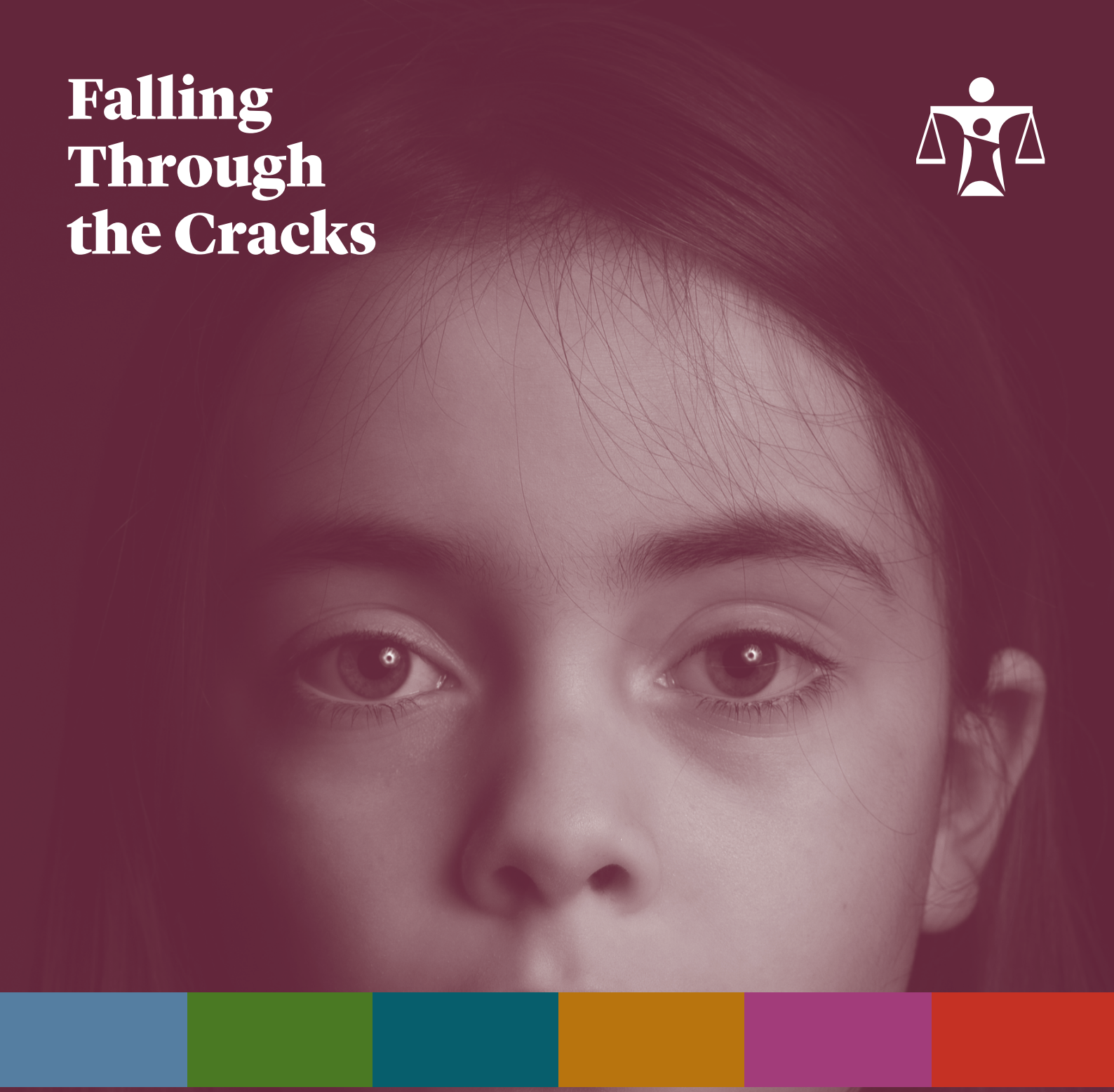
Falling Through the Cracks



Child Law Project

An Analysis of Child Care Proceedings from 2021 to 2024

Dr Maria Corbett and Dr Carol Coulter

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The authors wish to applaud the bravery and resilience of the children whose stories we recount. At the point we hear about their lives some children are struggling to find their feet. For others, especially older children, we hear that they have overcome trauma and adversity to lead happy lives, excel in academia and athletics, and forge new trusting relationships. We also acknowledge the parents who, despite often grappling with immense personal challenges that hinder their parenting abilities, still attend court and strive to keep a connection with the children and to act in their child's best interests.

Lastly, we extend our admiration to the foster carers, social workers, guardians *ad litem*, advocates, lawyers and members of the judiciary for their resolute efforts and exemplary work. Their dedication ensures children are safeguarded and given the opportunity to thrive.

ABBREVIATIONS AND ACRONYMS

The following abbreviations and acronyms appear in this study:

ADHD	Attention deficit hyperactivity disorder
ADR	Alternative Dispute Resolution
Art/s	Article/s
ASD	Autism Spectrum Disorder
CFA	Child and Family Agency – Tusla
CFREU	Charter of Fundamental Rights of the European Union
CoE	Council of Europe
CPNS	Child Protection Notification System
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
DCEDIY	Department of Children, Equality, Disability, Integration and Youth
DMD	Dublin Metropolitan District
DSGBV	Domestic, Sexual and Gender-Based Violence
ECECR	European Convention on the Exercise of Children's Rights
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EU	European Union
GAL	Guardian *ad litem*
HSE	Health Service Executive
LAB	Legal Aid Board
para/s	Paragraph/s
RESC	European Social Charter (Revised)
s/ss	Section/s
SCSIP	Separated Children Seeking International Protection
UK	United Kingdom
UN	United Nations

2023 General Scheme	General Scheme and Heads of the Child Care (Amendment) Bill 2023
Minister for Children	Minister for Children, Equality, Disability, Integration and Youth

Orders under Child Care Act

ICO	Interim Care Order	Section 17
E/ICO	Extension of an Interim Care Order	Section 17
CO	Care Order	Section 18
SO	Supervision Order	Section 19
ECO	Emergency Care Order	Section 13

EXECUTIVE SUMMARY

1. Introduction

The report is based on the Child Law Project's attendance at child protection hearings in the District, Circuit, High and Supreme Courts over a three-year period from mid-2021 until mid-2024. In addition, a survey of one day's hearings in each regional District Court was conducted, along with a survey of five days' hearings in the Dublin District Court, in order to collect information and statistics on court practice and on child care applications. Secondary material from Irish and other common law jurisdictions was also used to supplement the analysis.

2. Legal Framework

The national legal framework of the child protection system, primarily the Constitution and the Child Care Act 1991, as amended, and the international human rights framework, are outlined. These include the right to protection from harm, the right to alternative care, the right to respect for family life, the right of children for decisions to be made in their best interests, the right to be heard and to a fair hearing within a reasonable time, the right to an effective remedy and the right of parents to participate in proceedings. All public bodies, including the courts and the Child and Family Agency (CFA), are obliged to follow human rights principles in the execution of their functions. The Child Care Act provides for various orders that permit the State to intervene when a child requires care and protection they would not otherwise receive.

3. District Court

The survey of 38 court venues in all 24 Districts of the District Court found variations in how child care proceedings were listed and conducted, with many courts having to deal with excessively long lists. Only a minority of regional District Courts were able to observe the statutory requirement that child care proceedings are conducted separately from other proceedings, with only nine of the 24 Districts hearing child care cases on their own and the remaining 15 hearing child care as part of a mixed or family list. The mixed list could include criminal and other civil matters. One court heard child care cases on a day where a total of 160 matters were listed.

The manner in which the cases were listed varied, with applications concerning sibling groups and multiple applications taken together in some courts, while in others applications concerning the same child or children were taken separately. The physical infrastructure in the court venues varied, some had large numbers of people waiting all day for their case to be called with limited seating or private spaces to confer with their lawyers.

There is an opportunity for many of these issues to be addressed when the Family Courts Bill is enacted and there is a single Practice Direction for all child care proceedings in the Family Courts. We welcome also the provision in this Bill for the vertical transfer of complex cases to the Circuit Court where deemed necessary.

4. Profile of Parents

During the three-year period 343 cases were reported and these were analysed to establish the profile of the parents; the profile of the children; the nature of the applications sought; and the outcomes of the cases. The analysis showed that almost a third (29 per cent) of the parents suffered from a disability, mainly mental health issues or a cognitive disability, addiction featured in 20 per cent of cases, domestic violence was experienced by 14 per cent of parents, mainly mothers, and the same percentage were members of ethnic minorities. In many cases more than one of these issues were present.

5. Profile of Children

Most of the children were the victims of neglect or abuse, arising from the parents' inability to cope due to their issues. However, a growing number of children were coming into care due to their own disability or mental health or behavioural issues. These included children engaged in self-harm, suicidal ideation and violent behaviour where the parents had sought the help of the CFA or other State agency as they had not been receiving sufficient support to parent their child. In some instances such children were also at risk of sexual exploitation or involvement in criminal behaviour.

6. Applications

The most common applications sought were for interim care orders or extensions of interim care orders, which accounted for 40 per cent of all applications. Care orders featured in over 20 per cent, where we witnessed a growing tendency for the courts to grant shorter care orders rather than an order until the child was 18, especially in cases involving very young children, in order to give the parent an opportunity to address their issues. A significant proportion of our reports (32 per cent) were of proceedings concerning a child who was already in care.

7. High Court

We attended the High Court where special care orders were sought or reviewed or where the CFA applied for a child to be made a Ward of Court. Many of these cases concerned the lack of an appropriate placement for the child or young person in question. Since the coming into operation of the Assisted Decision-Making (Capacity) Act (ADMCA) in April 2023 the High Court has considered how children who are Wards of Court can make the transition from wardship to receiving any necessary State support and assistance under the ADMCA, while respecting their level of capacity. The High Court, the Court of Appeal and the Supreme Court have also handed down judgments on the obligations of the State under the Child Care Act, which we summarised in this report, as they are binding on the State.

8. Placements

The lack of appropriate foster and residential care placements, break-downs in a child's placement, and the use of unregistered placements have become an increasing feature of child care proceedings in both the District and the High Court. There is a significant cohort of children with complex needs, including a variety of disabilities, mental health and behavioural issues, for whom no appropriate placements are available. Special care, where a child can be detained for therapeutic purposes, is provided in a small number of specialised units, but only half of the beds are available due to staffing issues. There are no high-support units for children who do not qualify for special care, and limited step-down places for children ready to leave special care. Judges have highlighted these issues repeatedly, and pointed out that the State is vulnerable to challenge on its failures in this area.

9. Lack of Inter-Agency Cooperation

Numerous reports concerned the situation of children who required support from agencies other than the CFA, notably the HSE, but also the Department of Education. In many of these cases the courts were asked to direct other agencies to provide supports for such children. In one case the High Court stated conclusively that the HSE, not the CFA, was responsible for providing a suitable placement for a child with a disability, this has not been appealed and is now the law. Mandatory, structured inter-agency cooperation to care for and protect exceptionally vulnerable children across a range of Government departments and organisations is required.

10. Supports for Parents

Under international human rights instruments, no child should be separated from their parent due to their or their parents' disability. The prevalence of parents with a disability in child protection proceedings highlights the need for Government action to ensure this does not occur. This means early evaluation of parental ability, sensitive to the needs of parents with a disability, and the provision of appropriate supports, including an advocate where child protection proceedings are being contemplated. Access to addiction services should also be a priority for parents at risk of their children being taken into care. Where domestic violence features in a family, options other than removing the child should be considered, including proceedings under the Domestic Violence Act, where the CFA can seek domestic violence orders.
The Barnardos national pilot Support Service for the Parents of Children in Care is an important step in supporting parents of children in care, and will need evaluation and expansion.

11. Human Rights Vulnerabilities

The report highlights the possibility of the exposure of the State to challenge under its constitutional and human rights obligations. It is a violation of the child's right if State authorities knew, had reason to suspect or ought to have known that abuse was going on and failed to act to protect children from abuse. The fact that some children were not in care, or were in inappropriate care, while being at risk of sexual exploitation or abuse makes the Irish State vulnerable. The continued detention of a child in special care where is it no longer warranted, due to the lack of an onward placement, raises a concern about unlawful detention. In addition, the right to respect for family life is at issue if a child is separated from their parents due to the child's or the parent's disability. Finally, until the Child Care (Amendment) Act 2022 is fully commenced the constitutional provisions on the views of the child remain unfulfilled.

12. The Future

Consideration should be given to the development of a national strategy on alternative care, setting out a vision on how the alternative care system will operate over the coming 10 to 20 years. This could include community-based initiatives to prevent care admissions; methods to attract and retain the next generation of foster carers and residential care staff; the design of a model of high support care with a focus on therapeutic inputs, potentially operated in conjunction with the HSE; and the design of a model of care for suspected victims of trafficking and exploitation.

In the short term, an action plan to address the current crisis in accessing appropriate care placements should be developed. The work of ensuring collaboration between different State agencies in providing support for vulnerable children should be prioritised across all relevant Departments. The establishment by DCEDIY of an interagency committee is a positive first step.

We welcome the progress made to date towards establishing a specialist Family Court and reforming the family justice system and updating the Child Care Act and urge that Government maintain its focus on these to ensure the State can vindicate the rights of the child and build trust in the care system.

INTRODUCTION

Introduction

I INTRODUCTION TO THIS REPORT

This report provides an analysis of child care proceedings attended by the Child Law Project from mid-2021 to mid-2024 and sets out our observations for reform. The report fulfils a condition of a Funding Agreement between the Child Law Project and the Minister for Children, Equality, Disability, Integration and Youth which requires that a report will be published providing an in-depth analysis of the cases attended during the contract period. It also requested an examination of a number of specific topics. The grant period ran from 1 November 2021 to 31 October 2024.

The Child Law Project is an independent project in operation for twelve years which examines and researches judicial child care proceedings with the aim of promoting transparency and accountability.[1]

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. Most are heard in the District Court where it is rare that a written judgment is delivered. These two factors combined can hinder transparency and accountability and means there is limited information about how the courts are working. In the absence of comprehensive information, rumour, assumptions 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, in 2007 the *in camera* rule was modified to permit reporting on child care proceedings subject to maintaining the anonymity of the families involved and on the basis that it is likely to provide information which will assist in the better operation of the Child Care Act, in particular in relation to the care and protection of children.[2] In 2012, the Child Law Project was established with support from philanthropic and State sources.[3] Over the past twelve years, the Project has published 29 volumes of reports comprising a total of 1,050 court reports based on attendance at child care proceedings across the country.[4] We operate under a Protocol to protect the anonymity of the children and families subject to proceedings.[5] In addition, we produce analytical reports to identify trends and make observations for reform. This report is our fifth analytical report.

1 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.

2 Child Care (Amendment) Act 2007. The *in camera* rule was later modified to allow limited media reporting under the Courts and Civil Law (Miscellaneous Provisions) Act 2013.

3 Since 2018 we have been a company limited by guarantee, registered as CCLRP CLG and governed by a Board of Directors. We trade as 'Child Law Project' and previously as 'Child Care Law Reporting Project'.

4 All our publications are available at www.childlawproject.ie including our archive of cases which is searchable by key terms.

5 A copy of our Protocol can be accessed at www.childlawproject.ie/protocol We have at times taken further steps to protect the child's identification such as delaying publication of a case report to allow for a "fade factor" on the case to emerge.

Structure of this Report

This chapter introduces the work of the Child Law Project, defines key terms and sets out the methodology employed in this report. It provides a short overview of the alternative care system, and the social, institutional, policy and legal framework in which child care proceedings are heard.

Chapter One provides an analysis of child care cases heard in the District Court and reported on our website. It also includes the findings of a review of all 24 Districts. Chapter Two provides an overview of cases attended in the special care Minors' and Wardship List of the High Court including a review of recent case law. Chapter Three provides an overall piece of analysis examining the major themes which emerged from the findings of the first two chapters. Chapter Four explores five specific issues, which were a requirement under our funding agreement. Chapter Five draws together our concluding remarks, provides a commentary on compliance with the State's obligations under constitutional and human rights law and sets out observations for reform.

The report is entitled "Falling Through the Cracks". The authors are keen to stress that this is not a commentary on the alternative care system in its entirety as we are not aware of the circumstances of each of the 5,803 children in care. We can only comment on the cohort of children whose cases we observed.

Despite this caveat, we believe this title reflects a cohort of children whose cases are currently dominating proceedings across the country.

We have been attending and reporting on child care for twelve years and over that period there have always been cases of children falling between the cracks when State agencies struggled to find an appropriate placement for a child, especially in special care. However, over the past three years the situation has deteriorated. The cohort of children who have been left without a suitable placement or therapeutic service to meet the child's needs has grown. For the first time ever, we have seen cases of young children for whom no foster carer is available; very young children, as young as four years, being place in residential care; and a 'waiting list' for admission to special care. These are retrograde steps that have undermined progress made over the past twenty years. This slide backwards is taking place in the context of a vacuum of national policy and continued weak interagency cooperation.

This report notes the very welcome progress on legal reform, in particular giving statutory effect to Article 42A of the Constitution and taking further steps towards establishing a Family Court. However, the wheels of reform turn slowly and so the legal and institutional framework in operation now remains virtually the same as it was in late 2021. We hope that the insights provided in this report will be of value in highlighting the urgent need for a whole-of-government approach to alternative care, and a continued strategic focus to bring the planned legal reforms to fruition.

