



Child Law Project

Findings and Observations for Reform from 10 years' attendance at child protection proceedings

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1. Introduction

This paper marks the tenth anniversary of the establishment of the Child Law Project. It aims to bring together key material we have published over the past ten years. It briefly outlines our history, remit and activities to date; sets out the legal and policy context in which child care proceedings are heard; and provides a profile of the children and parents subject to child care proceedings. Then, drawing on ten years of attendance at child care proceedings, summarises some key findings and observations for reform and notes where progress has been made to address concerns raised.

1.1 The Creation of a Court Transparency Project

The principle underpinning our work is that citizens need to know and understand how laws passed by the politicians they elect work out in practice. One of the main arenas the working out of the law is seen is in the courts. Child protection cases in Ireland are heard *in camera* to protect the privacy of the child and his or her family. However, this approach can hinder transparency and accountability and means there is limited information about how the courts are working. In the absence of comprehensive information, rumour and anecdote can hold sway. While most anecdotes undoubtedly reflect individual experiences there is no way of knowing how representative they are. Inevitably, therefore, they can form the basis for lobbying for specific policies, without an adequate evidence base for such policies having been established.

In response to such criticisms, Ireland modified the *in camera* rule to 'open up' child care proceedings to reporting under the Child Care (Amendment) Act 2007 and later to limited media reporting under the Courts and Civil Law (Miscellaneous Provisions) Act 2013. Both sets of reporting are subject to maintaining the anonymity of the families involved. In 2012, the need for a court transparency project on child protection proceeding in Ireland was proposed by Geoffrey Shannon (now a Circuit Court judge) in dialogue with the philanthropic organisation, the One Foundation. Dr Carol Coulter, a journalist of 30 years' experience, was identified as the person best placed to run such a project given her experience of establishing the [Family Law Reporting Pilot Project](#) for the Courts Service, which ran from 2006 to 2008.

Funding for a pilot was secured from the One Foundation, the Atlantic Philanthropies and the then Department of Children and Youth Affairs, with the Free Legal Advice Centres (FLAC) agreeing to host the Project. The Child Care Law Reporting Project was established in November 2012 and on 4 April 2013 the then President of the District Court, Her Honour Judge Rosemary Horgan launched its first volume of reports, published on a dedicated website (www.childlawproject.ie).

The Department of Children (now the Department of Children, Equality, Disability, Integration and Youth) has remained committed to the Project and is currently its sole funder. The Child Law Project has been the successful tender applicant on two consecutive three-year funding agreements, the current agreement is scheduled to end on 31 October 2024. We operate on a modest budget of €200,000 per annum. The Project employs a Chief Executive and Executive Director (both part-time) and engages court reporters and support personnel for finance and communications on a contract for service basis. Our operational independence is guaranteed in our funding agreement with the Department. Our research work is guided by a Research Advisory Group.

The organisation was established as a company limited by guarantee (CCLRP Clg) in 2018 and is governed by a [Board of Directors](#). In 2022, its trading name was shortened from 'Child Care Law Reporting Project' to 'Child Law Project'.

We operate under a [Protocol](#) to protect the anonymity of the children and families subject to proceedings.

1.2 Our Remit

Our remit is set and limited by section 29 of the Child Care Act 1991, as amended by section 3 of the Child Care (Amendment) Act 2007 and section 6 of the Child Care (Amendment) Act 2022, which permits certain bodies attend child care proceedings and access documents. The nomination process for attendance at and reporting on child care proceedings is governed by Regulations ([S.I. 467/2012](#)). We are very grateful to the University of Galway who act as our nominating body.

Over the past ten years, our reporting has primarily focused on first instance child care proceedings heard in the District Court. These included applications for orders under the Child Care Act in particular section 13 (emergency care order), section 17 (interim care order), section 18 (care order), section 19 (supervision order) and applications under section 47 on issues related to the welfare of a child in care and under section 23 related to access arrangements between a child in care and their family.

