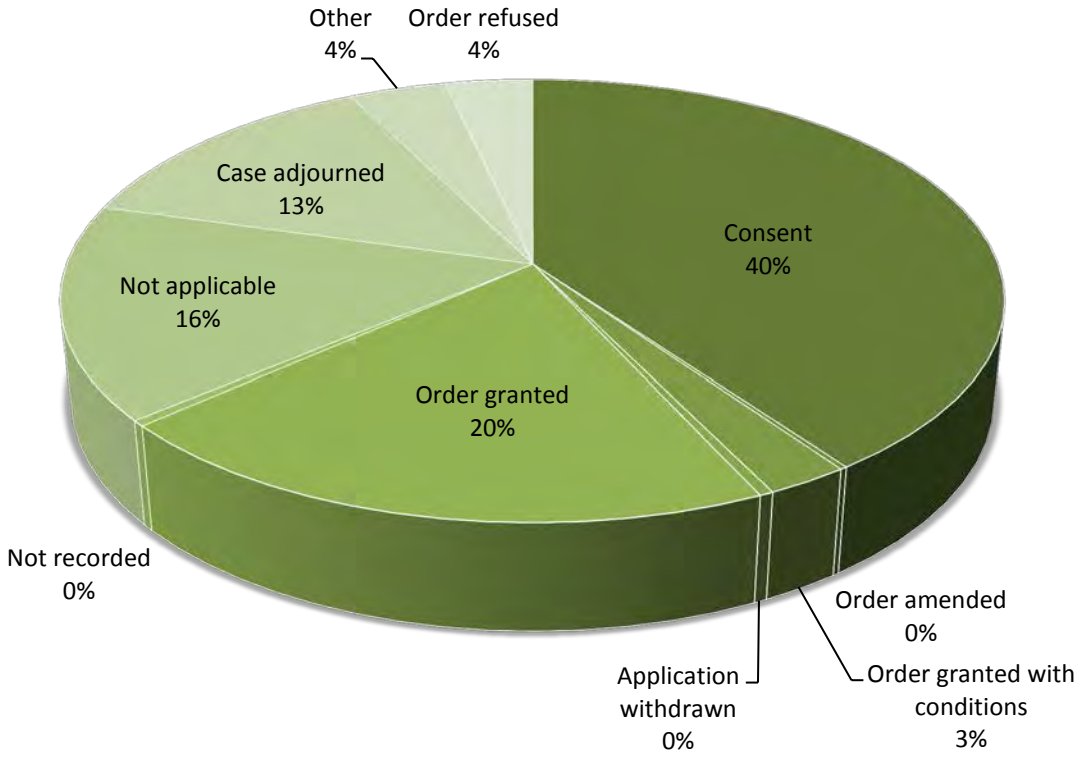
	Cases	% of all cases
Social worker	391	80.5
Solicitor only	46	9.5
Garda	10	2.1
None	10	2.1
Psychiatrist/Counsellor	9	1.9
Public health nurse	6	1.2
Multiple	3	0.6
Doctor	2	0.4
Teacher	2	0.4
Other	2	0.4
Not recorded	5	1.0
Total	**486**	**100.0**

1.6.3 Outcome of case

In 40 per cent of cases the respondents consented to the order being sought. In some where both father and mother were respondents one might consent and the other contest the order. Where it is stated the order was granted this followed some objection by a respondent. "Not applicable" covers cases where orders were reviewed or Section 47 applications were made.

Outcome	Cases	% of cases
Consent	195	40.1
Order granted	98	20.2
Not applicable	76	15.6
Case adjourned	64	13.2
Other	19	3.9
Order refused	17	3.5
Order granted with conditions	12	2.5
Application withdrawn	2	0.4
Not recorded	2	0.4
Order amended	1	0.2
Total	**486**	**100.0**