II TERMINOLOGY AND SCOPE OF THIS REPORT

Below we define key terms as used in this report:

Child	The term "child" is defined as any person from birth until the individual reaches the age of legal majority, eighteen years of age. In some instances, the term "teenager" is used in this report to describe an older child.
Parent	As a form of shorthand, unless otherwise stated the generic term "parent" is used throughout this report to include a child's parent, legal guardian or person acting *in loco parentis* and the term can refer to a person (singular) or multiple people (plural).
Child and Family Agency	The Child and Family Agency is also known by the name Tusla. As the name "Tusla" does not appear in legislation, the name "Child and Family Agency" and its abbreviation "CFA" are used in this report. However, the term "Tusla" does appears in some quotations.
Child in care	References to a child or children being "in care" in this report refer to any child who has been admitted to the care of the CFA under section 4, 13, 17, 18, 19 and 23H of the Child Care Act 1991. A child being provided with accommodation under section 5 of the 1991 Act is not in the care of the CFA, legal responsibility for the child remains with their parent.
Child care	References to "child care" law or proceedings refers to proceedings under the Child Care Act 1991 as amended. These are public law proceedings to be distinguished from private family law proceedings concerning parentage, guardianship, custody of and access to a child.
Family reunification	For the purpose of this report, the phrase "family reunification" refers to re-uniting a child and their parent in circumstances where they have been separated due to a child protection or welfare concern. This is to be distinguished from international family reunification, which concerns a family who have been separated across international boundaries as a consequence of immigration law.
Special care	The term "secure care" is sometimes used in practice to refer to "special care", the terms have the same meaning but as the phrase "secure care" has no legal meaning it not used in this report.
Special emergency arrangements	The phrase "special emergency arrangement" and its abbreviation "SEA" and the phrase "bespoke placement" refer to a care placement arranged by the CFA in a setting that is not regulated.
Unaccompanied or separated minor	This term "Unaccompanied or separated minor" refer to a third-country national or stateless child (under the age of 18 years) with no adult or legal guardian responsible for them (some but not all of whom may be seeking international protection) and a child residing in Ireland under the Temporary Protection Directive (2001/55 EC) due to the war in Ukraine.

Scope

The focus of this report is child care proceedings, in particular proceedings heard by the District Court; special care hearings heard by the High Court; relevant judicial reviews of child care cases; and wardship cases involving children and young adults who have previously been in care heard by the High Court.

As with all our work, this report is unable to comment on the quality of care provided to individual children in care, this role is fulfilled by the Health Information Quality Authority (HIQA) and the Child and Family Agency – Tusla (CFA) who inspect these units against relevant Regulations and National Standards.

Unless the child is also under a supervision or care order, none of the following categories of children fall into the scope of this study: A child who is detained in the Oberstown Children Detention Campus; an inpatient in a hospital or psychiatric unit; a child living with their family in homeless accommodation, a domestic violence refuge or within the international protection system. In addition, criminal proceedings against a parent or other person in relation to child abuse, neglect or exploitation, fall outside the remit of this research.

Some children in care are placed with relatives in a foster care setting (formal kinship care). In other circumstances a child may be living with relatives in an informal family care (informal kinship care). Only those children in formal kinship care fall into the remit of this report.

Despite this report being commissioned by the Minister for Children, many of its findings and recommendations concern the work of the CFA, the mental health and disability services provided by the Health Service Executive (HSE) and the operation of the courts which fall under the remit of the Department of Justice, the Courts Service of Ireland and the judiciary.

III METHODOLOGY AND RESEARCH METHODS

This report builds on our previous research and analytical reports, in particular our 2021 Analytical *Report Ripe for Reform*,[6] *District Court Child Care Proceedings: A National Overview* (2019),[7] *An Examination of Lengthy, Contested and Complex Child Protection Cases in the District Court* (2018),[8] and *Final Report* (2015).[9]

A socio-legal methodology was adopted for this research. Two research methods – court observation and a survey – were employed to generate primary data for analysis. The findings from these two methods were supplemented by a short survey of the Call Over list for the Dublin court, desk-based research examining previous research by the Child Law Project, official publications, as well as relevant academic and grey literature.

Where appropriate comparisons are made between the findings from court reporting, the survey and previous research conducted by the Child Law Project as well as other published data or research. The comparison with research from other sources using different methodologies helps to triangulate our findings.

Court Reporting

The key method informing this research was the development, collation and analysis of 343 court reports. The reports were created by the attendance of one of our panel of reporters in court over the three year period from the second half of 2021 to June 2024. The reporters observed child care proceedings primarily heard by the District Court but also by the High Court, Circuit Court, Court of Appeal and Supreme Court. The reports were edited and published in six volumes between February 2022 and July 2024 on <www.childlawproject.ie>.

6 Maria Corbett and Carol Coulter, Ripe for Reform: An Analytical Review of Three Years of Court Reporting on Child Care Proceedings (Child Care Law Reporting Project – 2021).
7 Carol Coulter, District Court Child Care Proceedings: A National Overview (Child Care Law Reporting Project – 2019).
8 Carol Coulter, An Examination of Lengthy, Contested and Complex Child Protection Cases in the District Court (Child Care Law Reporting Project – 2018).
9 Carol Coulter et al., Final Report (Child Care Law Reporting Project – 2015).

An in-depth analysis of the reports was undertaken which generated both qualitative (narrative) and quantitative (statistical) data through which key themes were identified. NVivo software was used to aid the analytical process.

The reports illustrate the work of the court and of the social workers, guardians *ad litem*, lawyers and others in child care proceedings. The nature of the reports varies. Some describe what happened in court on a particular day and so reflect a given point in the child's case on that date. As a consequence, such reports may not be complete and the eventual outcome in the case may be unknown. In other reports, a reporter was able to attend multiple hearings concerning the same child or group of siblings over a period of several months or years. In these case, successive reports on the same child were published in different volumes following the case as it wends its way through the system. As a consequence, the reports range from a few paragraphs in length to over 10,000 words.

The cases attended were selected on one of the following bases:

i) on a random basis to capture routine and mundane cases;
ii) as the case was identified as being of potential strategic importance for policy or legislative reform; or
iii) as the case fell into a thematic category we had identified as of interest (either to meet a criteria of our Funding Agreement or one we had identified in previous reports as of interest, such as newborn admissions to care).

Limitations: Three limitations arise when employing this research method which may impact on the quality of its findings. Firstly, the sample is not statistically representative. Secondly, some reports only capture a case at a point in time so may not be complete. Thirdly, we categorise the reports based on the application being heard or the key issue being raised; however, some cases could have been categorised under more than one heading.

District Court Survey

The second research method informing this research was the completion of a survey of all 24 Districts of the District Court. Our earlier study *District Court Child Care Proceedings: A National Overview*, published in 2019, identified variations that exist in how child care is heard across the 24 districts. The 2023 survey sought to collect quantitative data to evidence this disparity. Data was gathered by way of a questionnaire completed for almost all court venues scheduled to hear child care during a 16-week period. It provides an overview of the districts, their courthouse environments and the nature of scheduled hearings for child care.

Drawing on the findings of the 2019 survey, a questionnaire was developed and piloted. The President of the District Court kindly agreed to notify the District Court judges and circulate a copy of the questionnaire. We attended a full day of sitting in 37 court venues, covering all 24 districts of the District Court. As the court in Dublin sits every day we attended five days of hearings in Dublin. It took 16 weeks from February to June 2023 to complete the survey. The findings of the questionnaire were analysed using Excel and are presented as composite data relating to the 24 districts, with some district level data used for illustrative purposes.

Limitations: Three limitations arise when employing this research method which may impact on the quality of its findings. First, some data is missing or incomplete, and therefore may under-represent the true figure. The questionnaires were completed based on the observations of nine different reporters during their attendance at court during a court hearing. The nature of a fast-paced and noisy courtroom environment meant that at times the reporter was not able to ascertain data for all fields being sought.

The data collected was based on observations and listening for references made during the hearing. We did not employ another research method (such as questioning a party to the proceedings or reading court documentation) to check the accuracy or supplement our data. We had a difficulty in collating the total number of matters listed for hearing as different districts employ different approaches when presenting this information in their published Lists. The data also reflects the circumstances on the day we attended which may include unusual circumstances. For example, on the day we visited Trim, the judge was unavailable and all child care cases were adjourned apart from one and all private family law matters were cancelled.

A second limitation is that in some instances we were unable to gather sufficient data to be able to produce a finding. For example, we unsuccessfully sought to gather data on the length of wait for a Care Order hearing date. Finally, a third limitation is that the research method used of attending court on a scheduled hearing date will not capture all child care matters heard in that district given that an emergency hearing may be made at any court outside of scheduled hearings.

Supplementary Methods

In addition to the District Court survey, we also undertook a review of the weekly Call Over hearings of the Dublin Metropolitan District (DMD) over a ten-week period between October and December 2021.

Finally, the findings from our own research are supplemented by data from secondary sources including official publications and academic literature. This report is also informed by a review of relevant Irish and international human rights law. A small number of experts in specific fields were consulted and a focus group with our reporters was held to inform the study's recommendations. The individuals are not identified, in line with our practice of not identifying expert witnesses and individual lawyers in the cases we report on, and are referred to by their profession where they are quoted.

IV ALTERNATIVE CARE SYSTEM

Numbers in Care:

At the time of writing, as of end of July 2024 there were 5,803 children in care.[10]

The vast majority (87.4 per cent) of these children were in foster care; with the remaining children either in residential care (8.4 per cent) or 'other' care placements (4.2 per cent).[11] Of those in foster care, 1,474 (25.4%) are fostered by relatives.[12]

There has been a reduction in the overall number of children in care over the past number of years. For example, eight years ago in July 2016 there were 6,372 children in care,[13] compared to 5,803 in 2024, a decrease of nearly nine per cent.[14] We do not have adequate data to interpret what has led to this trend. It may be that there has been a reduction in the number of children in need of care due to the success of preventative, early intervention and family support interventions. However, given the significant rise in referrals to the CFA over the same period, the question needs to be asked is the downward trend due to a rise in the 'threshold' applied by social workers in deciding whether or not to seek to have a child admitted into care. The 'threshold' may be influenced by social workers not being available within communities, the lack of appropriate placements and/or an increase in the use of private family arrangements.

Admissions to Care: More detailed data is available for children in care for the year 2023. During 2023, 892 children were admitted to care.[15] For 29 per cent of these children it is a re-admission to care and for the remaining 71 per cent (634 children) it was their first time to be admitted to care. For a small percentage of children, (231 children, 4 per cent) this was their third or more placement within the previous 12 months. The number of new admissions for 2023 was a reduction on previous years and was the lowest number for the period 2016 to 2023. The vast majority (83 per cent) of children in care in 2023 were under a court order, with the remaining (17 per cent) in care under a voluntary arrangement.[16] For 16 children their placement was outside of Ireland, all but one of these children were in foster care.

10 Child and Family Agency – Tusla, Monthly Service Performance and Activity Report July 2024 (Child and Family Agency - 2024) 3.
11 *ibid* 10. "Other" care placements includes children at home under a care order, in a detention centre, disability unit, mental health unit, drugs/alcohol rehabilitation unit, hospital, special emergency arrangement, supported lodgings etc.
12 Child and Family Agency – Tusla, Monthly Service Performance and Activity Report July 2024 3.
13 Child and Family Agency – Tusla, Monthly Performance and Activity Dashboard July 2016.
14 Child and Family Agency – Tusla, Monthly Service Performance and Activity Report July 2024 3.
15 Child and Family Agency – Tusla, Review of Adequacy Report 2023 60.
16 *ibid* 14-15. The legal status of children who entered care for the first time during 2023 differs from this pattern with over half (57 per cent) admitted under a court order and the remainder (43 per cent) under a voluntary agreement.

V SOCIAL, INSTITUTIONAL AND POLICY FRAMEWORK

Since our last Analytical Report was published in November 2021, there have been several important developments that have impacted on children and families in Ireland and on the relevant institutional and policy frameworks.

Social Context

In November 2021, the public health restrictions imposed by the Covid pandemic had been lifted but Ireland was only slowly resuming normal social engagements and beginning to address the impact of the pandemic. A significant proportion of the cohort of children subject to child care proceedings described in this report experienced part of their childhood during the Covid restrictions which were in place from March 2020 onwards.[17] At the time restrictions were put in place we and others raised concern about the detrimental impact school closure and limited access to therapeutic and support services, sports and recreational opportunities would have on the country's most vulnerable children. Many children missed out on vital developmental and educational supports, as well as timely safeguarding and therapeutic interventions, which arguably are still impacting their lives.

Societal changes within the population have occurred since late 2021.

Most pressing is the acute rise in homelessness among families.

There is also a severe shortage of rental accommodation is certain parts of the country. In July 2024, 4,401 children were recorded as homeless, within 2,096 families.[18]

The outbreak of war in Ukraine in February 2022 has resulted in more than 100,000 Ukrainians seeking safety in Ireland.

To date they have been provided for under the EU Temporary Protection Directive,[19] including separated children.[20] In addition, there has been a rise in the number of families and also unaccompanied minors arriving in Ireland for the purpose of seeking international protection. Finally, there is growing cultural diversity within Ireland as a result of inward migration for work and educational opportunities.

Institutional and Policy Framework

Political responsibility for child protection, alternative care and family support rests with the Minister for Children, Equality, Disability, Integration and Youth. The Department of Children, Equality, Disability, Integration and Youth (DCEDIY) has responsibility for the development of policy and legal reform in these areas. Operational responsibility for the delivery of child protection, alternative care and family support services rests with the Child and Family Agency (CFA), which falls under the aegis of DCEDIY.[21] The CFA is a unified national organisation, divided into six geographical areas for operational purposes. In addition, several other State bodies play a role in child welfare and protection, in particular the HSE, An Garda Síochána and Cuan (a newly established State agency to focus on Domestic, Sexual and Gender-Based Violence).

In terms of policy, the overarching Government policy on children and young people is *Young Ireland: National Policy Framework for Children and Young People 2023-2028*.[22] It is a broad policy framework, which operates alongside thematic specific national policy, including for example one on child

17 Children's Rights Alliance, Building Children's Futures The Children's Report (Children's Rights Alliance - 2024) 20-21.
18 Department of Housing, Local Government and Heritage, Monthly Homeless Report July 2024 (Department of Housing - 2024) 9.
19 This Directive was activated by EU Council Decision EU 2022/382 of 4 March 2022, to provide immediate protection in EU countries for people displaced by the Russian invasion of Ukraine.
20 Central Statistics Office Arrivals from the Ukraine in Ireland Series 13 (Central Statistics Office - 2024).
21 It operates under the Child and Family Agency Act 2013.
22 Government of Ireland National Policy Framework for Children and Young People 2023-2028 (Prepared by Department of Children, Equality, Disability, Integration and Youth – 2023).

participation.[23] *Young Ireland* does contain some high-level commitments in relation to child protection and alternative care. In addition, the CFA has developed a suite of strategic plans for its alternative care services (foster care, residential care and aftercare). These are, however, agency level plans so are restricted to matters that fall within the remit of the CFA. Hence, there is no inter-agency national policy or strategy on child protection and alternative care.

There is no whole-of-government document that identifies the challenges faced and Government commitments to address these.

In a positive development, in 2024 an interagency committee on vulnerable children was established by DCEDIY on an administrative basis. We understand it currently comprises representatives from DCEDIY, the Department of Health, the CFA and the HSE.

The Minister for Children has committed to reviewing the Child Care Act. A first step in this reform process was the enactment of the Child Care (Amendment) Act 2022, which provided a statutory basis for the paramountcy of the best interests principle. Other key provisions of this Act relate to hearing the views of children and the establishment of a national guardian *ad litem* service. These provisions have yet to be commenced, however, we acknowledge that significant work is being undertaken by the Department on these matters. A second step in the reform process was the publication of the Heads and General Scheme of the Child Care (Amendment) Bill 2023 which, among other things, amends the orders available under the Act.[24] In addition, in 2022 the Minister for Children launched the 'Care Experiences: Journeys through the Irish care system' a research and data project examining the lives of children in care and adults who were in care as children.[25] Finally, progress has been made to establish a Barnahus model of service across the country. This is a cross government, multi-agency project providing an integrated response to child sexual abuse.[26] These initiatives are warmly welcomed.

The Minister for Justice has committed to reform of the family justice system. In 2022, the Family Courts Bill 2022 was published which proposes to create specialist family divisions within the District, Circuit and High Courts. The Department also published the *Family Justice Strategy 2022-2025* and established the interdepartmental Family Justice Oversight Group to progress these reforms.[27] In 2022, the Department also published its third strategy on tackling domestic, sexual and gender-based violence.[28] Progress was also made towards the construction of a new family law court complex at Hammond Lane in Dublin. These are welcome initiatives.

There have also been a number of positive national initiatives for the child population as a whole which have the potential to have a positive impact on children in care or at risk of entering care. These include the establishment in 2023 of the Child Poverty and Well-Being Programme Office by the then Taoiseach, Leo Varadkar TD, to coordinate government actions that reduce child poverty and foster children's well-being, and publication of a whole-of-government plan to address child poverty, and a national strategy to support children within the first five years of life.[29]

23 Department of Children, Equality, Disability, Integration and Youth, Participation of Children and Young People in Decision-making Action Plan 2024-2028 (2024).
24 Heads and General Scheme of the Child Care (Amendment) Bill 2023.
25 See the DCEDIY website page for this project <https://www.gov.ie/en/publication/c30a0-research-date-project-on-children-in-care-adults-who-were-in-care-as-children/>.
26 See the DCEDIY press release for this initiative <https://www.gov.ie/en/press-release/84e93-national-barnahus-model-of-service-to-ease-trauma-for-children-who-have-been-sexually-abused-publication-of-inception-report-for-the-european-unioncouncil-of-europe-joint-project/>.
27 Department of Justice, Family Justice Strategy 2022-2025 (Department of Justice - 2022).
28 Department of Justice, Zero Tolerance: Third National Strategy on Domestic, Sexual & Gender-Based Violence 2022-2026 (Department of Justice - 2022).
29 Government of Ireland, From Poverty to Potential: A Programme Plan for Child Well-being 2023-2025, (Department of An Taoiseach 2023); and Government of Ireland, First Five: A Whole-of-Government Strategy for Babies, Young Children and their Families *2019-2028*.

VI NATIONAL LEGAL FRAMEWORK

The legal and policy frameworks governing child protection and child care and relevant criminal justice statutes apply to all children under 18 years in the State. Under these frameworks the child has a right to be protected from harm, to have their views heard and decisions made in their best interests.

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 and clarified and evolved by way of judgments from the superior courts. 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.

Under Irish law, the age of legal majority is 18 years. As a general rule, a child is unable to provide consent. A parent, legal guardian or person acting in *loco parentis* must provide consent on the child's behalf.[30] A child does not have legal standing in court so requires a next friend to initiate judicial proceedings, appeal an order, make an application to have an order discharged or a direction varied.