We have also covered other relevant child-related proceedings including:

- Proceedings under section 25 of the Mental Health Act 2001 where a child is detained in a mental health facility, heard by the District Court
- Proceedings affecting children under section 11 of the Domestic Violence Act 2018, heard by the District Court
- Special care proceedings (Minors’ Review List) under Part IVA of the Child Care Act 1991, heard by the High Court
- Wardship proceedings concerning children and care leavers, heard by the High Court
- Child care cases judicially reviewed by the High Court
- Child care cases on appeal to the Circuit Court, Court of Appeal and the Supreme Court.

Our remit does not extend to private family law proceedings, which are also held *in camera*. We warmly welcome the publication by the Department of Justice of the [Family Justice Strategy 2022-2025](#), which includes a commitment to “examine the feasibility of establishing a family law case reporting system, to include: trialling a project to analyse case outcomes, judgements and decisions to produce summaries in plain language of various case types,” and “producing a guideline for regular, established public reporting of case outcomes, decisions and judgements in family law as a matter of course across all court jurisdictions.” (Start date: Q4 2023; Completion date: Q4 2025).

1.3 Our Activities To-date

Our activities to-date fall under four categories – court reporting; analytical reports and observations; research; and information and education.

A. Court Reporting

Since the commencement of the Project, our reporters have attended cases around the country selected i) on a random basis to capture routine and mundane cases; ii) as the case is identified as being of potential strategic importance or iii) as the case relates to a theme we are tracking, such the admission of newborns to care.

To date, we have published **859 court reports** from our attendance at child proceedings. These were published in 26 volumes on a quarterly or biannual basis. The publication of each volume was accompanied by a press release with a summary of sample of cases. Our latest volume is [volume 2 of 2022](#), our [archive](#) of cases is searchable by key terms.

Our court reports illustrate the work of the court and of the social workers, guardians *ad litem*, lawyers and others in child care proceedings. Some reports are successive reports published in different volumes following the same case as it wends its way through the system. However, the majority are reports of a particular hearing during the progress of a case. These reports reflect a given point in the case, and may not include its eventual outcome.

Ten years on we believe there remains an ongoing need for comprehensive reporting of child care proceedings and for reporting to be extended to cover private family law proceedings, especially in light of the forthcoming reforms of the Child Care Act and establishment of a Family Court.

B. Analytical Reports and Observations

We apply the knowledge gained through our court reporting and observing the law in practice to identify emerging issues and trends and draw out lessons for reform. We publish our reflections in periodic analytical reports:

- [Analytical Review of Three Years of Court Reporting – ‘Ripe for Reform’ \(2021\)](#)
- [Analytical Report of Three Years of Court Reporting – ‘Final Report’ \(2015\)](#) and two interim reports [2013](#) and [2014](#)

We also publish observations on proposed changes to legislation, policy and practice, including:

- [Observations on Heads and General Scheme of the Child Care \(Amendment\) Bill 2023](#)
- [Observations on the Family Courts Bill 2022](#) and on the [General Scheme 2020](#)
- [Observations on the Covid-19 Roadmaps \(April and May 2020\)](#)
- [Observations on the Child Care \(Amendment\) Bill 2019](#)

C. Research

To better understand the work of the courts we have gathered administrative data on how child care is heard by the District Court:

- A review of how each of the 24 districts of the District Court hears child care proceedings ([2019](#)). In the first part of 2023, we conducted a survey of all 24 districts which will be published over the coming months.