Outcome of Case



1.6.4 Outcomes by application type

	Emergency Care Order		Interim Care Order		Supervision Order		Extension ICO		Care Order		Extension of Care Order		Other	
	Cases	%	Cases	%	Cases	%	Cases	%	Cases	%	Cases	%	Cases	%
Consent	5	35.7	11	32.4	25	56.8	110	70.1	25	45.5	14	15.1	5	5.6
Order granted	3	21.4	14	41.2	13	29.5	39	24.8	15	27.3	13	14.0	1	1.1
Order granted with conditions	1	7.1	2	5.9			1	0.6	5	9.1	3	3.2		
Case adjourned			5	14.7	5	11.4	4	2.5	8	14.5	27	29.0	15	16.9
Order refused	3	21.4	1	2.9	1	2.3	2	1.3	1	1.8	6	6.5	3	3.4
Order amended													1	1.1
Other	1	7.1							1	1.8	15	16.1	2	2.2
Application withdrawn	1	7.1	1	2.9							1	1.1		
Not recorded							1	0.6			1	1.1		
Not applicable											14	15.1	62	69.7
Total	**14**	**100.0**	**34**	**100.0**	**44**	**100.0**	**157**	**100.0**	**55**	**100.0**	**93**	**100.0**	**89**	**100.0**

2. Regional Analysis – July 2014

2.1 Regional Divisions

The rest of the country included cases attended in Galway, Letterkenny, Tralee, Listowel, Wexford, Cavan, Gorey, Naas, Carrick-on-Shannon, Sligo, Ennis, Longford, Athlone, Portlaoise, Mallow, Trim, Virginia, Nenagh, Mullingar and Castlebar.

Region	Cases	% of cases
Dublin	169	34.8
Cork	66	13.6
Clonmel	28	5.8
Waterford	25	5.1
Drogheda	22	4.5
Dundalk	22	4.5
Limerick	20	4.1
Rest of Country	134	27.6
Total	**486**	**100.0**

2.2 Court Order Applications

2.2.1 Type of application

	Dublin	Cork	Clonmel	Waterford	Drogheda	Dundalk	Limerick	Rest of Country
	% of cases	% of cases	% of cases	% of cases	% of cases	% of cases	% of cases	% of cases
Supervision Order	4.1	13.6	14.3	24.0		9.1		11.9
Emergency Care Order	5.3	1.5						3.0
Interim Care Order	7.7	6.1	3.6	16.0	9.1	9.1	10.0	4.5
Extension ICO	33.1	4.5	75.0		77.3	77.3	30.0	27.6
Care Order	1.8	15.2		16.0	9.1	4.5	25.0	22.4
Extension care order	32.5	6.1		12.0			30.0	18.7
Other	15.4	53.0	7.1	32.0	4.5		5.0	11.9
Total	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**

2.3 The Applicant

2.3.1 Applicant represented by

	Solicitor		Barrister		Senior Counsel		Not applicable		Total Cases
	Cases	%	Cases	%	Cases	%	Cases	%	Cases
Dublin	167	98.8	1	.6	1	.6			169
Cork	66	100							66
Clonmel	28	100.0							28
Waterford	24	96.0					1	4.0	25
Drogheda	22	100.0							22
Dundalk	21	95.5	1	4.5					22
Limerick	20	100.0							20
Rest of Country	130	97.0	4	3.0					134

2.4 The Respondent

2.4.1 Respondents

	Dublin		Cork		Clonmel		Waterford		Drogheda		Dundalk		Limerick		Rest of Country	
	Cases	%	Cases	%	Cases	%	Cases	%	Cases	%	Cases	%	Cases	%	Cases	%
Mother	52	30.8	16	24.2	15	53.6	6	24.0	3	13.6	3	13.6	11	55.0	45	33.6
Father	13	7.7	3	4.5					1	4.5					4	3.0
Both	86	50.9	43	65.2	11	39.3	17	68.0	17	77.3	18	81.8	7	35.0	80	59.7
More than one father	3	1.8	1	1.5	2	7.1	1	4.0	1	4.5	1	4.5	1	5.0	2	1.5
Other	12	7.1	3	4.5			1	4.0					1	5.0	3	2.2
Not recorded	1	.6														
Not applicable	2	1.2														
Total	**169**	**100.0**	**66**	**100.0**	**28**	**100.0**	**25**	**100.0**	**22**	**100.0**	**22**	**100.0**	**20**	**100.0**	**134**	**100.0**

2.4.2 Respondent representation

Where the respondent has no legal representation, this is often because they have not yet sought it and will do so. In a minority of cases the respondent is not present in court and has no legal representation, in others they are not present but are represented.