Two new statutes were introduced since our 2021 Analytical Report. First, the Child Care (Amendment) Act 2022 gives statutory effect to parts of Article 42A of the Constitution. It provides that the best interests of the child shall be considered paramount in child care proceedings. The Act also vindicates the constitutional right of the child to have their views heard and taken into account through a variety of mechanisms; however, these provisions have yet to be commenced.

Secondly, in 2023 the Assisted Decision-Making (Capacity) Act 2015 was amended and commenced.[31] The law begins a process of ending the wardship system for adults, including some care leavers who are over 18 years and are Wards of Court.

Finally, there were a number of judgments from the superior courts relating to child care law. Some of these are discussed in this report.

VII INTERNATIONAL HUMAN RIGHTS FRAMEWORK

As a member of the EU and signatory to international human rights instruments, Ireland is obliged to ensure its laws and practice are compliant with the following:

European Union law, in particular the Charter of Fundamental Rights of the European Union (CFREU),[32] the Brussels II bis Regulation,[33] and the Directive on Victims of Crime.[34]

Council of Europe's instruments, resolutions and guidelines including:

- European Convention on Human Rights (ECHR),[35] the jurisprudence of the European Court of Human Rights (ECtHR) and the European Convention on Human Rights Act 2003
- European Social Charter (Revised) (RESC)[36]
- European Convention on the Exercise of Children's Rights (ECECR)[37]
- Guidelines on Child-Friendly Justice[38]
- Resolution 2049, Social services in Europe: legislation and practices on the removal of children from their families[39]
- Resolution 2232, Striking a balance between the best interest of the child and the need to keep families together[40]

30 One exception to the general rule on consent is that under section 23(1) of the Non-Fatal Offences Against the Person Act 1997 a child of 16 and 17 years may consent to surgical, medical and dental treatment without the agreement of their parents.
31 Assisted Decision-Making (Capacity) Act 2015 and Assisted Decision-Making (Capacity) (Amendment) Act 2022.
32 Charter of Fundamental Rights of the European Union 2012/C 326/02.
33 Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility.
34 Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.
35 Convention for the Protection of Human Rights and Fundamental Freedoms, CETS No. 005, 1950.
36 European Social Charter (Revised), *European Treaty Series - No. 163.*
37 European Convention on the Exercise of Children's Rights, *European Treaty Series - No. 160.*
38 Council of Europe (2011) Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice.
39 Council of Europe: Committee of Ministers, Council of Europe Parliamentary Assembly, ' 'Resolution 2049 Social Services in Europe: Legislation and Practice of the Removal of Children from Their Families in Council of Europe Member States' (2015) para 6.
40 Council of Europe Parliamentary Assembly, 'Resolution 2232, Striking a Balance between the Best Interest of the Child and the Need to Keep Families Together' (2018).

United Nations treaties, general comments and guidelines including:

> Convention on the Rights of the Child (CRC)[41] and its optional protocols, and the UN Committee on the Rights of the Child's General Comments and Guidelines for the Alternative Care of Children[42]
> Convention on the Rights of Persons with Disabilities (CRPD).[43]

The following rights can be identified from these European and international human rights law instruments and jurisprudence. Their relationship to the Constitution of Ireland is also highlighted below.

Right to Protection from Harm: A child has a right to protection from all forms of harm.[44] In circumstances where State authorities knew, had reason to suspect or ought to have known that abuse was going on and failed to act to protect children from abuse, the ECtHR has found that the State in question violated Article 3 of the ECHR (freedom from inhuman and degrading treatment).[45] Of relevance are Articles 40 and 42A of the Constitution.

Right to Alternative Care: A child deprived of his or her family environment has a right to alternative care and periodic review of their care placement.[46] Of relevance is Article 42A of the Constitution.

Right to Family Life: All individuals, including parents and children, have a right to respect for family life.[47] Of relevance are Articles 40, 41, 42 and 42A of the Constitution. This right comprises:

> The child has a right to know and be cared for by his or her parents.[48] This right includes a proactive dimension in that the State has an obligation to provide appropriate assistance to parents with their child-rearing responsibilities.[49]
> The child has a right not to be separated from his or her parents unless it is necessary for the child's best interests.[50] No child shall be separated from parents on the basis of a disability of either the child or one or both of the parents.[51] The State must take steps to reunify a child with his or her parents, where appropriate.[52]
> If separated from his or her parents, the child has a right to maintain a personal relationship and direct contact with both parents on a regular basis except if it is contrary to the child's best interests.[53]

Right to be Heard: The right to participate in decision-making is established across a range of human rights instruments.[54] A child has a right to be heard in any judicial and administrative proceedings affecting him or her, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.[55] The European Court of Human Rights has found that there is no absolute right of the child to be heard directly in judicial proceedings.[56] The UN Committee provides that the views of a child in care must be taken into account in the determination of decisions on his or her care placement, plans, reviews, and access arrangements.[57] Of relevance is Article 42A.4.2 of the Constitution which provides that provision

41 Convention on the Rights of the Child (Adopted and Opened for Signature, Ratification and Accession on 20 November 1989) 1577 UNTS 3 (UNCRC). (2 September 1990).
42 Guidelines for the Alternative Care of Children, A/Res/64/142, 24 February 2010.
43 UN General Assembly, Convention on the Rights of Persons with Disabilities: resolution / adopted by the General Assembly, 24 January 2007, A/RES/61/106.
44 CFREU Art 24(1); ECHR Art 3; RESC Arts 7(10); and CRC Arts 19 and 34-36.
45 *Z v UK* (2002) 34 EHRR 3 and *DP & JC v UK* (2003) 36 EHRR 14.
46 CFREU Art 24(1); RESC Art 17(1)(c); CRC Arts 3(2), 20 and 25; CRPD Art 23(5); and Guidelines for the Alternative Care of Children, A/Res/64/142, 24 February 2010.
47 CFREU Art 7; ECHR Art 8; RESC Art 16; and CRC Arts 7, 16 and 18.
48 CRC Art 7.
49 RESC Art 16; CRC Art 18(2) and CRPD Art 23(2).
50 CRC Art 9(3) and CRPD Art 23(4).
51 CRPD Art 23(4).
52 See a further discussion see Maria Corbett, 'An Analysis of Child Care Proceedings Through the Lens of the Published District Court Judgments' (2017) 20(1) Irish Journal of Family Law.
53 CFREU Art 24(3); CRC Art 9(3); and *Olsson v Sweden* (1992) 17 EHRR 134.
54 CFREU Art 24(1); CRC Art 12; ECECR Art 3; para 6; UN Committee on the Rights of the Child (2009) General Comment No. 12: The right of the child to be heard, CRC/C/GC/12, para 53.
55 CRC Art 12.
56 *B v Romania* (No. 2), No. 1285/03, 19 February 2013; *BB and FB v Germany*, Nos. 18734/09 and 9424/11, 14 March 2013; CJEU, C-491/10 PPU, *Joseba Andoni Aguirre Zarraga v Simone Pelz*, 22 December 2010. *T v UK* App no. 43844/98 (ECtHR, 16 December 1999); *V v UK* App no.24724/94 (ECtHR 16 December 1999).
57 Committee on the Rights of the Child, 'General Comment No 12 (2009): The Right of the Child to Be Heard CRC/C/GC/12' (2009).

shall be made by law for the views of the child to be ascertained and given due weight having regard to the age and maturity of the child in child care proceedings.

The Committee on the Rights of the Child has identified two prerequisites to the child's realisation of the right to be heard – the child must have access to child-appropriate information, including the possible consequences of decisions; and the child must have a safe space within which to contribute their views, an environment which is not intimidating, hostile, insensitive or inappropriate for her or his age.[58]

Right for Best Interests to be Primary Consideration: In all actions concerning children undertaken by courts of law and administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.[59] Of relevance is Article 42A.4.1 of the Constitution which provides that provision shall be made by law for the best interests of the child to be "the paramount consideration" in child care proceedings.

Right to a Fair Hearing within a Reasonable Time: All parties – the child and his or her parents – have the right to a fair hearing within a reasonable time.[60] In the context of child protection removals, decisions must be lawful,[61] accurate,[62] non-discriminatory,[63] subject to appeal or judicial review,[64] and well-documented.[65] Of relevance is Article 40 of the Constitution.

Parental Right to be Participate: The ECtHR has found that parents have a right to be involved in the decision-making process "seen as whole, to a degree sufficient to provide them with the requisite protection of their interests".[66] In addition, all persons are entitled to the equal protection and equal benefit of the law and States are obliged to take all appropriate steps to ensure that reasonable accommodation is provided to promote equality and eliminate discrimination.[67]

Right to Access an Effective Remedy: All individuals, including children, have a right to access an effective remedy to a breach of their rights.[68] A child must have access to an independent complaints' procedure[69] and where rights are found to have been breached there should be appropriate reparation.[70]

Attention should also be paid to ensuring compliance with the following:

Child-friendly Justice: The concept of child-friendly justice has been developed and promoted by the UN[71], EU[72] and CoE[73]. The CoE Guidelines define child-friendly justice as:

"[…] accessible, age appropriate, speedy, diligent, adapted to and focused on the needs and rights of the child, respecting the rights of the child including the rights to due process, to participate in and to understand the proceedings, to respect for private and family life and to integrity and dignity."[74]

Public Sector Duty: In Ireland, all public bodies – including the courts and the CFA – are subject to the Irish Human Rights and Equality Commission Act 2014. Section 42 of the Act places a positive obligation on a public body to perform its functions having regards to the need to: eliminate discrimination, promote equality of opportunity and treatment of its staff and the persons to whom it provides services and protect human rights of its members, staff and the persons to whom it provides services.

58 *ibid* 12, paras 25 and 34.
59 CRC Art 3(1); CRFEU Art 24(2); ECECR Art 6.
60 ECHR Art 6; and CFREU Art 47.
61 ECHR Art 8; and CRC Art 9.
62 *AD and OD v United Kingdom* (App No 28680/06), 2 April 2010.
63 Recommendation Rec(2005)5 of the Committee of Ministers to member states on the rights of children living in residential institutions (Council of Europe).
64 CRC Art 9(1); UN General Assembly, 'Guidelines for the Alternative Care of Children Res A/RES/64/142' (2010) para 5.
65 Council of Europe Parliamentary Assembly (n 33) Recommendation 5.3.
66 *Dolharme v Sweden* App no 67/04 (EctHR, 6 June 2010), [116].
67 CPRD, Art 5.
68 ECHR Art 13; and CFREU Art 47.
69 General comment no. 5 (2003): General measures of implementation of the Convention on the Rights of the Child CRC/GC/2003/5, para 24.
70 *ibid.*
71 General comment no. 5 (2003): General measures of implementation of the Convention on the Rights of the Child CRC/GC/2003/5, para 24.
72 European Union Agency for Fundamental Rights Agency (2015) *Child-friendly justice* – Perspectives and experiences of professionals on children's participation in civil and criminal judicial proceedings in 10 EU Member States.
73 Council of Europe Parliamentary Assembly (n 40) Resolution 2049, Recommendation 5.3.
74 Council of Europe, 'Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice' (2011) 17.

Chapter 1

CHILD CARE IN THE DISTRICT COURT

Chapter 1:

CHILD CARE IN THE DISTRICT COURT

This chapter provides an overview of first instance decisions in child-related proceedings attended by our reporters and heard primarily in the District Court.[75] Two methods were used to collect data:

i) a survey of 24 District Court venues conducted in 2023; and
ii) an examination of the 343 court reports published in six volumes between 2022 and 2024.

Section 1.1 provides a brief overview of child care law. Section 1.2 set out the findings of a study undertaken of the District Court using a survey methodology. It provides an overview of court venues, environment and types of hearings. Section 1.3 provides statistical data generated from the survey including applications heard, as well as providing data from the DMD Call Over. Section 1.4 then introduces findings from the study's second methodology, data gathered by way of court reporting and published in six volumes of reports between 2022 and 2024. Section 1.5 examines the nature of applications made for care and supervisions orders and the profile of children and parents. Finally, section 1.6 explores proceedings attended which relate to children already in care.

1.1 INTRODUCTION TO CHILD CARE LAW

The Child Care Act 1991 requires 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.

Family Support: The Child Care Act obliges the CFA to identify children in need of care and protection and to supply it. This includes various forms of family support and taking a child into care under a voluntary agreement. The CFA may hold a Child Protection Conference, an inter-agency and inter-professional meeting at which a child's name may be placed on the Child Protection Notification System (CPNS); share information between professionals and parents to identify risk factors, protective factors and the child's needs; and develop a Child Protection Plan to provide support to the child and their parents to ensure that the child is kept safe from harm and that the risks to the child are lowered. Each of these measures (conference, notification system and plan) are provided for in national policy but do not have a legislative basis. Information garnered through these processes can be used as evidence in child care proceedings.

75 These also include proceedings under section 25 of the Mental Health Act 2001 where a child is detained in a mental health facility and proceedings affecting children under section 11 of the Domestic Violence Act 2018.

Parents must be afforded proper fair procedures in relation to the holding of Child Protection Conferences, in particular in relation to the information provided to the parents in advance of the conference,[76] and a parent is entitled to bring a legal representative with them to the conference.[77] There is no data publicly available on the number of such conferences held each year nor their impact in negating the need to seek a court order. A Family Welfare Conference may also be held in a narrower set of circumstances, its remit is restricted to where it appears a child may require a special care order[78] or diversion from criminal proceedings.[79]

Voluntary Agreements: Under certain circumstances, the CFA can admit a child into its care (without a court order) under a voluntary agreement with the consent of the child's parents or where the child appears to be lost, orphaned or abandoned.[80]

Judicial Orders: If efforts at family support or voluntary care fail to protect the child, the CFA is under a duty to seek an appropriate order in the courts.[81] The CFA is not required to engage in alternative dispute resolution (ADR) or pre-proceedings activities prior to making a non-urgent application for a care or supervision order.[82] There is no legislative basis for child protection mediation in Ireland. Proceedings under the Child Care Acts 1991 are excluded from the remit of the Mediation Act 2017. Once proceedings have begun, court rules allow for them to be adjourned to facilitate ADR. However, no mechanism is in place to provide the ADR and this provision is rarely availed of in practice.[83] There is no requirement for a written decision, most are given verbally.

In District Court child care proceedings, the CFA is usually the applicant and the child's parents are the respondents. In a minority of cases a GAL may make an application, and very rarely a parent does.

In most cases, the child has no legal status in the proceedings and is rarely present in court or made a party to the proceedings.

When granting a care order, it is at the discretion of the judge to make directions about the child's care. Such directions often include that the case be re-entered if the child's placement breaks down or if the child is without an allocated social worker for more than six weeks and that the case should be scheduled for an aftercare hearing on a certain date.

At the discretion of the judge, the court may appoint a guardian *ad litem* (GAL) to hear the views of the child and provide the court with their expert opinion on what is in the best interests of the child.[84] A GAL is usually only appointed for the duration of the court proceedings and then discharged. The Child Care (Amendment) Act 2022 reforms the legal provisions relating to the GAL but the relevant provisions have yet to be commenced.

The orders provided for in the Child Care Act are an emergency care order (section 13), interim care order (section 17), care order (section 18), supervision order (section 19) and special care order (Part IVA). These applications are made in the District Court, with the exception of applications for special care which must be brought to the High Court (see Chapter Two). The CFA is the only body empowered to instigate judicial child care proceedings.

The CFA is under a general duty to make an application for a care or supervision order where it appears the child "requires care or protection which he is unlikely to receive unless a court makes" an

76 *JG v The Child and Family Agency* [2015] IEHC 172.
77 *Ms A v Child and Family Agency* [2015] IEHC 679.
78 Child Care Act 1991, s 23A.
79 Children Act 2001, s.7. Children (Family Welfare Conference) Regulations (Department of Health and Children, 2004).
80 Child Care Act 1991, s 4.
81 Child Care Act 1991, s 16.
82 For further discussion see: Maria Corbett and Carol Coulter, 'Child Care Proceedings: A Thematic Review of Irish and International Practice' (Department of the Children and Youth Affairs 2019).
83 S.I. No. 17/2014 - District Court (Civil Procedure) Rules 2014, Order 49A(2).
84 Child Care Act 1991, s 26.

order.[85] The threshold to justify granting an interim care, care and supervision order rests on one of three conditions being met:

i) the child has been or is being assaulted, ill-treated, neglected or sexually abused, or
ii) the child's health, development or welfare has been or is being avoidably impaired or neglected, or
iii) the child's health, development or welfare is likely to be avoidably impaired or neglected.

The threshold for granting an interim care order is that the court has "reasonable cause to believe", which is a lower threshold than that needed for a full, long-term care order, where the court must be "satisfied" that the conditions are met.

Under the Act, a child in care has a right to have "reasonable access" with their parents and other relevant person.[86] The entitlement is framed as a duty on the CFA to facilitate the access "to the child by his parents"; however, the High Court has ruled that access is a basic right of the child rather than a right of the parent.[87] The CFA may refuse or impose conditions on access arrangements; anyone "dissatisfied" can apply for a judicial order to vary or discharge these arrangements.[88]

1.2 OVERVIEW OF DISTRICT COURT

The District Court is divided into 24 Districts, each of which is operationally independent.

Each District is referred to by the geographical area it covers and also by a number (eg District 17: Kerry).[89] Dublin is the exception in that it does not have a number but is simply referred to as the Dublin Metropolitan District (DMD). One court based at the Bridewell building, Chancery Place, Dublin 7, serves the whole Dublin District.

There is a complement of 69 judges assigned to the District Court. Of these 69 judges, 26 are 'fixed', being allocated to a certain District; 25 judges are 'moveable', in that they may be requested to sit in a district where the need arises; and 18 judges are assigned to the DMD. The judges carry out all the work of the District Court, of which child care is just one part.

Child Care within the District Court: Based on the figures published by the Courts Service in its Annual Report for 2023, child care comprises a significant component, over 29 per cent, of all child and family proceedings heard by the District Court.[90] Domestic violence applications comprise 43 per cent; guardianship, custody of and access to children comprise over 18 per cent; and the remaining 10 per cent relate to maintenance matters.