In addition, to gain a greater insight into possible reforms to address the difficulties raised in our court reporting we have undertaken three research studies:

- A collaborative study with a maternity hospital of child protection pathways for newborn infants. The findings of which were published in the international journal, [Child Abuse Review](#) in 2023.
- [Child Care Proceedings: A Thematic Review of Irish and International Practice \(2019\)](#)
- [An Examination of Lengthy, Contested and Complex Child Protection Cases in the District Court \(2018\)](#)

D. Information and Education

We provide information to the public, policy makers and others on the operation of the child care system through our publications and our participation at various events and fora. For example, we have participated in an advisory group to the Family Justice Oversight Group; published articles in the Irish Journal of Family Law; presented to the [Oireachtas Committee on Justice and Equality](#); shared lessons from our work with [UK colleagues](#), hosted an [international conference](#) and provided training inputs to third level universities. We also have drafted an easy-to-read guide to child care proceedings for a non-legal audience, including children and parents.

2 Legal and Policy Context in which Child Care Proceedings are Heard

2.1 Legal and Policy Framework

The central piece of legislation governing child care proceedings is the Child Care Act 1991, which has been amended on numerous occasions since its enactment. The Child Care Act provides for the Child and Family Agency to apply to the District Court for an order in respect of a child it deems in need of care and protection, and who would not be adequately protected without one of the orders available under the Act. The 1991 Act is currently being reviewed and on 19 April 2023, the Minister for Children, Equality, Disability, Integration and Youth published the Heads and General Scheme of the Child Care (Amendment) Bill 2023 which among other things amends the orders.

The Child Care Act, like all legislation, is subordinate to the Constitution, which guarantees fair procedures and affords certain rights to the marital family, individuals and children. Since April 2015, the Constitution contains a four-part article, Article 42A, which strengthens the constitutional rights afforded to a child.

Child care law is continually evolving by way of judgments from the superior courts. For example, in the past few months the High Court has published [Y & Anor v Health and Safety Executive](#) which confirms the HSE is responsible for the provision of disability services to a child and [LM v The Child and Family Agency](#) which clarifies the duty of the CFA in relation to the making of an application for a special care order.

The Minister for Children, Equality, Disability, Integration and Youth has political responsibility for child protection and alternative care in Ireland. Operational responsibility for the delivery of alternative care services rests with Tusla –the Child and Family Agency, which falls under this Department. In addition, several other state bodies play a role in child welfare and protection, in particular the HSE (mental health and disability) and the Gardai.

There is no national policy or strategy on child protection or alternative care. The Child and Family Agency has developed a suite of strategic plans for its alternative care services (foster care, residential care and aftercare). These are agency level plans so are restricted to matters that fall within the remit of the Child and Family Agency. In the area of family justice, the Department of Justice published the [Family Justice Strategy 2022-2025](#), the implementation of which is being overseen by the interdepartmental Family Justice Oversight Group.

2.2 Developments over past Ten Years

Several important developments have occurred during the ten-year period since our establishment which have impacted on the environment in which child care proceedings are heard.

2014	Transfer of responsibility for child protection, alternative care and family support from the HSE to Tusla – the Child Family Agency under the Child and Family Agency Act 2013.
2015	Passage into law of Article 42A of the Constitution which strengthens children’s constitutional rights.
2017	Adoption by the Child and Family Agency of ‘Signs of Safety’ as its national practice model.
2018	Commencement of a statutory framework for special care proceedings under the Child Care (Amendment) Act 2011.
2022	Commencement of a statutory provision that the best interests of the child will be the paramount consideration in the resolution of child care proceedings, under section 4 of the Child Care (Amendment) Act 2022 in compliance with Article 42A4.1°.
2023	Commencement of the provisions of the Assisted Decision Making (Capacity) Act 2015 to end the wardship system for adults (including care leavers) over a three-year period.

In addition, four significant developments are of note given their particular impact on vulnerable children:

- The Covid pandemic and related public health restrictions which led to the temporary closure of early years providers and schools and restrictions on services.
- The UK left the EU ending automatic mutual recognition of child related orders under EU law.
- The outbreak of war in Ukraine in February 2022 resulting in Ukrainians seeking safety in Ireland to date, including separated children.
- The acute rise in homelessness among families and the severe shortage of rental accommodation in certain parts of the country.