	Dublin		Cork		Clonmel		Waterford		Drogheda		Dundalk		Limerick		Rest of Country	
	Cases	%	Cases	%	Cases	%	Cases	%	Cases	%	Cases	%	Cases	%	Cases	%
No legal representation	58	34.3	13	19.7	8	28.6	7	28.0	7	31.8	3	13.6	3	15.0	31	23.1
Legal Aid Board	85	50.3	46	69.7	17	60.7	11	44.0	11	50.0	6	27.3	12	60.0	74	55.2
LAB barrister	7	4.1					2	8.0	1	4.5	3	13.6			3	2.2
Private Solicitor	10	5.9	3	4.5	1	3.6	3	12.0	2	9.1	6	27.3	4	20.0	16	11.9
Barrister	7	4.1	1	1.5	1	3.6	2	8.0			4	18.2			9	6.7
Both LAB and Private					1	3.6										
Not recorded			1	1.5					1	4.5					1	0.7
Not applicable	2	1.2	2	3.0									1	5.0		
Total	**169**	**100.0**	**66**	**100.0**	**28**	**100.0**	**25**	**100.0**	**22**	**100.0**	**22**	**100.0**	**20**	**100.0**	**134**	**100.0**

2.4.3 Respondent Details

	Dublin		Cork		Clonmel		Waterford		Drogheda		Dundalk		Limerick		Rest of Country	
	Cases	%	Cases	%	Cases	%	Cases	%	Cases	%	Cases	%	Cases	%	Cases	%
Single	58	34.3	14	21.2	17	60.7	5	20.0	6	27.3	15	68.2	9	45.0	57	42.5
Married	13	7.7	6	9.1	1	3.6	4	16.0	3	13.6	1	4.5	1	5.0	24	17.9
Divorced/ Separated	21	12.4	31	47.0	7	25.0	11	44.0	6	27.3	5	22.7	4	20.0	21	15.7
Co-habiting	10	5.9	5	7.6	1	3.6	2	8.0	1	4.5	1	4.5	2	10.0	20	14.9
Parent in hospital/ prison	17	10.1	1	1.5					2	9.1			1	5.0	3	2.2
Widowed	11	6.5	4	6.1	2	7.1			1	4.5					4	3.0
Other	7	4.1	1	1.5			1	4.0	1	4.5					1	.7
Both dead/ missing	7	4.1	2	3.0					1	4.5					2	1.5
Unknown	2	1.2	1	1.5			2	8.0							2	1.5
Not recorded	23	13.6	1	1.5					1	4.5			3	15.0		
Total	**169**	**100.0**	**66**	**100.0**	**28**	**100.0**	**25**	**100.0**	**22**	**100.0**	**22**	**100.0**	**20**	**100.0**	**134**	**100.0**

2.4.3 Respondent Ethnicity

	Dublin		Cork		Clonmel		Waterford		Drogheda		Dundalk		Limerick		Rest of Country	
	Cases	%	Cases	%	Cases	%	Cases	%	Cases	%	Cases	%	Cases	%	Cases	%
Irish	109	64.5	53	80.3	26	92.9	17	68.0	11	50.0	9	40.9	15	75.0	102	76.1
Irish Traveller	8	4.7					1	4.0			2	9.1	1	5.0	7	5.2
UK			1	1.5					1	4.5					7	5.2
European	10	5.9	3	4.5			1	4.0	6	27.3	2	9.1	3	15.0	9	6.7
Roma	3	1.8							1	4.5	3	13.6			1	.7
African	20	11.8	3	4.5			1	4.0					1	5.0	1	.7
Asian	2	1.2			1	3.6									1	.7
Middle Eastern	2	1.2														
Mixed	10	5.9	3	4.5	1	3.6	5	20.0	2	9.1	5	22.7			5	3.7
Other	2	1.2													1	.7
Not recorded	3	1.8	3	4.5					1	4.5	1	4.5				
Total	**169**	**100.0**	**66**	**100.0**	**28**	**100.0**	**25**	**100.0**	**22**	**100.0**	**22**	**100.0**	**20**	**100.0**	**134**	**100.0**