85 Child Care Act 1991, s 16.
86 Child Care Act 1991, s 37(1). Such access may include allowing the child to reside temporarily with any such person.
87 *MD v GD*, unreported, High Court, 30 July 1992.
88 Child Care Act 1991, s 37.
89 It should also be noted that Districts 11 and 14 no longer exist. In this report, we have renamed some districts to i) differentiate between districts with the same name (eg District 18 and 20 both officially entitled 'County Cork') and ii) to help provide a clearer description of the geographical area covered by the district.
90 The Courts Service, Annual Report 2023 (The Court Service - 2024) 78-79.

1.2.1 Overview of District Court Venues

The following information is based on the findings of our survey conducted in the first half of 2023. As set out in the methodology, this survey was a follow-on to a previous study undertaken in 2019 and comparisons are made where appropriate.

At the time of the survey, there were 82 regional courthouse venues across the country serving 23 District Courts and also a number of Dublin based court venues.[91] Child care was not heard in every available court venue. Practice varied between the districts as to how the district organised to hear child care, both in terms of the number of court venues used and the nature of the list in which child care was heard. We ascertained that child care matters were scheduled to be heard in 38 courthouse venues during this 16-week period.[92] During the period of this study, we attended all 38 courthouses. Over half of the districts (14 of the 24 districts) organised for child care to be heard in one court venue and the remaining 10 districts heard child care in either two or three locations.

Across the 38 courts, three courts (Dublin, Limerick and Cork) heard child care weekly (or several times a week) with the remaining courts hearing child care either monthly or, in a smaller number of cases, several times within the month if cases arose. Similar to our experience in 2019, the majority of cases were heard by fixed judges with only eight courts having a moveable judge sitting.

Some districts operated a practice of holding special sittings to hear longer child care cases or for case management purposes. We observed two such special sittings. In District 15 (Portlaoise), the judge held a week of special sittings which included child care. In addition, in District 4 (Roscommon), the judge held a special sitting which comprised a half day hearing for case management and then in the afternoon heard a care order application/review.

The table overleaf shows the number of court venues within each District of the District Court and the number, location and frequency in which child care cases were heard as of the first half of 2023. Of the 82 regional venues and multiple Dublin courts we identified that 38 court venues were scheduled to hear child care across the 24 districts.

Of the 24 districts, 9 heard child care on their own and the remaining 15 heard child care as part of a mixed or family list.

91 The Court Service, District Court Sittings (The Court Service - 2024).
92 Examples of court venues which we did not attend as there was no child care scheduled to be heard on the day we had planned to attend include Bantry and Macroom in District 18 (West Cork); Dungarvan in District 21 (South Tipperary and Waterford); and Athy in District 25 (Kildare).

TABLE 1: OVERVIEW OF DISTRICT COURT VENUES (AS OF EARLY 2023)

District	Name	Number of court venues	Number of venues hearing child care	Court venue hearing child care	Nature of the List on day we attended
District 1	Donegal	6	1	Letterkenny	Child Care
District 2	Sligo, Leitrim, South Donegal	6	3	Sligo Town Carrick-on-Shannon Ballyshannon	Mixed Mixed Mixed
District 3	Mayo	4	2	Ballina Castlebar	Mixed Child Care
District 4	Roscommon and East Galway	7	2	Roscommon Castlerea	Mixed Mixed
District 5	Cavan and Monaghan	2	2	Cavan Town Monaghan	Mixed Mixed
District 6	Louth	3	3	Drogheda Dundalk Ardee	Mixed Mixed Mixed
District 7	Galway City and County	4	1	Galway City	Mixed
District 8	Tipperary North	3	1	Nenagh	Child Care
District 9	Westmeath and Longford	3	3	Athlone Mullingar Longford	Family Family Mixed
District 10	Louth and Meath	2	1	Trim	Mixed
District 12	Co. Clare and South Co Galway	4	1	Ennis	Family
District 13	Limerick City and County	3	1	Limerick	Child Care
District 15	Laois and Offaly	2	2	Tullamore Portlaoise	Family Child care
District 16	Wicklow	3	3	Arklow Bray Wicklow	Mixed Mixed Unknown
District 17	Kerry	7	1	Killarney	Child Care
District 18	West Cork	5	2	Clonakilty Bandon	Mixed Mixed
District 19	Cork City	2	1	Cork City	Child Care
District 20	North Cork	3	1	Mallow	Child Care
District 21	South Tipperary, Co. Waterford	6	1	Clonmel	Family
District 22	Carlow and Kilkenny	2	1	Carlow	Child care
District 23	Wexford	2	2	Gorey Wexford	Mixed Mixed
District 24	Waterford	1	1	Waterford City	Child Care
District 25	Kildare	2	1	Naas	Mixed
Dublin Met. District	Dublin	Multiple	1	Chancery Place	Child Care
TOTAL		***82 regional venues plus multiple Dublin courts***	***38 venues heard scheduled child care***		***9/24 districts hear child care on its own AND 15/24 districts hear child care as part of a mixed or family list***

1.2.2 Court Facilities

The quality of the courthouse environment and facilities varied between the districts. Some courthouses were newly built, such as District 1 (Donegal): Letterkenny, built in 2018, while others were historic buildings, such as District 13: Limerick's civil courthouse, which dates back to 1763, but had been extensively re-furbished.

Courthouse Facilities: Almost all of the courthouses were accessible, the three notable exemptions were Ballina, Castlerea, and Killarney. An absence of toilet facilities was noted in two courthouses. In Castlerea, toilets are located outside and around the back of the building and there were no toilet facilities available to those attending court in Killarney. We found less than a quarter of the 38 courts had visible, working water fonts.

In relation to the adequacies of the venue environments, the reporters assessed the courthouse facilities on a scale of 'adequate', 'could be better' or 'problematic'. About half of the 38 courts (47%) had adequate seating for those waiting, while in 24 per cent of the courts the availability of seating was problematic. The majority of courtrooms were assessed as having adequate heating (79%), the heating in one courtroom was assessed as being 'problematic'. Most were also considered to have adequate lighting (87%), with lighting being rated as 'could be better' in five courtrooms. The issue of the quality of the audio within the courtroom was less positive. Reporters rated the audio 'adequate' in 24 courtrooms, 'could be better' in nine and 'problematic' in four courtrooms. In many cases, the difficulty related to witnesses and practitioners not using the allocated microphones effectively or at all.

Most of these 38 courthouses (86%) had available consultation rooms, 12 had rooms for practitioners, 13 had a victim support room. We note that only four courthouses had information booths. Most courthouses (78%) had video-link facilities, and one court had plans to have video-link capabilities within the near future.

Many, if not all, of the courthouses are also used to hear criminal matters. Twenty-four of the courthouses were noted as having prisoner holding cells.

1.2.3 The Experience of Waiting

Waiting Areas: As is the practice with *in camera* hearings, parties to the case must wait outside the courtroom until their case is called. Across the 38 courts, practice varied in terms of where people waited to be called. Fourteen courts had dedicated waiting rooms, 30 had people waiting in the lobby areas, 13 had people waiting in the corridors, and in 21 of the courts there were people waiting outside the building doing everything from enjoying the sun to escaping large crowds.

Many of the waiting areas were reported to be very busy and cramped with limited seating for those present.

It was observed that Bray courthouse had a Court Office Information Attendant who was present to assist families, diffuse tense situations, and help advise if a court hearing needed to be moved up in order to help those waiting.

The experiences of who was waiting in the waiting areas also varied across the courthouses. We found children were present in 26 per cent of the waiting rooms. Some of these instances were mothers with young children, some were juveniles present for other cases, and in one example it was a student there for work experience.

Nearly half of these courthouses had prisoners and accompanying Gardaí present and over a third had at least one prison van parked outside.

When prisoners were present, they were largely made to wait at the back of the courtroom and were handcuffed until seated in the courtroom.

Regarding people waiting for other courtrooms, we have data for 36 courts, of these, 61 per cent had people waiting for unrelated cases to those being heard in that courtroom.

Mechanism for Calling Cases: In terms of how parties and practitioners were called into the courtroom practice again varied and in some courts multiple methods were used. Fifteen courthouses used a Tannoy system to call cases. In Mallow, the Tannoy was only used to call parties who were expected to attend but had not shown up. In 18 courthouses a member of a Garda Síochána verbally called the parties. In a further 27 courthouses, the solicitors for the CFA or another practitioner called in the parties. There was one example, Ennis, in which the child care cases were not individually called but were instead all heard in quick succession with no breaks in between. It is usual practice in *in camera* proceedings for parties to be identified (and called into court) using their case initials.

Of concern, our reporters noted that in four courts parties were called to court using both case initials and full names.

Place in the List: The final question we asked in regard to the experience of the courthouses themselves was whether the parties were given an indication of their place on the list, specifically whether they were to be heard in the morning or afternoon slots. Over half of the courts gave such an indication, in over a third list placements were not clearly communicated to the parties and it was unclear in the remaining 13 per cent of courts if the placements on the list were provided in advance.

1.2.4 Length of Court Sitting

Similar to the findings of our 2019 study, we once again found that many of the courts are severely over-worked, which affects how child care proceedings are dealt with. Most districts had only one judge to deal with sometimes enormous lists, which included criminal and civil matters as well as large volumes of private family law.

It is usual practice that courts sit between 10.30am and 4.00pm. Judges must read and consider the various applications, write decisions and engage in case management and administration duties outside of court sitting hours. We observed that most courts began sitting at 10.30am and sat for longer than the standard court sitting time.

The longest court day we observed was in Carrick-on-Shannon which lasted nine hours and 15 minutes, finishing at 8pm that evening.

We also observed an outlier in that the Trim sitting lasted only 35 minutes due to special circumstances. Removing the longest and shortest day, of the 28 courthouses on which we have information, the average court sitting time was five hours and 30 minutes.

The pressure on the court when sitting can be seen from the fact that five courts did not take a lunch break and a further one took only a 15-minute break.

Dublin: We observed the Dublin court separately over a five-day period. Over this period, we found that the courts sat for an average time of four hours and 43 minutes with the longest day being six hours and 40 minutes in length and the shortest being one hour and 50 minutes.

Call Over: Call Over is a case management hearing held by the court service to help plan its workload. We have data for 16 courts on the length of time the Call Over hearing took. The average time was approximately 21 minutes. In lieu of a Call Over, Limerick gave time slots in advance of the court hearing date and in Ennis the List was posted on the door to the court room. Dublin holds its Call Over virtually at the beginning of each week (see also section 1.2.7).

1.2.5 Nature of Court Sitting

Under the Child Care Act 2001, child care proceedings are to be heard "at a different place or at different times or on different days from those at or on which the ordinary sittings of the Court are held". Of the 38 court venues we collected data on, only 29 per cent (11 venues) listed child care proceedings separately from other proceedings.

The vast majority of courts (71%, 27 venues) scheduled to hear child care as part of either a mixed or private family law list.

This finding echoes that of our 2019 study which found child care was heard separately in 26 per cent of venues.

It was at times difficult for our reporters to distinguish between a mixed or family law list. We have listed the hearing as a 'mixed' day if criminal and civil matters were heard alongside private family law and child care matters. The fact that the court has scheduled to hear child care only does not restrict the judge from dealing with an emergency matter.

We observed that in one child care hearing the court was cleared to allow a private law matter be heard for a few minutes. In some cases, there was one child care matter listed as part of a mixed listed, in other instances one family law matter such as a domestic violence application was listed on a child care day.

Our reporters noted that the mixed lists, as well as criminal matters, included matters relating to licensing, traffic, domestic violence, warrants, summons and debt. With one exception, the mixed or family law lists were managed so that the child care matters were grouped together for hearing.

1.2.6 Matters Listed

A List is prepared for each court sitting and shared in advance with practitioners. This document lists each matter or application before the court, using the case initials and in some cases a unique record number. The districts have adopted different ways of setting out their Lists. We observed four different approaches used by courts:

Category A - Individual children and individual applications
Category B - Individual children and group applications (more than one order sought)
Category C - Sibling groups and individual applications
Category D - Sibling groups and group application

Of these four categories, the most common category was category D; however, a significant number of courts also used category A and C. Category B was not commonly used. Below are some examples of how the different categories of List operated in practice. Carlow was an example of a category D List, applications were by sibling group and applications were grouped together. Applications in Mullingar were an example of category C list, sibling groups

TABLE 2: TYPE OF LIST HEARD BY THE DISTRICT COURT

Type of List	Frequency	Percentage
Family and mixed	27	71%
Child care	11	29%
TOTAL	***38***	***100%***

were listed together but the applications were individually heard. Nenagh had a category A List, for example a family of six children had 18 applications listed, there were three applications per child, all of which were listed separately.

The use by the districts of different systems to list matters for hearing made it difficult for us to determine how many children or applications were being dealt with under each item on the List.

Consequently, this may have impacted on the accuracy of our calculations of the total number of matters within a district and ability to compare districts to each other.

Length of the List: The total number of applications listed for hearing varied between the districts. The number also varied depending on whether the List was for child care, family law or a mixed list. Across all the lists we observed, the average list consisted of 46 applications.

The longest list observed was a mixed list in Bray which comprised 160 matters.

The shortest lists were child care in Dublin which comprised eight applications and Limerick which comprised ten applications. It should be noted that unlike many other locations Dublin hears child care daily and Limerick hears child care weekly rather than monthly, which is common in regional courts, and has the shortest regional list.

We have information on 36 of the 38 regional courts we attended in relation to the number of child care matters listed. The average number of child care matters was 16. The largest number of child care matters listed on a child care day was in Sligo where 61 matters were heard.

We saw that private family law proceedings were heard in 29 courts. The average number of family law matters was 26. The largest number of family law proceedings was 87 matters listed in Bray in the lengthy mixed list. We observed criminal matters in 20 courts. The length of the criminal list varied from one criminal matter to 108 in Bray.

In four courts we observed that unscheduled emergency proceedings were heard, many of which were domestic violence applications.

In Dublin, the length of the list varied greatly from day to day. The longest list which our reporters observed was 25 matters and the shortest list was eight matters. In general, the matters seemed to be organised by sibling groups and by grouped application. However, there were some days where our reporters observed individual applications or just grouped applications.

1.2.7 Special Report on the DMD Call Over

In addition to the District Court survey, we also undertook a review of the weekly Call Over hearings of the Dublin Metropolitan District (DMC) over a ten-week period between October and December 2021.[93] We then reviewed the matters listed for hearing. This review included an overview of 739 cases listed for hearing over a ten-week period. It provides a snapshot of the scale and complexity of child care cases coming before the courts in the capital.

At this time the DMD Call Over was heard online each Monday morning when the court is sitting, was presided over by one of its three judges and lasted approximately two hours. It was attended by Courts Service registrar staff and legal practitioners representing the CFA and the HSE where appropriate, as well as legal representatives for the respondent parents and GALs where appointed.

The weekly Call Over briefly discusses each matter listed for hearing that day and in the coming week. Among other things, the applicant was requested to indicate if the matter was ready to be heard, if there was a need for an interpreter or video link and to estimate the length of time the matter was likely to take. Many matters required an hour or less of court time, others could take half a day, and a minority were highly contested and could run over several days.

A total of 739 matters were originally listed for hearing within the ten-week period. This is an average of 74 matters or 'cases' listed each week to be heard by the three sitting judges. The busiest list had 88 matters listed and the quietest 47 matters.

Of these 739 matters listed over 11 per cent (83 matters) were adjourned to a future date and some re-entered the list within the ten-week period under examination. In addition, a further two per cent (15 matters) were listed in error, struck off or the date vacated. Hence, 641 cases were scheduled to be heard during this ten-week period. It should be noted that changes to the daily lists often occur on the hearing day, including cases being adjourned or a new application being added to the list, such as an emergency care order.

1.3 STATISTICAL OVERVIEW FROM DISTRICT COURT SURVEY

As part of the District Court survey, the reporters gathered data on each application heard on the day they attended court. We gathered data on 380 matters across the 24 regional Districts. We attended five days during one week of hearings in the DMD. There were two judges sitting that week so there were two courts in operation. During the course of these five days we attended 52 cases, which represented over half (58%) of all cases listed in the DMD that week.

1.3.1 Applications

Of the 380 matters we observed we gathered data on the types of application heard.

The largest cohort of applications, 43 per cent, were for extensions of interim care orders.

Such applications appear significantly more frequently than the next most common application type, section 47 applications which accounted for 10 percent of applications. The low number of applications for care orders should be understood in light of the fact that many regional courts do not have time to hear care order application during scheduled hearings and so must set special sittings.

The vast majority of applications were made by the CFA. In most cases the court granted the application sought; however a large portion were adjourned and others did not require a decision as they were updates for the court. Only four applications were refused, two of these concerned access and the other two concerned a non-threshold matter.

93 Snapshot of District Court Cases Listed between October and December 2021 in the Dublin Metropolitan District – 2021vol2#31.

TABLE 3: NATURE OF APPLICATIONS

Type of application	Frequency	Percentage
Extension of interim care orders	163	43
Section 47 applications	39	10
Others incl. re-entries, for mentions, case management	36	9
Reviews of care orders	33	9
Interim care orders	20	5
Supervision order (including a review)	16	4
Aftercare	16	4
Review	16	4
Section 37 access applications	15	4
Care order applications	14	4
Cost application	5	1
Emergency care order	2	<1
Appointment of GAL	2	<1
Other	3	<1
TOTAL	***380***	100

Length of Application: Of the 380 applications which we reported on, we know how long each application was for 304 applications.

The longest matter heard in one day in the regional courts was a Care Order which lasted over four hours.

The longest matter heard in Dublin was an access application which also lasted four hours. The seven shortest matters were each lasted approximately one minute long.

In the regional courts, the average length of an application was under 20 minutes and most applications (common length / mode) were under 10 minutes. The data for Dublin is a smaller sample but it is interesting to note that the average length of an application was longer, under 30 minute the mode (most common length) was again longer, at under 15 minutes. Across all the courts, the largest cohort of matters (41%) were short, taking ten minutes or less, 40% were between 11 and 29 minutes, 15% were between 30 and 59 minutes, and only a minority (4%) took longer than an hour.

Number of Children: Regarding the number of children which the applications concerned, of the 380 applications, we have information for 324 matters. Of these, 60 per cent of applications were for only one child and 23 per cent were for two children. The largest sibling group for which an application was made was seven. In seven per cent of the cases, the reporters could not ascertain the number of children to which a given application was related.