2.3 The District Court

Most child care cases are heard in the District Court, a court of local and limited jurisdiction. The District Court is divided into 24 Districts, each of which is operationally independent. Practice varies across the country in terms of how each district organises to hear child care proceedings. Some Districts hear child care on a dedicated child care day but the majority hear child care on the same day as private family law, civil and criminal matters. Large number of cases can be scheduled to be heard on these mixed and family law days which in practice means many matters are adjourned. The frequency of when child care is heard also varies. Most regional courts hear child care matters once a month, whereas in Limerick and Cork it is weekly and in Dublin it is daily.

In District Court child care proceedings, usually the Child and Family Agency is the applicant and the child's parents are the respondents. In most cases, the child has no legal status in the proceedings and is rarely present in court. At the discretion of the judge, a guardian *ad litem* (GAL) or solicitor may be appointed to represent the views and interests of the child. Most of the proceedings concern the admission of a child into care or were focused on meeting the needs of a child in care. However, there were some cases where reunification was possible.

The largest cohort of applications heard in child care are for extension of interim care orders (this order must be renewed every 29 days). In some courts where child care is heard along with other cases the judge may not have time to hear a full care order application or a contested case so must request a special sitting of the court to allow time for these matters to be heard.

2.4 Children in Alternative Care

The [most recent figures](#) available from the Child and Family Agency for children in care relate to the end of January 2023 and show 5,597 children in care. It is noted that this figure does not include separated children seeking international protection, such as fleeing the war in the Ukraine.

The vast majority (90.2 per cent) of children in care were in foster care (5,049 children). Of the children in foster care, more than one in four were in the care of a relative. The remaining 548 children (9.8 per cent of all children in care) were in residential care (386 children) or 'other' care placement (162 children). The figure for residential care included 11 children who were in special care where they are civilly detained for the purpose of care and education.

When the figures for the end of January 2023 are compared with those for the end of January [2015](#), two trends emerge. First, there is a reduction of more than 14 per cent in the overall number of children in care (6,357 in 2015 compared to 5,597 in 2023). However, this figure may be distorted as the 2023 figure does not include separated children. It appears there is a reduction in the proportion of children in care being in foster care and a corresponding increase in the proportion of children in residential care. Secondly, the percentage of children in care with a private provider has doubled from seven per cent in 2015 to 14 per cent in 2023.

Crisis in placements: The Child and Family Agency (CFA) is currently experiencing a crisis in securing appropriate care placements. Where an appropriate placement cannot be identified the CFA may provide a local solution (non-procured Regional Bespoke Placement), such as a hotel room. These placements are not covered by national standards and inspections and raise other governance and resource implications. Such placements are often not able to meet the needs of the child to education, access to therapeutic supports, social contact with peers (as many are a single child placement) or contact with family (as many can be located a great distance from the child's home). We have observed that in some instances a lack of a stable and appropriate placement has led to a deterioration of their mental health and to a risk of coming into contact with youth justice services. Our reporting from the High Court has shown that in some cases a child was detained longer than necessary in special care due to the lack of a follow-on placement.

2.5 Profile of the Children and Parents Subject to Proceedings

Reason for admission: Drawing on our court reports, we note that the reason for the child's admissions to care falls into one of three categories. The majority of admissions related to a concern that the parent had neglected or abused their child or failed to protect them from harm. Some admissions were focused on the child's presentation with emotional, behavioural or mental health difficulties. A third group consisted of those who had no adult responsible for the child, such as unaccompanied minors (separated children seeking international protection), or where a parent was dead or absent (often related to addiction).

Profile of the Parents: Many parents were experiencing multiple difficulties which hindered their ability to care for the child, including mental health and addiction problems, often accompanied by domestic violence, homelessness and social isolation. Cognitive impairment also featured in many such cases. Ethnic minority parents – migrants, Travellers and Roma – were disproportionately represented in child care proceedings. Another group that is overrepresented are parents who themselves spent time in care.