2.4.5 Present in Court

	Dublin		Cork		Clonmel		Waterford		Drogheda		Dundalk		Limerick		Rest of Country	
	Cases	%	Cases	%	Cases	%	Cases	%	Cases	%	Cases	%	Cases	%	Cases	%
Both present	32	18.9	13	19.7	7	25.0	8	32.0	4	18.2	9	40.9	6	30.0	41	30.6
One present	66	39.1	19	28.8	15	53.6	8	32.0	4	18.2	5	22.7	9	45.0	40	29.9
Neither present	65	38.5	32	48.5	6	21.4	6	24.0	13	59.1	4	18.2	5	25.0	48	35.8
Not recorded	6	3.6	2	3.0			3	12.0	1	4.5	4	18.2			5	3.7
Total cases	**169**	**100.0**	**66**	**100.0**	**28**	**100.0**	**25**	**100.0**	**22**	**100.0**	**22**	**100.0**	**20**	**100.0**	**134**	**100.0**

2.5 The Children

2.5.1 Number of children subject of application (children per respondent)

	Dublin		Cork		Clonmel		Waterford		Drogheda		Dundalk		Limerick		Rest of Country	
Children	**Cases**	**%**	**Cases**	**%**	**Cases**	**%**	**Cases**	**%**	**Cases**	**%**	**Cases**	**%**	**Cases**	**%**	**Cases**	**%**
0	1	.6	2	3.0												
1	106	62.7	40	60.6	14	50.0	10	40.0	13	59.1	10	45.5	12	60.0	89	66.4
2	35	20.7	12	18.2	6	21.4	5	20.0	4	18.2	4	18.2	5	25.0	14	10.4
3	15	8.9	5	7.6	7	25.0			4	18.2	6	27.3	2	10.0	14	10.4
4	8	4.7	2	3.0	1	3.6	1	4.0	1	4.5	1	4.5	1	5.0	9	6.7
5	2	1.2	5	7.6			4	16.0							3	2.2
6	1	.6					5	20.0			1	4.5			3	2.2
7															1	.7
8															1	.7
Not recorded	1	.6														
Total	**169**	**100.0**	**66**	**100.0**	**28**	**100.0**	**25**	**100.0**	**22**	**100.0**	**22**	**100.0**	**20**	**100.0**	**134**	**100.0**

2.5.2 *Children with special needs*

	Physical		Psychological		Educational	
	Children	Cases	Children	Cases	Children	Cases
Dublin	21	18	77	59	30	22
Cork	3	3	18	11	10	4
Clonmel	4	3	4	2	0	0
Waterford	1	1	4	1	4	2
Drogheda	2	2	0	0	0	0
Dundalk	1	1	0	0	0	0
Limerick	0	0	9	5	5	2
Rest of Country	12	11	46	29	15	10

2.5.3 *Children represented by Guardian ad Litem*

	No		Yes		Solr for child		Not recorded		Total
	Cases	%	Cases	%	Cases	%	Cases	%	
Dublin	51	30.2	115	68	1	0.6	2	1.2	169
Cork	43	65.2	18	27.3	5	7.6			66
Clonmel	23	82.1	5	17.9					28
Waterford	14	56.0	11	44.0					25
Drogheda	7	31.8	15	68.2					22
Dundalk	4	18.2	18	81.8					22
Limerick	10	50.0	10	50.0					20
Rest of Country	84	62.7	49	36.6	1	.7			134

2.5.4 *Guardian ad Litem employment*

	Barnardos		Independent		Not recorded		Total
	Cases	%	Cases	%	Cases	%	Cases
Dublin	49	42.6	55	47.8	11	9.6	115
Cork	17	94.4			1	5.6	18
Clonmel	4	80.0			1	20.0	5
Waterford	8	72.7	3	27.3			11
Drogheda	10	66.7	4	26.7	1	6.7	15
Dundalk	15	83.3	3	16.7			18
Limerick	8	80.0	2	20.0			10
Rest of Country	22	44.9	23	46.9	4	8.2	49

2.5.5 *Guardian ad Litem representation*

Guardians ad litem are usually, though not always, represented by a solicitor. Where they are recorded as not being represented it is sometimes because they have just been allocated to the case and have not yet had obtained representation.