Placement Type: We have information for 257 of the 380 cases on the type of care placements. Of these, 59 per cent per cent of the children were in foster care, 12 per cent were in residential care, the remaining matters related to sibling groups in multiple types of placements, a child in aftercare and in other types of placements.

The data we gathered indicates that the majority of these placements were stable, with the remainder described as at risk of breakdown or a new placement was being sought as the current one was deemed not be appropriate.

Other Proceedings: Of the proceedings we observed, it was noted in a small number of cases that the child or parent were also engaged in other proceedings. Eight children were known to be also subject to youth justice proceedings. In three cases the parents were subject to family law proceedings. In four cases the parents were engaged in domestic violence proceedings, in eight applications a parent were subject to criminal proceedings and in an additional instance the parents were subjected to both domestic violence and criminal proceedings.

1.3.2 Parental Participation

Another aspect of the court proceedings on which we gathered information was the participation of the child's parents in the hearings.

Mother's Participation: We have information for 314 of the 380 cases regarding mothers. In the majority of proceedings (68%), the mother was legally represented. In about a third of applications, the mother attended court (33%) and in 21 cases gave oral evidence. Mothers were consenting to the application in 54 per cent of the cases.

Father's Participation: We have information for 301 of the 380 cases regarding fathers. The father was legally represented in 86 per cent of the hearings. In about a fifth of cases (21%) the father was in attendance and in 13 cases gave oral evidence. The father was consenting in 26 per cent of the cases.

There were 23 instances in which the parents' legal representation had no information regarding how to proceed (14 for the mother and 9 for the father). In four of these instances there were no instructions from either parent. There were also two cases in which the identity of the father was unknown, in one the man refused to take a paternity test. There were seven instances in which the parent was in custody (four mothers and three fathers). In 14 cases a parent could not be located (five mothers and nine fathers). In 18 cases a parent was deceased (7 mothers and 11 fathers).

Supports: Regarding the use of parental supports, we observed five cases where an interpreter was present. In one case, the parent had another child with them to assist in translation and communication. The reporters observed 33 cases where an advocate engaged, mainly supporting the mother.

1.3.3 Engagement by Professionals

Social Workers: We have information for 302 of the 380 cases regarding social workers. In the vast majority of cases it was noted that the child had an allocated social worker, in most cases the social worker submitted a report and was present in court.

Guardians *ad litem*: We have information for 300 of the 380 cases regarding the appointment of a GAL. A GAL was appointed in 79 per cent of cases. We have information from 242 cases regarding the legal representation which the GAL may have had. The GAL was legally represented in 85 per cent of cases, most commonly by a solicitor, with 14 represented by a barrister. The GAL submitted a report to court in the vast majority of proceedings (80%). They were present in court in many cases (59%) and in a smaller portion (27%) they gave evidence).

Witnesses: In a minority of matters observed (14 of the 380) an additional Child and Family Agency (CFA) representative gave oral evidence. In most cases this was the team leader who gave evidence in lieu of the allocated social worker. In other cases, an access worker or social worker manager gave oral evidence. In just four cases we observed that an external witness gave oral evidence, two gave testimony in person and the others by video link.

As already stated, these observations come from a different data set to those in the subsequent section of this chapter, where we analyse the data contained in our published reports.

1.4 ANALYSIS OF PROCEEDINGS ATTENDED SINCE 2021

This section provides an overview of the findings of an analysis of 343 court reports published in six volumes between February 2022 and July 2024.

Of these 323 reports, the largest cohort (290 reports) relate primarily to first instance child care proceedings heard in the District Court. A second cohort of 23 reports focus on wardship proceedings concerning 34 children and care leavers heard by the High Court. There are also eight reports concerning special care, one of which is a composite report so in total these reports relate to 64 children. The final two reports are of a different nature, one contains the findings of a review of the Dublin District's Call Over hearing and the other contains a copy of the letter from a District Court judge, Judge Simms, to various Ministers and officials.
The reports concerning special care and wardship are discussed in Chapter Two. The reports on District Court proceedings are explored below.
The overview report on the DMD Call Over was discussed at section 1.2.7 and the letter from Judge Simms is discussed at section 3.2.6 below.

TABLE 4: VOLUME BY YEAR, NUMBER AND PUBLICATION DATE

Year	Volume Number	Date of publication	Number of Reports
2024	Vol 1	8 July 2024	70
2023	Vol 2	15 January 2024	54
2023	Vol 1	17 July 2023	67
2022	Vol 2	16 January 2023	62
2022	Vol 1	27 July 2022	59
2021	Vol 2	14 February 2022	31
TOTAL			***343***

The reports vary in length from a few paragraphs based on a single short hearing to a lengthy report where the reporter followed proceedings relating to the same child or group of siblings on multiple hearings over a period of several months or years.

For the purpose of this analysis, reports on the same child or sibling group published in consecutive volumes were merged to create a single report. In addition, some reports provided a composite report of several cases heard in one court sitting, these were separated out into individual reports. Following the merger of some reports concerning the same child or sibling group and the creation of additional individual reports from composite reports, the figure of 343 published reports becomes 323 reports for analysis.

The 290 child care reports were heard primarily in the District Court, with the exception of two appeals heard by the Circuit and High Court. The majority (283) were applications under the Child Care Act

TABLE 5: PUBLISHED COURT REPORTS BY NATURE AND JURISDICTION

Nature of the Proceedings	Court	Number
Child Care	District Court, Circuit Court and High Court	290
Wardship	High Court	23
Special Care (Child Care Act 1991	District Court, High Court and Supreme Court	8
Letter from Judge Simms	-	1
Overview Report on DMD Call Over	-	1
TOTAL		***323***

1991 for a care or supervision order or matters affecting a child in care involving discussions on the appropriateness of the care placement and aftercare planning. There were also five reports heard under section 25 of the Mental Health Act 2001 where a child is detained in a mental health facility. Of these five children, one was also under a care order. A number of mental illnesses featured including extreme psychosis, anorexia nervosa and OCD. Finally, a further two reports covered proceedings heard under section 11 of the Domestic Violence Act 2018, which is discussed in Chapter Four.

As set out in the table below, of the 283 cases heard under the Child Care Act, the vast majority of these reports are for interim care orders and extensions of those order, which accounts for the highest number of cases at 115. Care orders follow with 60 cases.

The next largest category comprised reviews and directions totalling 47 cases, followed by 24 cases concerning placements. Aftercare applications number ten cases. Supervision orders account for six cases, while access applications total five cases. Emergency care orders make up four cases. There are three cases each for reunification and enhanced rights for foster carers. Appeals account for two cases. Costs and Hague Convention matters each have one case.

Some reports could have been classified under a number of headings but we sought to classify them under the final heading (eg a Care Order rather than the earlier ICO hearing) or under the primary application (eg categorised as an ICO even though the focus of the hearing was on the suitability of the child's placement).

1.5 ANALYSIS OF APPLICATIONS MADE

The pattern of applications outlined above replicates that seen in two other datasets which employed different methodologies - data published by the Court Service for 2022;[94] and the findings of our 2023 District Court survey. Similarities emerge from the datasets:[95]

TABLE 6: NUMBER AND PERCENTAGE OF CASES BY NATURE OF THE APPLICATION

Type of applications	Number of Cases	Percentage
(i) Applications for a supervision or care order		
Interim care orders and extensions (s.17)	115	40%
Care orders (s.18)	60	21%
Supervision orders (s.19)	6	2%
Emergency care orders (s.13)	4	1%
Appeals	2	<1%
Transfer of jurisdiction (Hague Convention)	1	<1%
(ii) Proceedings concerning a child on care		
Reviews and directions (including s.47 applications)	47	16%
Placement issues (including re-entries)	24	8%
Aftercare	10	4%
Access (s.23)	5	2%
Reunification	3	1%
Enhanced rights for foster carers (s.43A)	3	1%
(iii) Procedural matters		
Costs application	1	<1%
Direction on social work reports	2	<1%
TOTAL	283	100%

94 The Court Service, The Court Service Annual Report 2022 (2023) 72-72.
95 The only comparable data was care orders, interim care orders, emergency care orders and supervision orders. The total number of these orders in the District Court survey was 215, our case reports sample was 166 and the Court Service sample was 9,212.

In all three datasets the most common order made was an interim care order (including initial applications and extensions).[96]

Supervision orders made up less than 10 per cent of orders made,[97] and emergency care orders made up a fraction of all orders made.[98] This pattern is replicated in our previous analytical reports indicating that many aspects of District Court child care proceedings have remained consistent over the past twelve years.

The percentage of care orders granted varied across all three datasets.[99] The number of care orders featured in our court reports was significantly higher than in the survey findings or the Court Service data. This variance is likely to be due to the fact that care orders are often prioritised in the identification of cases for reporting, whereas an interim care order hearing may be too short to justify writing up a report.

1.5.1 Care and Supervision Orders

Interim Care Orders and Extensions: The largest category of hearings was for extensions of interim care orders (ICOs). Each ICO is usually made for a period not exceeding 29 days and there is no limit to the number of times an interim care order can be renewed.

Over the course of our reporting we have raised concern about children remaining under ICOs for too long and also called for the introduction of an assessment order to negate the need to return to court every month.

We welcome the proposal in the Heads and General Scheme of the Child Care (Amendment) Bill 2023 to provide for an extension of up to 90 days where an assessment into the welfare of the child is ongoing and unlikely to concluded with the 29-day period, (in order words an assessment order) and also a new requirement to evidence the need for an extension past one year.[100]

Care Orders: The care orders granted cover a huge variety of circumstances from newborns to older teenagers. We continue to see a trend whereby judges are granting short care orders, for example for a period of one year. One example was a twelve-month care order for a baby under the age of six months, whose mother had recently been in care herself. The 2023 General Scheme proposes to clarify within the statute that this is an option open to the court and to specify that the CFA may make an application for a care order for a period less than 18 years. This is to be welcomed.[101] Also welcome is the proposal that where the court makes an order for a different period than that applied for by the CFA the court shall set out the reasons for this decision in writing.[102]

We urge consideration be given to extend the duty to provide a written decision to all care orders, setting out the reason the order was made.

The 2023 General Scheme also proposes to amend the grounds for the granting of an interim care

96 The Court Service, The Court Service Annual Report 2022 (2023) - 81% District Court Survey 84%, Case reports 64%.
97 Court Service Annual Report - 4.7%. District Court Survey 7.4%, Case reports 4.8%.
98 Court Service Annual Report - 3.5%. District Court Survey 0.9%, Case reports 2.4%.
99 Court Service Annual Report - 10%. District Court Survey 6.5%, Case reports 28%.
100 Head 19(4)(2B).
101 Head 18(2).
102 Head 18(4).

order, care order and supervision order by merging two of the three grounds on which orders can be made.[103] Clarity is needed on the rationale for this change and we urge caution against amending the Act by inserting the phrase "likely to be" into the same ground as past behaviour as this mixes up two different types of evidence.

Supervision Orders: Six supervision orders were reported on. The reasons for the granting of a supervision order varied. Two were granted following the failure of children to attend school, while others were granted in response to the parents' presentation or failure to engage meaningfully with the CFA. In one instance, a supervision order was refused as the mother had engaged in supports. The 2023 General Scheme proposes amendments to clarify the purpose of a supervision order; permit the court to grant an order on its own motion and broadens the powers of the CFA. All of these proposals are to be welcomed.[104]

In one of the cases the judge warned the mother that breaching a supervision order is a criminal offence. This is the first time we have observed a judge threaten a criminal sanction for breach of a supervision order.[105] In our observations on the reform of the Child Care Act we proposed that this provision be deleted from the statute.

Emergency Care Orders: We observed four Emergency Care Orders (ECOs). One of the four was in respect of a newborn, another involved an allegation of non-accidental injury, the third concerned a suspected victim of trafficking and the final one related to a boy who was self-harming. In addition to these four reports, in a further 22 reports the child or children in question had previously been the subject of an emergency care order.

The 2023 General Scheme proposes to extend the maximum duration of an ECO from 8 to 15 days. We are not clear what the rationale for this proposed change is, given that the option exists to apply for an interim care order.

We have not observed proceedings where the current timeline was considered to be problematic, in terms of vindicating the rights of the child. We caution against this change as it could lead to legal challenges, especially given the level of power granted to the state under this order, including that it can be made *ex parte* and location of child can be withheld from parent.[106]

1.5.2 Other Proceedings

Transfer of Jurisdiction: Two cases were heard which involved discussion on whether the child was habitually resident in Ireland. In the first case, an application was made under article 8 of the Hague Convention to transfer jurisdiction from the District Court to a UK court.[107] Since Brexit this has been the instrument used to deal with inter-jurisdictional matters relating to child protection, as the previous EU Regulations no longer applied. Following a four-day hearing the court held that the UK court was a better place to make informed decisions with regard to the short, medium and long term care of the child in question. The child was born in Ireland to British parents but was admitted to care when she was less than two weeks old, the child's siblings were in care in the UK. The court found that the transfer was in the child's best interests given that the majority of the relevant history of social services'

103 Heads 17(1), 18(1) and 19(1).
104 Head 19.
105 Judge warns mother that breaching a supervision order is a criminal offence - 2023vol1#3.
106 Head 14.
107 Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-Operation in Respect of Parental Responsibility and Measures for the Protection of Children.

engagement with the family, along with institutional knowledge, was in the UK.

In the second case, the judge found that an infant in care was habitually resident in Ireland from the date an emergency care order was made in respect of the child who was at the time a few days old.[108]

The child was born in Ireland to parents who were at the time legally resident here. The parents left Ireland within one month of the birth of the infant and have not returned. The father was in a war-torn country and the mother's whereabouts were unknown, following her release from prison in another European country.[109]

She was described as having "a chronic and serious drug addiction."

Appeals: Two reports featured appeals. One was a *de novo* appeal to the Circuit Court of a District Court care order which was dismissed.[110] The second was a complex matter where a Circuit Court appeal and application for leave for a judicial review were both reported. The appeal related to the discharge and re-appointment of a GAL.[111]

1.5.3 Voluntary Care Agreements

Section 4 of the Child Care Act empowers the CFA to admit a child into care under its own power where it appears the child is lost, orphaned or abandoned. If a parent presents themselves and wishes to resume custody of the child, the child must be returned to them. This section also grants the CFA power to admit a child into care under a voluntary agreement with the consent of the child's parents. As it is a non-court intervention, we have only a limited perspective on the operation of this part of the care system. Among our sample were 28 cases where a child was either in care under a voluntary agreement and an application was now before the court for a judicial order or it was mentioned as part of the child's history that they had at a previous point been in care under a voluntary arrangement. An examination of these reports helps an understanding of the interplay between voluntary care agreements and judicial orders.

In some cases, the CFA was applying for a judicial order as the parent was no longer co-operating.[112] For example, in one case, the impetus for moving from a voluntary care agreement to a judicial order was that the CFA found it difficult to contact the mother who had addiction problems.

108 This case was heard under Brussels IIa Regulation Council Regulation (EC) No 2201/2003.
109 Judge decides Irish habitual residence of baby born to parents from European country no longer living in Ireland – 2023vol2#35.
110 Circuit Court dismisses parents' appeals against District Court care orders for two teenage children until the age of 18 – 2024vol1#2.
111 High Court considers judicial review of decision of Circuit Court to appoint GAL – 2022vol1#56.
112 Interim care order extended for four children currently in care following breakdown of voluntary care arrangement – 2023vol1#22.

The CFA wished to have the young child assessed due to developmental delay but the mother had failed to meet with the social workers to sign the necessary consent forms. The CFA said the voluntary care arrangement was compromising the child's care.[113]

Patterns emerged in that voluntary care was used to admit a newborn infant to care, to admit a child to care following an incident which led to the Gardaí exercising their emergency powers or in circumstances where the CFA agreed to adjourn their application for a judicial order for a period of time to give the parent time to engage with them.[114]

An example of this is a case where a newborn baby was admitted to care under an ECO, at the hearing for an initial ICO the CFA adjourned their application as the mother and father consented to a voluntary care arrangement being put in place.[115] However, the CFA later reapplied for the ICO, which was granted at a subsequent hearing.

In a number of cases the child had been in voluntary care for a substantial period of time.[116] One case is a good example of why the long-term use of voluntary care agreements can be problematic. The case involved two siblings who had been in care with the same relative foster carer for 10 years under a voluntary care agreement. The parents were often uncontactable due to addiction and homelessness.

The CFA said the parents had thwarted their care of the children by not signing consent forms which delayed an assessment for one of the children and meant the children had missed out on a holiday. The children called their foster carers Mom and Dad and the GAL said: "When I mentioned the possibility of them returning to their parents, they just looked at me in a state of bewilderment."[117]

The use of voluntary care arrangements has been the subject of research and commentary in recent years. DCEDIY has recognised the need to put in place additional safeguards and set out a new legislative framework in the 2023 General Scheme. We warmly these proposals.

1.5.4 Reason for Admisssion to Care

The reasons for an application for a care order fall into one of three categories – parental neglect or abuse, the child's own presentation or the child has no guardian in the State. Each is discussed below.

113 Interim care order for young child granted, mother's consent to assessment of need dispensed with – 2023vol2#4.
114 See for example, Adjournment of interim care order hearing to allow mother engage with CFA – 2024vol1#5.
115 Emergency Care Order for newborn baby while mother under psychiatric care, interim care order granted later – 2024vol1#4.
116 Interim care order extended, access to mother refused – 2022vol1#10.
117 Parents seek supports from HSE for child with autism in voluntary care – 2023vol1#51.

Parental Neglect or Abuse: The majority of care applications relate to a concern that the parent had neglected or abused their child (including physical, emotional and sexual abuse) or had failed to protect the child from harm by others.

In many of the cases the parents' capacity to care for their child is affected by parental mental health, disability, addiction, homelessness, domestic violence and criminality. The level of vulnerability of these families is apparent in that in many cases the parent is parenting alone, in 14 cases one or both parents was in detention or had recently left detention; in 21 cases the child's parent had died including in violent circumstances; and in at least 14 cases the parent had themselves been in care during their own childhood. A feature in many cases is that the parent had limited social support networks.

Child's Presentation:

A growing cohort of cases where a care application is made was focused on the child's own presentation with emotional, behavioural, addiction, disability or mental health difficulties.