Profile of the children: A common thread in many, but not all cases, is that the child has experienced traumatic events and suffered harm, including numerous incidents of abuse and chronic neglect, including serious sexual assault, death threats and non-accidental injury, the untimely or violent death of a parent or other close relative, experiencing homelessness, and witnessing domestic violence, being exposed to inappropriate sexual material or behaviour, living with a parent with a substance addiction or who was self-harming. A significant proportion of cases make reference to the child having special needs and disabilities.

Drawing on our court reports from the High Court, we have observed that many of the children who were the subject of special care proceedings had been in care, including special care, for significant periods of their childhood. Their care needs were highly complex, often with multiple diagnoses and challenges. They presented with a spectrum of emotional and behavioural difficulties and psychological disorders. These included intellectual disability, learning difficulties, personality disorders, eating disorders, and polysubstance drug abuse. They often had a history of neglect and abuse including sexual exploitation. Many presented as severely traumatised, were engaging in self-harm, had suicidal ideation and sometimes extremely violent thoughts and behaviours towards themselves and others.

3. Key Findings and Observations for Reform

Below we summarise key findings and observations for reform identified over the past ten years and related legislative developments.

3.1 Court Structure

The Department of Justice is the lead agency. It has committed to reform the family justice system. It has published the Family Courts Bill 2022, the *Family Justice Strategy 2022-2025* and established various fora to progress these reforms.

Findings	Observation for Reform	Developments
Most child care is heard in a generalist court within mixed Lists	Establish a specialist family courts to hear child care separately with trained judges	Family Courts Bill 2022
Long lists mean some courts require special sittings to hear care orders and contested applications	Ensure sufficient number of District Court judges to hear child care cases on dedicated child care days in a timely manner	Progress on appointment of additional judges
Problems with jurisdiction meaning little flexibility	<i>Horizontal transfer:</i> Permit child care cases to be transferred to another District Court outside the immediate area of residence of the family concerned	Family Courts Bill 2022, section 37
Unsuitability of District Court for complex cases	<i>Vertical transfer:</i> Empower District judges to decline jurisdiction in complex child care cases, and refer them to a higher court	Family Courts Bill 2022, section 70
Lack of uniform Practice Directions for child care	Empower the judiciary to issue Practice Directions which will apply to all 24 Districts	Family Courts Bill 2022, section 42
Variation in the supports available for children and families engaged in proceedings	Set up a Court Support Office to oversee the appointment and regulation of independent advocates, GALs, cultural mediators and interpreters for vulnerable parents including those with impaired capacity	
No formal specialism within legal profession	The professional bodies should consider establishing a panel of specialist child care legal practitioners, with appropriate training	Family Justice Strategy 2022-2025
Delays in proceedings due to difficulty in securing completion of assessments and expert reports.	Establish an independent service comprising suitably qualified experts to carry out assessments and provide expert evidence for the purpose of supporting decision-making by the Family Court, drawing on the Australian Children’s Court Clinics	Family Justice Strategy 2022-2025
No targeted intervention on family reunification where parental addiction is the core difficulty	Introduce a family drug and alcohol programme within the Family Court to support family reunification where it is safe and in the child’s best interests, drawing on best practice internationally and linked to community addiction services.	
No judicial continuity so different judges hear applications about the same child and family	Establish mechanisms to allow for judicial continuity within the Family Court to enable all cases concerning the same child and family to be heard by the same judge	

3.2 Child Care Law

The Department of Children, Youth, Disability, Integration and Youth is the lead agency. It has committed to reform the Child Care Act 1991. It has enacted but not fully commenced the Child Care (Amendment) Act 2022 and has published the Heads and General Scheme of a Child Care (Amendment) Bill 2023.