	Solicitor		Barrister		Not represented		Not recorded		Total
	Cases	%	Cases	%	Cases	%	Cases	%	Cases
Dublin	103	89.6	9	7.8	1	0.9	2	1.7	115
Cork	13	72.2			3	16.7	2	11.1	18
Clonmel	3	60			1	20	1	20	5
Waterford	9	81.8	1	9.1	1	9.1	1	6.7	11
Drogheda	12	80			2	13.3			15
Dundalk	17	94.4	1	5. 6					18
Limerick	5	50			1	10	4	40	10
Rest of Country	35	71.4	5	10.2	8	16.3	1	2.0	49

2.6 The Foster Carers

2.6.1 Foster Carers

	Relative		Non-relative		Hospital		Not recorded		Not applicable		Total
	Cases	%	Cases	%	Cases	%	Cases	%	Cases	%	Cases
Dublin	29	17.2	91	53.8	2	1.2	4	2.4	43	25.4	169
Cork	10	15.2	34	51.5	2	3.0			20	30.3	66
Clonmel	8	28.6	15	53.6	1	3.6			4	14.3	28
Waterford	3	12.0	14	56.0					8	32.0	25
Drogheda	3	13.6	15	68.2			2	9.1	2	9.1	22
Dundalk			21	95.5					1	4.5	22
Limerick	7	35.0	11	55.0					2	10.0	20
Rest of Country	21	15.7	75	56.0			3	2.2	35	26.1	134

2.6.2 Residential location unit

Res unit:	Ireland		Abroad		Secure Unit		Not recorded		Not applicable		Total
	Cases	%	Cases	%	Cases	%	Cases	%	Cases	%	
Dublin	25	14.8					7	4.1	137	81.1	169
Cork	6	9.1	2	3.0	1	1.5	1	1.5	56	84.8	66
Clonmel									28	100.0	28
Waterford	1	4.0	1	4.0					23	92.0	25
Drogheda							2	9.1	20	90.9	22
Dundalk	1	4.5							21	95.5	22
Limerick	1	5.0			1	5.0			18	90.0	20
Rest of Country	19	14.2			1	.7	1	.7	113	84.3	134

2.7 The Court Hearing

2.7.1 Length of Hearing

	Cases	%		Cases	%
Dublin			**Rest of Country**		
< 1 hour	135	79.9	< 1 hour	111	82.8
1-3 hours	21	12.4	1-3 hours	13	9.7
3-5 hours	2	1.2	3-5 hours	2	1.5
Two days	3	1.8	One day	2	1.5
Three days	3	1.8	Three days	1	.7
Four days	1	.6	Five days	1	.7
More than ten days	1	.6	Six days	1	.7
Not recorded	3	1.8	More than ten days	2	1.5
Total	**169**	**100.0**	Not recorded	1	.7
			Total	**134**	**100.0**
Cork					
< 1 hour	63	95.5	**Waterford**		
1-3 hours	2	3.0	< 1 hour	21	84.0
Three days	1	1.5	1-3 hours	1	4.0
Total	**66**	**100.0**	One day	2	8.0
			Four days	1	4.0
Dundalk			**Total**	**25**	**100.0**
< 1 hour	19	86.4			
1-3 hours	2	9.1	**Limerick**		
Seven days	1	4.5	< 1 hour	16	80.0
Total	**22**	**100.0**	1-3 hours	4	20.0
			Total	**20**	**100.0**
Drogheda					
< 1 hour	22	100.0	**Clonmel**		
Total	**22**	**100.0**	< 1 hour	28	100.0
			Total	**28**	**100.0**

2.7.2 Witnesses

	Dublin		Cork		Clonmel		Waterford		Drogheda		Dundalk		Limerick		Rest of Country	
	Cases	%	Cases	%	Cases	%	Cases	%	Cases	%	Cases	%	Cases	%	Cases	%
Social worker	148	87.6	33	50.0	27	96.4	16	64.0	20	90.9	22	100.0	19	95.0	106	79.1
Psychiatrist/ Counsellor	1	.6					2	8.0							6	4.5
Doctor			1	1.5											1	.7
Public health nurse	6	3.6														
Garda	4	2.4	1	1.5			1	4.0							4	3.0
Teacher	2	1.2														
Other															2	1.5
None	3	1.8	1	1.5			1	4.0							5	3.7
Multiple			2	3.0											1	.7
Solicitor only	3	1.8	27	40.9	1	3.6	4	16.0	2	9.1			1	5.0	8	6.0
Not recorded	3	1.8	1	1.5			1	4.0							1	.7
Total	**169**	**100.0**	**66**	**100.0**	**28**	**100.0**	**25**	**100.0**	**22**	**100.0**	**22**	**100.0**	**20**	**100.0**	**134**	**100.0**