These cases including children engaged in self-harm, suicidal ideation and violent behaviour. Often the child was identified as needing disability or mental health services (but not psychiatric treatment under the remit of the Mental Health Act 2001).

Of deep concern is the number of cases where the child was considered by the professionals involved in his or her care to be at imminent risk of sexual exploitation (including from non-family members), exploitation for criminal purposes, or engaging in dangerous behaviour, such as joyriding. These cases were often linked to the child having capacity issues, autism spectrum disorder (ASD) or an addiction.

We have also seen some new concerns emerge. For example, in one case a teenage boy was described as living as a recluse in a virtual gaming world.[118]

No Adult Responsible for the Child: A minority of applications for a care order concern a child where there is no adult with legal responsible for him or her within the State. This category includes 23 unaccompanied or separated minors. It also includes orphans and children who have been abandoned by a parent who has left the jurisdiction or the parents' whereabouts are unknown and they are uncontactable (often related to addiction and homelessness).

1.5.5 Profile of Parents

In almost half of the cases there was little or no information on the parents because of the nature of the case. We have information on 177 where the issues affecting the parents' ability to parent their children were described in court. These issues are described below.

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.

118 One-year care order for teenage boy who was living as a recluse in a virtual gaming world – 2024vol1#35.

TABLE 7: ISSUES PRESENTING IN CASES WHERE WE HAVE INFORMATION ON PARENTS

Parental issues	Frequency	Percentage
Disability comprising mental health (38), cognitive (23) and physical (8)	69	28%
Addiction to drugs or alcohol	51	20%
Domestic Violence	35	14%
Membership of ethnic minority	34	14%
Parent dead or missing	21	8%
Parent in prison	14	6%
Parent had been in care as a child	14	6%
Had experienced homelessness	11	4%
Total references to issues	***249***	***100%***

Cognitive impairment also featured in many such cases. Minority ethnic parents were disproportionately represented in child care proceedings. Another group that is over-represented are parents who themselves spent time in care. The table above sets out the main parental issue identified. More than one issue was present in most of the 177 cases where information was available on the parents.

1.5.6 Outcome of Applications

Not all hearings were contentious, in some the parent did not contest the CFA application, in others the parents consented to the application. In others the parents were supportive of the application as they were unable to care for the child or saw the application as a way to get access to a service for their child. In a small number there was no parent or guardian to respond the application.

The majority of the applications made by the CFA for a supervision or care order were granted. There were, however, a few exceptions.

Refusals: Eight reports featured a refusal by the court of applications sought, the reasons for which varied. Some orders were refused for procedural reasons, for example, to allow parents to seek representation. In two cases, an access application was refused, informed by the wishes of the child who was not in favour of the application. In a further case, the judge refused to grant a care order application for a child who had been abandoned by her mother, who had subsequently left the jurisdiction several years earlier.[119] The reason for the judge's decision was that the day before the hearing, information about the possible identity of the child's father had come to the attention of the social work team. The judge refused the care order but extended the ICO instead pending further investigation.

Length of Extension: A role of the court is to actively monitor the progress of children and hold the CFA to account. In several cases the judge refused to grant the usual one-month extension of an interim care order, choosing instead to bring the case back to court in one, two or three weeks' time. This occurred in cases where the judge was concerned that the child was not receiving adequate care. One such case involved of a teenager in an unregulated special emergency arrangement (SEA) who was absconding, engaging in criminality and had missed court hearings. In another case, the judge refused an order sought as the young boy in question was without an allocated social worker. The judge instead granted a shorter order and requested an update from the CFA when the case was back in court three weeks later. The judge threatened the CFA that he would not continue to extend interim care orders without a social worker being allocated.[120] In several cases under the court's review progress was made by the time the case next returned to court.

119 Dublin District Court refused Care Order and extended interim care order to allow time to identify child's father, adoption sought – 2023vol2#21.
120 Dublin District Court refuses to fully extend interim care order for a young boy without allocated social worker – 2023vol2#7.

1.6 PROCEEDING CONCERNING CHILDREN IN CARE

A significant proportion of our reports (92 reports) are of proceedings concerning a child who is already in care. Some of these cases had come before the court for a scheduled review, including aftercare reviews as the child approaches 18 years of age. In others the case had come back to court in an unplanned manner, including as a re-entry due to a placement breakdown or on foot of an application under section 47, often raising a concern that the child was not being properly supported. The reviews and placement issues are discussed in more detail in the following chapter.

In other more positive cases, the case returned to update the court on plans for family reunification or for an application to grant enhanced rights to foster carers. Many of these reports illustrate the positive, life-changing impact of the care system on children. Several children wrote to the judge to thank them, including a teenager who made the judge a thank you card. In many cases the court was updated that the child had settled in their placement and was described as "thriving". The updates to court often note how the child has progressed from where they were when they entered care. These reports demonstrate the excellent work undertaken by social workers, foster carers and residential care staff to safeguard and care for children and support their recovery. Stability is a key ingredient for a successful outcome for a child. In many of our reports the court was provided with updates on children who were living in a stable environment with carers (often relative carers).

In one example, a child was described as making "remarkable progress" despite an "extraordinarily difficult" childhood.

To date the girl's education had been ad hoc and thwarted by her parents. […] she was now doing exceptionally well given her starting point. [The GAL] said at her previous school she was ostracised because of hygiene, clothes and lack of school supplies but she had thrived at the new school.[121]

In another case, when a child first entered care as a toddler she was described as "robotic in nature, had frozen watchfulness, overate, ate raw food including raw meat". Six years later the social worker said she had "blossomed in the care of her foster carers".[122]

Our reports also recount instances where the parent has addressed their own difficulties in order to begin to repair a relationship with their child. For example, in one case, a mother had overcome addictions and worked hard over eight years "with the aim of increasing her access with her daughter and building a bond with her".[123]

Enhanced Rights for Foster Carers: Three of our reports relate to successful applications under section 43A of the Child Care Act, whereby after a period of five years foster carers may apply to be granted enhanced rights in respect of their foster child. In each case the child was of primary school age, in one the child has been with the family since she was six days old,[124] and in another since she was five months old and was described as "part of the family".[125]

121 Care order granted for girl who had made "remarkable progress" despite "extraordinarily difficult" childhood – 2021vol2#8.
122 Judge heavily criticises CFA during review of four children in care – 2023vol1#50.
123 Judge praises teenage girl's mother for positive steps taken to improve her life in order to form a bond with her daughter – 2024vol1#40.
124 Foster parents granted enhanced rights with birth parents' consent – 2023vol2#38.
125 Enhanced rights granted to foster parents who described child as part of their family – 2024vol1#36.

In the third case, when granting the order, the judge said: "It was [the judge's] pleasure to grant this order and that people like you [the foster parents] make the system work. You and your husband are to be commended."[126]

Reunification: There are five cases where reunification with parents was planned or had occurred. In these reports, the focus was on planning family reunification or a sibling had already been reunified and the proceedings involved the plan on how to transition another child back home.[127]

Access: Five cases dealt with applications to increase access between a parent and their child in care. In two cases access was increased and in the other two the application was refused. These decisions were informed by the views of the child. In the final one, the mother was representing herself so the judge advised her to get legal assistance to help her make an application.

Aftercare: We published ten reports on aftercare hearings. In each the child was turning 18 years in a matter of weeks or months. In several the child had a disability and so the HSE was involved in their aftercare planning. Such involvement proved difficult with one judge remarking that the HSE "leave matters to the 11th hour!". In one case concerning a non-verbal and very vulnerable teenage girl the HSE was under a witness summons as nothing was in place for the girl.[128] Another case involved a teenager of 17 years of age with complex needs who was in the process of being adopted by his carers.

Two cases involved discussions on access to aftercare supports. One involved a girl who would turn 18 in a month, she had arrived in Ireland as an unaccompanied minor and was described as "exceptionally vulnerable".[129] The child would not quality for aftercare but the judge, by the court's own discretion, made a referral for aftercare.[130] In another, the court found that the CFA was not in compliance with its own policy on aftercare when it withheld the full allowance from a teenager with a learning difficulty.[131]

Application to Discharge Order: In three cases a parent raised the prospect of making an application under section 22 to have a care order discharged as they were not happy with the care their child was receiving or were seeking reunification.[132] However, in each case the matter did not progress to a hearing.

Unallocated Social Workers: In several reports a concern was raised about a child in care who had no allocated social worker. This is a breach of national standards.[133] According to the CFA, in July 2024, 19 per cent of children in care had no allocated social worker.[134] As mentioned earlier, in a number of such cases judges have refused to grant the order for the time period sought and granted instead a shorter order and sought an update at the next hearing.[135] The CFA has acknowledged that "the allocation of cases to a social worker has become more difficult with reduced availability of social workers nationally."[136] In response the CFA has changed the nature of social work teams. The CFA has noted that: "In many instances where cases are unallocated to a social worker there is a social care worker or leader allocated to the case".[137]

126 Extended rights granted to foster parents – 2022vol1#50.
127 Interim care orders extended for two children where third child had recently gone home to mother – 2023vol2#14; Interim care order extended; unsupervised access directed; reunification planned – 2023vol2#16; Interim care orders extended for three children as fourth reunited with father – 2023vol2#17; Importance of parents knowing precisely what expected of them in a reunification plan stressed by court – 2023vol2#18; Interim care order extended for one week while CFA sources furniture and school uniforms prior to children going home following placement breakdown – 2023vol2#39.
128 HSE and CFA discuss how to respond to needs of non-verbal girl in care soon to turn 18 – 2022vol1#53.
129 Judge makes referral to aftercare for exceptionally vulnerable girl – 2022vol1#52.
130 HSE and CFA discuss how to respond to needs of non-verbal girl in care soon to turn 18 – 2022vol1#53.
131 Judge directs CFA to pay full aftercare allowance to young person thought by CFA to be vulnerable – 2024vol1#66.
132 Boy with complex needs placed in a holiday home – 2022vol1#44; CFA misled on supervision of non-verbal autistic child in private placement; abruptly ended – 2024vol1#46; Judge concerned about suitable placements for five children as successive extensions of interim care orders sought, weekly extensions only granted – 2024vol1#4.
133 National Standards for Foster Care (2003) 16, National Standards for Children's Residential Centres (2018) p 7.
134 Child and Family Agency – Tusla, Monthly Service Performance and Activity Report July 2024 3.
135 Dublin District Court refuses to fully extend interim care order for a young boy without allocated social worker – 2023vol2#7.
136 Child and Family Agency – Tusla, Monthly Service Performance and Activity Report July 2024 4.
137 *ibid.*

In 2024, we published two court reports which cover a series of proceedings where a judge re-entered a large number of cases where it was identified that children in care had no allocated social worker for protracted periods of time, some as long as two years.[138] The proceedings we attended noted 80 cases but a subsequent media report made reference to 235 cases.[139]

As noted earlier it is usual practice that when granting a care order a judge directs that the case be re-entered if a child is without an allocated social worker for more than six weeks. The judge sharply criticised the CFA for not notifying the court of this situation and for its non-compliance with the court's direction that where a child in care is without a social worker for more than six weeks, the matter must return to court. In each case the judge requested the case be re-entered to allow the court to review the case. The matter highlights the need to ensure court directions are appropriately noted in the child's file and adhered to. To foster trust between all parties in child care proceedings, there is a need for greater communication and coherence between national policy and practice.

Other applications: Three reports do not contain information on a child or family.

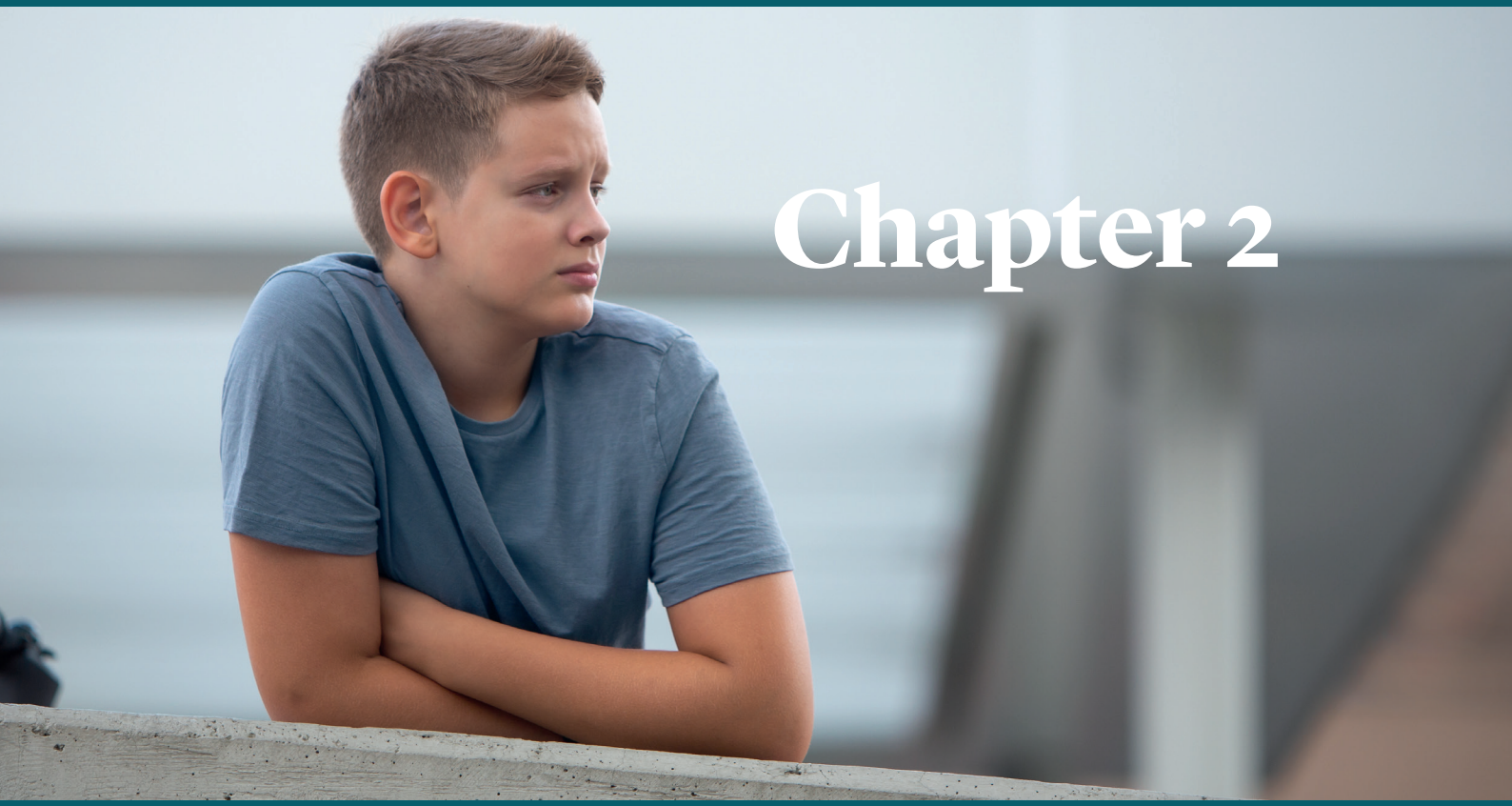
Costs: One was an application for costs which was opposed by the CFA. It was made by a solicitor who represented a mother at short notice in the hearing for an ICO. At the time, legal aid for the mother had not yet been authorised. The judge found there to be exceptional circumstances and granted the application.

Social Work Reports: Two reports contain comments made by judges in different districts. Their comments were directed at the CFA and focused on how to improve the quality and timely exchange of social work reports presented to court. In the first, followed a complaint by a solicitor representing the parents that the reports from the social workers and the GAL had been received within an hour of her coming to court, leaving her no time to discuss the content of the report with her clients, the judge made a local Practice Direction that such reports be circulated at least two days in advance of a hearing.[140]

In the second one the judge called all practitioners to court to explain improvements he wished to see.[141] Commenting on the quality of court reports, he stated that he was receiving voluminous amounts of reports where there was regular repetition in later reports of matters already included in earlier reports. He was critical of the "cut-and-paste" approach in some reports. He advised that only the initial social work report should include the background and extensive details. This "master report" should set out matters at the start of the proceedings and state whether orders had already been granted. Subsequent reports should include an update on what had happened in the interim period, without repeating the whole matter. He said that if problems persisted, he would issue a Practice Direction on the matter. In relation to the timing of the expiry of orders, he told practitioners that in future care orders should have an expiry date at the end of school terms rather than in the middle of a school term to avoid possible disruption to children.

Access to Justice: Two cases from these volumes add further weight to the mounting evidence for the urgent establishment of a dedicated national Family Court and the reform of the Civil Legal Aid scheme. In one, parents attended court in a provincial town to participate in a hearing for an extension of an interim care order for their infant son. However, the parents had left by the time the case was called at 7pm. The parents were legally represented but the scenario is problematic in terms of access to justice.[142] In another case which also related to an extension of an interim care order, the father was not legally represented, as he exceeded the threshold for him to quality for legal aid.[143]

138 Large number of cases re-entered in Dublin District Court because no allocated social worker – 2024vol1#63; Two cases re-entered by court because no social worker allocated, in one mother had turned her life around – 2024vol1#64
139 Mary Carolan, 'Judge slams failure by Tusla to notify courts of children in care with no social worker' *Irish Times* (Dublin, 4 July 2024).
140 Court makes Practice Direction to ensure CFA sends reports to lawyers in time – 2023vol2#42
141 Judge seeks improvements to social work reports presented to court – 2023vol2#41.
142 Interim care order extended for girl in single occupancy residential placement – 2022vol2#7.
143 Full care order for infant affected by drug use in pregnancy – 2021vol2#20.



Chapter 2

SPECIAL CARE AND WARDSHIP

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SPECIAL CARE AND WARDSHIP

2.1 INTRODUCTION TO SPECIAL CARE LAW

Special care, according to the Child and Family Agency (CFA) is "short term, stabilising and safe care in a secured therapeutic environment."[144] The aim of the such an intervention is to provide an individualised programme of support and skilled therapeutic intervention which will enable the child to stabilise and then move to a less secure placement. Given the restriction on the child's liberty, admission to special care can only take place if the High Court grants a special order in respect of the child.