Findings	Observation for Reform	Developments
No statute law providing for the best interests of the child to be paramount	Provide that the best interests of the child shall be considered paramount in child care proceedings	Child Care (Amendment) Act 2022, section 4
Hearing the views of a child in proceedings is at the judge's discretion	Commence statute law to vindicate the constitutional right of the child to have their views heard and taken into account through a variety of mechanisms	Child Care (Amendment) Act 2022 (not yet commenced)
Significant time in court is taken up by extensions of interim care orders	Provide for an extended interim care order (assessment order) while an assessment is conducted, with progress and results reported to the court	Child Care (Amendment) Bill 2023, Head 17
Children are in care under interim care orders for protracted periods of time	Introduce measures to limit the number of extensions of interim care orders	Child Care (Amendment) Bill 2023, Head 17
Children are in voluntary care for protracted periods of time	Include a maximum period of time that a child may remain in care under a voluntary care agreement	
Weak safeguards on securing up-to-date parental consent for children in care under a voluntary agreement	Strength requirement for securing ongoing parental consent	Child Care (Amendment) Bill 2023, Head 7
Limited powers of the court to act on its own motion	Empower the court on its own motion to initiate proceedings, move an order or substitute a different order for that sought by the CFA	Child Care (Amendment) Bill 2023 (some progress)
No guidance on hearsay evidence from children	Amend the Child Care Act 1991 in line with the recommendation of the Law Reform Commission report on the Law of Evidence	Commitment to include in Child Care (Amendment) Bill 2023
Inconsistent approach to admitting an unaccompanied minor into care	Set out in law the duty of the CFA in relation to separated children seeking international protection, unaccompanied minors and children who are homeless	
No statutory basis for conferencing and Child in Care reviews	Place Child Protection conferences and Child in Care Reviews on a statutory footing and provide that Reviews are independently chaired	
No statutory provision for alternative dispute resolution	Provide in law for an agency to engage in alternative dispute resolution on contested (non-threshold related) issues concerning a child in care	
Limited supports for parents who are subject to care proceedings	Put in place supports for parents whose children are subject to child care proceedings.	National pilot set up with funding from CFA

3.3 Care Placements and Supports for Children in Care

The Child and Family Agency (CFA) is the lead agency. It has committed to a range of activities under its strategic plans. There is no national policy or strategic plan on child protection (alternative care).

Findings	Observation for Reform
No national policy or strategy on child protection or alternative care	Develop a national roadmap on child protection and an inter-agency policy on child care proceedings
Lack of therapeutic, mental health and disability services for children in care	Strengthen capacity within the HSE to respond to therapeutic needs of children in care or at risk of entering care
Inconsistent approach by the CFA to child care proceedings	Develop a legal strategy to guide the directions given by the CFA to its legal representatives on: (i) the preparation and management of child care proceedings and (ii) requesting a case be stated to the High Court on matters repeatedly relitigated
Weak response to suspected sexual exploitation of children in care	Develop a joint protocol between the CFA and an Garda Síochána on suspected sexual exploitation of children in care and put in place enhanced supervision within care placements – Progress has been made as Tusla (CFA) has introduced a new policy
Lack of a specialism and joined up approach on child sex abuse	Ensure joint interviewing by specialist staff is taking place and establish multi-agency centres to respond to suspected child sex abuse – Progress has been made towards establishing a Barnahus service in three locations
Inconsistent approach to the naturalisation of a child in care	Amend section 15 of Irish Nationality and Citizenship Act 1956 to provide that the CFA may apply for a certificate of naturalisation in respect of a child in care under a section 18 order who is stateless.

A national policy on alternative care could include commitments on the development of services, training, research and data collection on the following areas: Traveller and migrant children; newborns admitted to care; family reunification; children with challenging emotional and behavioural difficulties; children in care with gender dysphoria; and child victims of domestic homicide.

All our publications are available on our website <www.childlawproject.ie>

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