2.7.3 Outcomes

	Dublin		Cork		Clonmel		Waterford		Drogheda		Dundalk		Limerick		Rest of Country	
	Cases	%	Cases	%	Cases	%	Cases	%	Cases	%	Cases	%	Cases	%	Cases	%
Consent	63	37.3	8	12.1	20	71.4	7	28.0	14	63.6	18	81.8	8	40.0	57	42.5
Order granted	23	13.6	12	18.2	7	25.0	7	28.0	5	22.7	3	13.6	5	25.0	36	26.9
Order granted with conditions	5	3.0					2	8.0					1	5.0	4	3.0
Case adjourned	33	19.5	8	12.1	1	3.6	3	12.0	1	4.5	1	4.5	2	10.0	15	11.2
Order refused	7	4.1	1	1.5			1	4.0	1	4.5			1	5.0	6	4.5
Other	14	8.3					1	4.0	1	4.5					1	.7
application withdrawn	2	1.2													3	2.2
Not applicable	21	12.4	37	56.1			4	16.0					3	15.0	1	.7
Not recorded	1	.6													11	8.2
Total	**169**	**100.0**	**66**	**100.0**	**28**	**100.0**	**25**	**100.0**	**22**	**100.0**	**22**	**100.0**	**20**	**100.0**	**134**	**100.0**

3 Reasons for Seeking Order

3.5 Reasons for Court Order

3.5.2 Reason for seeking order / Respondents ethnic background

Reasons for seeking order	Respondent ethnic background										Total
	Irish	Irish Traveller	UK	European	Roma	African	Asian	middle eastern	mixed	other	
Sexual abuse	10	5	1	2	0	0	0	0	5	0	23
Physical/ emotional abuse	20	0	2	3	0	7	3	0	8	1	44
Parental alcohol abuse	44	0	0	3	0	1	0	0	2	0	50
Parental drug abuse	57	2	0	4	0	1	0	0	0	0	64
Parental disability (intellectual, mental, physical)	55	1	1	5	0	4	0	1	5	0	72
Parent absent/deceased	15	1	0	2	3	2	0	0	0	1	24
Domestic Violence	8	0	4	0	0	0	1	0	0	0	13
Childs risk taking	14	1	0	2	0	0	0	0	1	0	18
Neglect	41	5	0	7	1	1	0	0	5	0	60
Multiple	44	3	0	4	0	1	0	0	4	1	57
Other	14	0	1	1	3	5	0	1	1	0	26
trafficked/abandoned	1	0	0	1	0	4	0	0	0	0	6
Abuse (before split into sexual and physical)	1	0	0	0	1	0	0	0	0	0	2
Total	324	18	9	34	8	26	4	2	31	3	459

*Total 459 due to missing data for either reasons or ethnic background in 27 cases

3.5.3 Reason for seeking order / Respondents status

Reasons for seeking order	Respondent details									Total
	Single	Married	Divorced/ Separated	Co-habiting	Parent in hospital/ prison	Widowed	Other	Both dead/ missing	Unknown	
Sexual abuse	4	6	3	3	0	2	0	1	2	**21**
Physical / emotional abuse	13	15	9	3	1	0	1	1	0	**43**
Parental alcohol abuse	17	0	19	6	2	5	0	0	0	**49**
Parental drug abuse	29	1	8	9	7	3	1	1	0	**59**
Parental disability (intellectual, mental, physical)	28	11	23	5	2	2	0	0	0	**71**
Parent absent/deceased	7	0	2	0	3	5	2	4	0	**23**
Domestic Violence	5	2	2	3	0	0	0	0	0	**12**
Childs risk taking	5	3	7	0	0	1	1	0	0	**17**
Neglect	30	3	12	5	4	1	1	0	1	**57**
Multiple	26	4	13	6	3	2	0	1	0	**55**
Other	9	7	6	1	0	0	3	0	1	**27**
trafficked/abandoned	0	0	0	0	0	0	0	3	3	**6**
Abuse (before split into sexual and physical)	1	1	0	0	0	0	0	0	0	**2**
Total	174	53	104	41	22	21	9	11	7	**442**

*Total equals 442 due to missing data for reasons or respondent details in 44 cases

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