There are three special care units: Ballydowd and Crannóg Nua located in Dublin and Coovagh House located in Limerick, each of which is mixed gender and operated by the CFA. Together the three units are registered for 26 beds, however, due to staffing shortages and other factors the units continue to operate below full capacity. As of July 2024, there were 13 children in special care.[145]

Special care units differ from general residential care in a number of ways: the units are secure, the child is detained, they offer higher staff to child ratios, education is on-site and there is access to specialised input including through the multidisciplinary Assessment Consultation Therapy Service (ACTS).

2.1.1 Statutory Provisions regarding Special Care

The High Court may detain a child with complex and challenging behavioural problems in special units for therapeutic and educational purposes. Prior to 2018, the High Court acted under its inherent jurisdiction and since 2018 a statutory framework for such an intervention has been in place. The relevant law is Part IVA of the Child Care Act 1991 which comprises one section, section 23, which is divided into 30 subsections from 23A to 23NP.

Under section 23C, the provision of special care is defined as the provision to a child of:
care which addresses –

(i) his or her behaviour and the risk of harm it poses to his or her life, health, safety, development or welfare, and
(ii) his or her care requirements, and includes medical and psychiatric assessment, examination and treatment, and educational supervision, in a special care unit in which the child is detained […].

Sections 23F and 23H set out conditions that must be present for both the CFA to apply for a special care order and for the High Court to grant such an order. Five conditions can be identified:

> the child must be between the age of 11 and 18 years
> the behaviour of the child poses a "real and substantial risk of harm to the child's life, health, safety, development or welfare"
> other forms of care provided by the CFA (for example foster or residential care) or treatment and services provided for under and within the meaning of the Mental Health Act 2001 will not adequately address the child's behaviour and risk of harm and care requirements
> the child requires special care to adequately address their behaviour and risk of harm and care requirements which the CFA cannot provide to the child unless a special care order is made in respect of that child
> the court must be satisfied that a special care order is in the best interests of the child.

144 See the website of the CFA https://www.tusla.ie/services/alternative-care/special-care/.
145 Child and Family Agency – Tusla, Monthly Service Performance and Activity Report July 2024 3.

The statutes also provide for an application to be made for an initial *ex parte* interim special care order for a period not exceeding eight days and a further application on notice to the parents for a period not exceeding 14 days.

The legislation does not envisage a long stay for a child in special care. An initial order may be granted for a period of up to three months and may be extended on two occasions, hence the maximum period a child may remain under a special care order is nine months. However, at the end of this period a fresh special care order may be sought and granted if required. The CFA is the only body permitted to apply for a special care order or extension of that order. The High Court must carry out a review of the child's progress in each four-week period for which a special care order has effect to consider if the child continues to require special care.

In addition to the legislation outlined above, the special care regime has been examined by the superior courts.

2.1.2 Caselaw regarding Special Care

The High Court has found that the CFA has a statutory duty to make a determination under section 23F(7) of the 1991 Act and having made that determination, the CFA is obliged to apply for a Special Care Order.[146] The Court found that the absence of placements did not relieve the CFA of its statutory obligations.

In early 2023, the High Court heard a set of Judicial Reviews travelling together and made declaratory orders against the CFA. These cases related to children deemed to be in need of special care but no placement was available as the units continued to operate below full capacity due to staffing and other challenges. In response to further litigation concerning two children referred to as M and B, the Court made mandatory orders against the CFA in respect of its statutory obligations to apply for special care.[147] In October 2023 on foot of those mandatory orders, the CFA made three applications for special care where there was only one bed available and asked the High Court to exercise its discretion and stay two of the three applications. The Court did not accede to this request and three special care orders were made.[148] This decision was appealed by the CFA to the Court of Appeal who also refused the application for a stay.

In parallel, the CFA secured a 'leapfrog' appeal to the Supreme Court, which heard the appeal in December and issued its judgment in February 2024.[149] We published a report based on our attendance at this hearing.[150] The Supreme Court unanimously rejected the appeal by the CFA against two decisions of the High Court requiring it to apply for special care orders for troubled teenagers. The orders had been made by Mr Justice Heslin and Mr Justice Jordan and supported by the GALs for the two children. Though agreeing that the children qualified for special care, the CFA had argued that as there were no special care beds available there was no point of applying for special care orders. In giving the lead judgment in the case, Mr Justice Hogan stated:

"On any view of the distressing facts of these cases the CFA could not properly have concluded other than that there was 'reasonable cause to believe' that both children required special care. As a human tragedy played out right in front of their eyes over the summer of 2023, the CFA prevaricated and failed to perform its statutory duty. It ought to have made the determination necessarily envisaged in those circumstances by s. 23F(7) and its failure to do so can only be described as inexcusable. In the face of overwhelming evidence as to the treatment which these children required, the failure to do so was can only be regarded as an example of a statutory body refusing to give effect to legislation enacted by the Oireachtas."[151]

He said that in the circumstances Mr. Justice Heslin of the High Court had the authority to make an order for *mandamus* and he was correct in doing so.

146 *AF v Child and Family Agency* (2019) IEHC 425.
147 *M and B v Child and Family Agency* (2023) IEHC 559.
148 *M McD v Child and Family Agency (2023)* 354 MCA.
149 *M McD v Child and Family Agency* (2024) IESC 6.
150 Supreme Court upholds High Court judgments that CFA must apply for special care orders for troubled children who need such care – 2024vol1#1.
151 *M McD v CFA* (2024) IESC 6, para 95.

Hogan J rejected the contention of the CFA, that it could not comply with the order because it did not have the staff to resource special care beds, on the basis that if implementing the legislation setting up special care was too onerous, the remedy was to amend the legislation. He continued that for the court to accept the CFA's reasoning would be to undermine the legislative function of the Oireachtas.

During 2024, the CFA has been subject to contempt of court proceedings, including in relation to a child referred to as *GB*. In addition, in June this year Mr Justice Jordan of the High Court held a 'no beds' hearing to examine the situation of children under a special care order for whom no placement is available. A judgment from this hearing is pending.

2.2 OVERVIEW OF SPECIAL CARE PROCEEDINGS ATTENDED

It is usual practice that a High Court judge is assigned to oversee the Special Care List, hearing cases every Thursday during court terms and becomes very familiar with the cases that are before the Court.

The Child Law Project attended the weekly Special Care List over the course of a fifteen-month period from 15 July 2021 to 20 October 2022 and published a composite report of our observations.[152] This composite report is based on hearings concerning 48 children. Some matters concerned new applications that came before the court during this period while others concerned children already admitted to special care. Other matters were listed for post-discharge review where the special care orders had expired or had been discharged prior to 15 July 2021 and were still under the review of the High Court.

In addition to this composite report, we also published seven other reports relating to special care with data on an additional 16 children whose proceedings were observed in 2023 and 2024. One of these contain our account of attendance at the Supreme Court hearings of late 2023, three reports relate to High Court Special Care List proceedings and the final three relate to District Court proceedings concern a child awaiting admission to special care order. Combining the composite report and the additional reports we had data on 64 children.

Below we set out the findings of our composite report on 48 children.

2.2.1 Profile of Children

During the 15-month period under review, of the 48 children whose cases were observed by the Child Law Project 22 were girls (45.8%) and 26 were boys (54.2%). In a small number of cases, an issue of gender identification arose.

Under the Child Care Act 1991, a special care order can only be made in respect of children who have attained the age of 11 years and the special care regime cannot apply to children once they have reached the age of 18 years. Many of the 48 children had birthdays while they were in special care so it was not possible to give an exact age breakdown of all the children during this period. The majority fell within the 15 to 17-year age bracket and there was a high number of children aged 17 years. However, some cases concerned young children.

A special care order was made in respect of an 11-year-old boy. The court was told that he was the "youngest child ever in special care". The level of violence of that child was described as "extraordinary".

152 Overview of Special Care List: Judge stresses need for legislative reform in a number of areas – 2022vol2#51.

The concerns which led to his admission to special care included fire-setting, substance abuse, dysregulation, possible exploitation and sexual abuse, sexualisation and a negative peer group, engagement in illegal activity and potential criminalisation with a "litany of PULSE entries".[153] The child had a diagnosis of attention deficit hyperactive disorder (ADHD).

This young child was also the subject of care proceedings before the District Court. Due to the level of behaviour of this child he spent eight of his initial 14 weeks in special care in single occupancy and due to his violent behaviour the staff were described as "the walking wounded". The child was in special care for in excess of 11 months.

Another very young child who was brought into special care was a 12-year-old boy.[154] The child came into care with a variety of problems including non-compliance with medication which was essential to treat a medical condition. The child had a fascination with criminal gangs and a vulnerability to exploitation and had been exploited by the "criminal underworld drug trade". The child had aggressive outbursts and suicidal behaviour and had a diagnosis of ADHD, ASD and an attachment disorder.

2.2.2 Reasons for Admission to Special Care

Grounds cited for the admission of the 48 children into special care included: emotional and behavioural difficulties; engaging in high-risk behaviour; violence posing a risk to others and to themselves; engaging in criminality; alcohol and substance abuse; being at risk of exploitation from criminal gangs and negative peer groups; being at risk of sexual exploitation; and being at risk of self-harm and suicidal ideation.

There were also a small number of cases in the list which involved an additional complexity, such as gender identification issues.

Many of the children also had a diagnosis of post-traumatic stress disorder (PTSD), ADHD, ASD or a form of intellectual disability, including learning difficulties and cognitive impairments. Some of the children had their diagnosis prior to being admitted to special care but sometimes the diagnosis was only made after assessments carried out while in special care. In a few cases a diagnosis of ADHD or ASD occurred very late for the child when they were aged 16 or 17 and near the age of majority. These assessments and diagnoses sometimes assisted in providing an explanation for some of the behaviours of the children and fed into appropriate treatment and identifying suitable step-down placements for them.

From our observations in court, we became aware that over half of the 48 children were also subject to care proceedings before the District Court. As our data is based on what we heard discussed in court (as opposed to a review of the child's file) the actual figure may be higher. After a child is discharged from special care, if the High Court is aware that a child is also under review in the District Court, the matter may not be listed for as many post-discharge reviews in comparison to a child who is not also before the District Court. If a child is not involved in care proceedings before the District Court there is usually a longer period of post discharge review in the High Court Special Care list.

153 Overview of Special Care List: Judge stresses need for legislative reform in a number of areas – 2022vol2#51.
154 *ibid.*

2.2.3 Duration of Special Care Orders

A special care order is for an initial period of three months with the possibility of two further extensions (a total period of nine months), however the practice is that many children are deemed to require the full nine months and for some a fresh order may be made.

Many of the 48 children reviewed during this period were the subject of a number of subsequent special care orders. Short orders were the exception rather than the norm in the Special Care List. This can be seen from the comments made by the judge in a case where the boy had only been in special care for a six-month period, he said it was "one of the cases (where) six months in special care actually did some good for this young fella and he is better and everybody seems to accept that."

The majority of the 48 children were in special care for a long period of time or had a number of re-entries into special care over a number of years. There were several reasons for this such as the complexity of the cases and the lack of an appropriate onward placements to allow the child to transition out of special care.

2.2.4 Lack of Step-Down Placements

A child leaves special care when the order expires or is discharged and the child usually transitions into a step-down placement. However, there is a chronic issue with the lack of appropriate step-down placements. The issue of the lack of placements arises nearly every week in the Special Care List and the judge has frequently commented that the issue "is dragging on too long" and that it is "the single most issue of controversy in this list" and that he felt like a 'stuck record' as he once again relayed the court's concerns to the CFA.

The lack of step-down residential placements is hindering the timely discharge of children from special care. This is particularly concerning given that these are secure settings. In some cases, a child was detained longer than necessary in special care due to the lack of a follow-on placement.

The continuation of detention where is it no longer warranted raises the question of whether or not such detention is lawful and if there is a potential breach of the child's right to liberty as provided for under Article 40 of the Constitution.

In addition, a delayed discharge may undermine the child's progress or risk them becoming institutionalised.

Location of Step-down Placements: In some cases, an issue arose in respect of the location of the proposed step-down placement and how this location may make the success of a placement more challenging. There have been difficulties to get a child to "buy into" and accept a step-down placement which was located in a rural location or at a distance from the preferred location, as there is a need for cooperation from the child in terms of the transition out of special care.

In a case where a child had expressed a preference for a placement in Dublin the judge noted that

"the children in units speak to one another" and are aware when another child has been assigned a placement which can have "a knock-on effect for other children to want the same." The judge commented that it is "not always possible to get placements in Dublin city centre and not always wise to provide placements in Dublin city centre".

In another case involving a 15-year-old boy who had previous involvement with criminality and drugs the GAL expressed reservations about a placement in the inner city and stated that placing the child in an "urban hotspot" was "courting disaster bringing him back into the very environment that contributed substantially to having him in special care in the first place." The judge also expressed reluctance in respect of the location of this proposed step-down placement:

"All the indicators are that doing so would put the child back into the position of danger in terms of welfare, allowing him to consort with drug abusers, drug pushers and those involved in criminality and giving him easy access to all of the temptations that have caused him problems. The CFA have an obligation to provide appropriate and suitable step-down placement and it will take some persuading to persuade me that the placement in the north inner city is a good placement."

Placement out of Jurisdiction: The High Court Special Care List included a small number of children and young people with very complex emotional and behavioural needs who pose a danger to themselves and others. Some of these cases involved extreme levels of self-harm, suicidal ideation and suicidal attempts. Many of the complex cases involved children who had spent lengthy periods in special care and required a bespoke placement or specialist facility.

During the period under review a number of cases mooted the possibility of a referral to a placement outside of the jurisdiction. However, it does not appear that any of these children were transferred outside the jurisdiction during this period. A number of legal complexities have arisen post-Brexit in respect of placements in the UK. Most of the referrals made to the UK had not progressed as even if assessed and accepted as a suitable candidate there are extremely lengthy waiting periods.

The High Court judge taking the Special Care List has frequently commented that some of the in-house therapies available in UK placements are not available in Ireland, and that there is also a difficulty with the difference in our definition of mental illness compared to the UK. The judge has commented on the gap in the services available in Ireland and a gap in respect of some of the psychiatric services that are required for these children. It has been commented in one of the complex cases that some of the special care units are not equipped to deal with such more complex cases coming into the Special Care List.

2.3 CHILDREN WAITING FOR A SPECIAL CARE BED

As noted in the section above on caselaw from late 2023 onwards a number of children have been granted a special care order for whom no bed in special care is available. These children are effectively on a 'waiting list' for special care. Their cases are kept under review by both the District Court and the High Court. In response to this and other difficulties in special care in April 2024, the CFA commissioned an expert review group to examine the operation of special care.[155] This review is ongoing.

In early 2024, we attended High Court proceedings where the judge reviewed four cases where special care orders had been made a number of weeks previously but where no special care beds were available for them.[156] The cases included a teenage boy who had absconded frequently from his existing placement with his grandmother and had recently been before the District Court on criminal charges but was released on bail. The GAL believed the child to be in "the exceptional risk category" and that he had a diagnosis of autism and ADHD. There was a concern that he was vulnerable to exploitation and he was found to have had shop vouchers and expensive clothing, which raised the concern that he was already being exploited.

155 Maria Corbett, one of the authors of this report, is a member of the review group.
156 Special care system "in crisis", lack of special care beds "a tsunami about to reach shore and nothing is being done" – High Court judge – 2024vol1#67.

In another case a boy was using drugs, engaging in criminality and joyriding.[157] In a third case, a teenage girl, with the cognitive function of a 10 year old child had absconded from care and there was concerns that she was being sexually exploited.[158] A fourth case related to a teenage girl described as having a mild intellectual disability and post-traumatic stress disorder (PTSD), had had over 25 hospitalisations and the GAL was extremely concerned in respect of the level of risk.

The judge described it as an "extraordinary situation once more". The special care order was made because of the danger to the life, health, safety and welfare of the child and said, "here we are, weeks after the order was made" and the child was "still out and about" going to ledges of bridges, being rescued, walking train tracks and being rescued. The judge said that the child was known to large numbers of Gardaí in stations around the area and excellent work had been done by them in keeping the child alive.

The judge noted that the child had PTSD against a background of multiple traumatic events, she had "chronic suicidality" and she was still "out and about" because the CFA had not provided space in special care in accordance with the court order. The judge said that there was no more he could do absent an application to court in respect of the failure of those responsible to give effect to the court order in place. The judge commented that: "the crisis is going completely under the radar on a national level due to the *in camera* nature of these proceedings." The judge said that someone will be held accountable and it was "by the grace of God" that the children in the list were still alive.

The judge expressed concern about "what would we do when someone has to explain where a child who should have been in special care commits suicide or dies as a result of the conduct that meant they should be in special care? …I don't know why those in the CFA are not dealing with this as a crisis situation. This is a tsunami about to reach shore and nothing is being done."

157 High Court hears of many issues with availability of onward placements – 2021vol2#14.
158 No bed for very vulnerable girl under special care order; allegation she had been raped while in care, fear of sexual exploitation; Judge: "This is the worst case I have ever come across." – 2024vol1#70.

2.4 WARDSHIP

For the last number of years the Child Law Project has been reporting on wardship proceedings in the High Court concerning children and young people, many of whom are or have been in the care of the CFA. Over the three-year period we published 23 reports on wardship which include information on 34 children and young people. Usually the CFA has been the body seeking wardship for the young person. The reasons for this varied, but included the young person having highly complex needs and requiring detention and treatment on an ongoing basis, sometimes in another jurisdiction. During this period the regime for dealing with people with limitations on their capacity has changed, as outlined below.

Taking a person into wardship requires a court finding that they are of "unsound mind" and lack capacity to make decisions for themselves. The court makes such a decision based on reports from medical specialists. Those subject to such proceedings can suffer from mental illness (but fall outside the definition of mental illness in the Mental Health Act), or cognitive disability. Being made a Ward of Court deprives a person of the right to make a wide range of decisions for themselves. This has been criticised as crude and overly paternalistic, and the Law Reform Commission recommended that the regime be replaced by a more nuanced system placing the rights of the person concerned at its centre. Such a regime should recognise that people could have capacity in certain areas, but not in others. Its report formed the basis for the Assisted Decision-Making (Capacity) Act, passed in 2015.

The Assisted Decision-Making (Capacity) Act 2015 (ADMCA) came into operation in April 2023. It replaced the adult wardship regime and established a new legal framework for supported decision-making. The legislation sets out a functional test for the assessment of capacity, meaning that a person's ability to make a decision is assessed based on the decision that has to be made at a particular time. The test for capacity under the Act recognises that a person's capacity can change over time, meaning they might need more or less support in the future.

Under the Act, all of those currently Wards of Court should leave wardship within the next three years. Their situation will then be reviewed and the supports they need in their decision-making assessed. In some cases, this will require the courts appointing a person to assist them.

The ADMCA does not apply to those under 18 years nor those between the age of 16 (when young people may make decisions concerning their health without parental permission) and 18 (the age of majority). This leaves those who have been made Wards of Court following a report on their capacity by a medical visitor in a wardship situation, awaiting the review of their wardship at or just before the age of 18.

The Act has no provision for the detention of those Wards of Court who are being detained for what is deemed by the court to be in their own interests. As the wardship regime came to an end in April 2023, the issue of how to deal with such people had to be examined by the High Court, and a number of young people fell into this category.

Among those was a case where the High Court examined the case of one young woman who had been in the care of the CFA, was now a Ward of Court and continued to be in a residential unit under a number of restrictive orders, including one empowering the Gardaí to detain and return her if she absconded.[159] The High Court considered where the power to detain now resided, given that the wardship regime had been ended, and decided that the power to detain a person now rested with the inherent jurisdiction of the High Court, and outlined the considerations that should apply.

The issue of interagency co-operation was frequently raised in wardship cases. One such case concerned a teenage boy who was a Ward of Court. The boy had autism, selective mutism and an eating disorder and was in the process of being transferred from child to adult services within the HSE.[160]

159 Applications to detain former Wards of Court can be made under inherent jurisdiction of High Court, following commencement of Assisted Decision-Making (Capacity) Act – 2023vol2#45.
160 Orders extended for young man with autism and eating disorder while adult wardship application being prepared – 2023vol1#66.

The President of the High Court said that there was a need for "significant interagency cooperation. I don't want it to happen that the case falls between two stools or even more stools, I think the parties are fully conscious of that, I do hope there won't be any as I say, falling between the cracks."

The High Court also considered the situation of several young people who had been made Wards of Court and sent to specialist units in the UK for the treatment of young people with complex needs, because no such facilities exist in Ireland. The judge in one of the cases expressed regret that there was no such unit in Ireland, and one of the young people, while accepting the need to be where she was, was very homesick.[161]

The lack of appropriate psychiatric and psychological services, including in-patient care, for children and young people with complex needs, including psychological, disability and behaviour issues, has been highlighted by the Child Law Project in many of its volumes of reports.

The reports on special care and wardship, taken together, show that there is a small, but significant, cohort of young people with very complex needs. Without intervention, some of them may cause harm to themselves and other people and may end up in the criminal justice system. Appropriate intervention, including detention in a therapeutic environment, is therefore of interest to society as well as the children themselves. Yet the provision of appropriate care is severely limited by capacity issues and by a failure to plan for the range of problems experienced by these children, including high-support units, along with special care.

As they reach adulthood, some of these young people will have capacity but may suffer from mental health issues or disability requiring ongoing support from health services, some will have limitations on their capacity and will need assistance under the ADMCA. A comprehensive plan, across a range of Government departments, is urgently needed to address the problems of these young people.

161 Ward of court twice in UK for specialised treatment not available in Ireland; judge expressed wish to see similar service in Ireland – 2023vol2#48.

Chapter 3

KEY ISSUES REVEALED BY REPORTS

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KEY ISSUES REVEALED BY REPORTS

Within each of the six volumes of reports there were examples where children are reported as thriving in care and overcoming personal difficulties. We have observed examples of successful safeguarding interventions, including the identification of possible trafficking victims, and children having settled and positive experiences in care. However, significant difficulties are currently being experienced. This chapter explores such difficulties, which emerged as urgent issues from Chapters One and Two. We are highlighting these issues based on two things: their prevalence as issues, and their seriousness in terms of the impact on the child and his or her rights.

Section 3.1 highlights traumas and harm, section 3.2 examines the acute shortage of appropriate care placements; section 3.3 explores the impact on child care proceedings and children in care of the lack of interagency collaboration on the provisions of mental health and disabilities services, section 3.4 looks at unaccompanied minors, section 3.5 at trafficking and exploitation, section 3.6 at Traveller children and 3.7 at child welfare in cases of domestic homicide.

3.1 TRAUMA AND HARM

As stated in our 2021 Analytical Report, a common thread in many, but not all cases, is that the child has experienced traumatic events and suffered harm.

These include numerous incidents of abuse and chronic neglect, encompassing 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 also having special needs and disabilities.

In addition, the experience of being admitted to care and the separation from parents and other family members may itself be experienced as a trauma by some children. In some cases of chronic neglect there had been a long history of CFA engagement with the family where the situation improved and disimproved.

A feature in a significant number of the case reports is that one or both parents are absent from the child's life. In multiple cases the court heard that the whereabouts of the parent was unknown, this was often connected to a parent leading a chaotic lifestyle due to addiction, mental illness and homelessness. The life histories of parents also include references to traumatic events including the untimely or violent death of a parent or partner, homelessness, relationship breakdown, domestic violence, imprisonment, childhood abuse or experience of care.

The impact of the litany of harm inflicted on the children subject to proceedings was reflected in a wide range of disclosures, behaviours and difficulties. It is beyond the scope of this report to explore or comment on the impact of harm or trauma (including intergenerational trauma) on individuals.

Many of our case reports include descriptions of difficulties and behaviours that could be interpreted as a reaction to trauma, such as attachment difficulties, emotional dysregulation, mental ill-health including post-traumatic stress disorder, self-harm, suicidal ideation and self-destructive behaviours including substance misuse.

3.2 PLACEMENTS

The State has a duty to provide a child in need with alternative care. This responsibility is delegated to the CFA. All placements must be registered with the CFA and are subject to inspection against national standards.[162] The CFA employs three methods to source such placements: it provides them itself; it commissions community and voluntary organisations to run children's residential centres or it procures services by way of a tender with private providers.

Registered care placements comprise foster care, foster care provided by relatives, residential care or special care. These placements may be provided on a respite, emergency or long-term basis.

3.2.1 Lack of Appropriate Care Placements

The shortage of appropriate care placements is a dominant theme across the volumes of published reports, in particular in the later period. The CFA has acknowledged it is experiencing difficulty in securing care placements.

There is no agreed definition of what constitutes an 'appropriate' placement. From our observations of its use in court we understand an 'appropriate' placement is refer to a placement that: can meet the needs of the child for stability; allow the child a chance to build a rapport with a carer or staff member; access to education; access to therapeutic supports (where needed); and enable the child (where appropriate) to stay connected to their family, friend and community support networks.

Our reports document instances where the CFA struggled to secure an appropriate placement for a child, leading to sub-optimal arrangements. We have observed cases where the CFA could not offer the child any placement so the child returned to live at home and where the child was placed in an unregistered placement.[163]

We have also seen cases where young children of pre-school and primary-school age has been placed in residential care. This is unusual as foster care would normally have been the first choice for a young child. It is unclear in some of these cases if the core issue was that the child was in need of a disability service.

In one case three siblings, of primary school age, had nowhere to go after their relative foster care placement broke down. The judge said the situation was "unacceptable and appalling" and that the children could have grounds for a future civil action against the State for negligence.

The judge kept the case under weekly review. The children had been in various out-of-hours emergency placements for the previous four or five weeks. However, some of those placements had also broken down, necessitating further moves and the children missing school. The children did not know where they were going to be staying after school on the following day and if they would be able to stay together.[164]

The shortage of placements is having an impact on all elements of the care system but is particularly worrying in the area of special care as it had led to delayed admission to and exit from special care.

162 Child Care (Placement of Children in Residential Care) Regulations 1995 (S.I. No.259 of 1995); Child Care (Placement of Children in Foster Care) Regulations 1995 (S.I. No.260 of 1995); and Child Care (Placement of Children With Relatives) Regulations 1995 (S.I. No.261 of 1995).

163 See for example, Dublin District Court directs the CFA to prepare a detailed care plan for a vulnerable teenager who had had large number of emergency placements – 2023vol2#32.

164 Judge concerned about suitable placements for five children as successive extensions of interim care orders sought, weekly extensions only granted – 2024vol1#45.

3.2.2 Lack of High Support Care Placements

In multiple cases, it was agreed that a specialist placement offering a high level of support was needed to keep a child safe and address their specific needs and behavioural difficulties but no such placement was available. Drawing on our court reports, we observe that many of the children in need of a such a placement has been in care, including special care, for significant periods of their childhood.

The care needs of the children were often highly complex, with multiple diagnoses and challenges. Children presented with a spectrum of emotional and behavioural difficulties and psychological disorders. These included intellectual disability, learning difficulties, emerging 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.

The only specialist high support placement on offer in the Irish care system is special care. At times the CFA may create a bespoke placement to respond to the specific needs of an individual child. In addition, we have seen examples of innovative practice, for example in one case a child in care and his mother were living together with relatives who are fostering the boy.

The range of placement types provided in Irish law and policy is limited compared to other jurisdictions who also offer, for example, professional specialist foster care placements or residential care with high supports.

Given the complex presentations of the children there is a clear need to examine the introduction of a range of placement types including high support models of care with input from the HSE in relation to mental health, disability and addiction.

3.2.3 Use of Unregistered Placements

Where an appropriate registered placement cannot be identified the CFA may place a child in an unregistered placement. These have been referred to as special emergency arrangements (SEAs) or non-procured regional bespoke placements. These placements are usually single child occupancy placements. The placement may be created by renting a hotel room or apartment and providing onsite staff.[165]

Examples from our reports include a 14-year-old boy staying in a hotel room and a teenage boy with complex needs living in a holiday home.[166]

165 Child and Family Agency - Tusla, Strategic Plan for Residential Care Services for Children and Young People 2022-2025 (Child and Family Agency - 2022) 27 and 30.
166 Boy with complex needs placed in a holiday home – 2022vol1#44.

While an individual placement may be meeting the needs of the child placed there, such placements are problematic on a number of levels. First, any unregistered placement is arguably operating in breach of section 60 of the Child Care Act. Secondly, an unregistered placement falls outside of the usual inspection and monitoring regime, although the CFA has put in place monitoring. Thirdly, the CFA acknowledged that the use of such placements is "concerning from a quality, cost, equity and governance perspective".[167] As of February 2024, there were 174 children in an unregistered placement, 111 of which were separated children seeking international protection.[168] We understand this figure has since been reduced.

3.2.4 Delayed Intervention

Section 16 of the Child Care Act provides that where it appears to the CFA "that a child requires care or protection which he is unlikely to receive unless a court makes a care order or a supervision order in respect of him, it shall be the duty of the Agency to make application for a care order or a supervision order, as it thinks fit."

HIQA has noted that: "There were delays in a small number of children coming into care because there was no suitable foster care or residential care placement available for them."[169] We have seen instances where perceived inaction or slowness on the part of the CFA in not seeking an order has been raised as part of court proceedings.

In one report, an application was made by a GAL to refer the CFA's 'Signs of Safety' policy to the Ombudsman for Children, it was however adjourned pending an internal review by the CFA.[170] The application argued that the policy had had a dreadful effect on a particular child. In this case an elderly great-grandmother was the 'signs of safety network' for a child who was found by Gardaí next to their deceased mother in a room in an appalling condition and in the company of a man against whom abuse allegations had been made.

3.2.5 Impact on the Child

The dearth of care placements is having a detrimental effect on some children's experience of being in care. Poor practice we have observed include placements being ended in an unplanned manner; children being placed far from their families; vulnerable children being placed in unregistered emergency settings, which fall outside of the usual inspection regime. Such practices undermine twenty years of progress and risk Ireland breaching its international human rights obligations.

In one case, a teenage girl whose parents were both in prison had her unregistered residential care placement abruptly ended and was told she could not return from school to collect her belongings, which were placed in black bags.

Her current accommodation was not HIQA approved, she had received no therapy to date and was described by her GAL as "essentially being warehoused".[171] A second case involved a nine-year old boy from Dublin who was placed in a private residential unit in the north-west; with two days' notice, he was then moved to the south-east of the country.

We have observed that in some instances a lack of a stable and appropriate placement has led to a deterioration of the child's mental health and to a risk of coming into contact with youth justice

167 Child and Family Agency – Tusla, Strategic Plan for Residential Care Services for Children and Young People 2022-2025 (Child and Family Agency - 2022) 27.
168 This week, Interview with Kate Duggan, CEO of the Child and Family Agency (This Week, RTE Radio 1, 12 February 2024). https://www.rte.ie/news/2024/0211/1431692-tusla-ceo/ and https://www.rte.ie/radio/radio1/clips/22353408/.
169 HIQA, Summary Overview Report for Children and Young People in 2021 (Health Information and Quality Authority – 2022) 5.
170 Application to refer CFA's 'Signs of Safety' policy to Ombudsman for Children adjourned pending internal review – 2023vol2#34.
171 Bespoke placement sought for teenage girl abruptly evicted from placement – 2023vol1#46.

services. Delays and difficulties in accessing suitable placements were often cited as a factor in the deterioration in a child's wellbeing and behaviour. While each case is unique, problems that arise with unsuitable temporary placements are that the child may be unable to build a rapport with staff and not be sufficiently settled to engage with school or begin therapeutic work.

In one case, two sibling children (aged 2 and 3 years) had been in care for seven weeks and during that time they had had six placement changes. At the hearing we attended the young children were in an emergency placement which was only guaranteed for that night.[172]

3.2.6 Response to the Lack of Placements

Over the course of twelve years of court reporting our reports have contained references to criticisms made about poor practice or gaps in the care system. However, over the course of this recent reporting period we have observed an increasing number of instances where members of the judiciary and other professionals expressed concern and frustration about failings in the care and health system.

We saw increasing examples of cases returning to court as a placement had broken down or where the judge was keeping the case under active review as a means of ensuring agreed actions were followed through.

Judge Simms Letter: In May 2023, in an unusual move, Judge Dermot Simms, a sitting judge of the Dublin Metropolitan District Court sent a letter, accompanied by a suite of six reports, to four Ministers, a number of relevant state bodies and an Oireachtas Committee.[173] He also provided a copy of this documentation to the Child Law Project and granted us permission to publish the letter, as part of our role of bringing transparency to child care proceedings. In the letter Judge Simms expresses his "utmost concern for the immediate predicament and welfare of children who are in care", drew attention to the placement of children in unsuitable special emergency residential placements (due to a lack of regulated care placements) and called for "immediate and coordinated action" to remedy the current crisis.

Judge Simms notes that: "There is also the risk, or indeed likelihood, that the State will face claims in the future arising out of its failure to comply adequately with its duty of care and statutory duty to many of these children".

Our reports illustrate a number of ways in which the judiciary and guardians *ad litem* have responded to individual cases where the State appeared to be failing a child in care. Members of the judiciary have made comments directed at the CFA, having kept the case under active review, in some cases bring the case back every few days, judges have requested the presence in court of senior managers within the CFA and made various directions in relation to placements, care plans and supports. Guardians *ad litem* have brought applications under section 47 and have also initiated judicial review proceedings. In several cases the judge granted permission for or requested that a report

172 Six placement changes in six weeks for two children aged two and three years – 2024vol1#42.
173 Letter from District Court Judge Dermot Simms of 17 May 2023 – 2023vol1#1.

be prepared and sent to an external body including the Health Information and Quality Authority (HIQA) and the Ombudsman for Children. In relation to special care, as outline in Chapter Two, there has been extensive litigation on access to a placement within special care.

Care Plans: A child in State care must have an up-to-date care plan, developed following a child-in-care review.[174] In response to difficulties in securing appropriate placements directions have been sought and granted in relation to the child's care plan. For example, in one case the judge directed the CFA to prepare a detailed written care plan for a vulnerable teenage girl who had had a large (but unknown) number of emergency placements and had not been in education for 20 months. The girl was now living at home as a "special emergency stop gap". [175]

3.3 INTERAGENCY CO-OPERATION

A thread running through both District and High Court cases is that often a child in care had needs that were additional to their need for care and protection. A significant portion of the children whose cases we observed were described has having either a disability, mental health or addiction difficulties. Children were also frequently described as exhibiting emotional, behavioural and psychological problems. Difficulties ranged from a child who was settled in foster care needing learnings supports to a child with a serious mental illness who required hospitalisation.

Five legal frameworks exist for the State to respond to a child (under 18 years) who needs care, protection, psychiatric treatment or educational support, disability and mental health services. These are set out in the Child Care Act 1991, Mental Health Act 2001, Education for Persons with Special Educational Needs Act 2004, the Disability Act 2005 and under wardship proceedings. These frameworks operate independently of each other. There is no legal concept of corporate parenting in Ireland, unlike in the UK.

There is no priority given to accessing services on the basis that the child is in care or at risk of entering care.

There is also no statutory duty to collaborate on responding to the needs of children, although the Minister for Children has committed to introduce such a duty.

Protocol: In relation to the HSE, a Protocol exists between the HSE and the CFA to promote interagency collaboration on children known to either or both agencies.[176] We have seen examples where the Protocol has been applied and a child is in a care placement jointly funded by the two agencies.[177] However, from our reporting we have observed that the Protocol is not consistently adhered to or is only applied at the eleventh hour.

Furthermore, while co-funding of services between the two agencies (CFA and HSE) may occur, there appears to be no shared planning of service delivery nor is there a model that brings together the two services. In addition, the legislative definitions required to trigger an obligation on HSE disability and CAMHS mental health services to get involved is very narrow.

We have seen cases where children's access to services have been denied or delayed, including where a child clearly in need was deemed to not meet the eligibility criteria; the services stepped away when the child failed to attend an appointment or because the child had moved catchment areas due to a care placement move.

The State appears ill-equipped to respond in a joined up and timely manner to children who have experienced trauma or loss, who have a

174 Child Care Act 1991 s 42; Child Care (Placement of Children in Residential Care) Regulations 1995 (S.I. No.259 of 1995) 23; Child Care (Placement of Children in Foster Care) Regulations 1995 (S.I. No.260 of 1995) 11; and Child Care (Placement of Children With Relatives) Regulations 1995 (S.I. No.261 of 1995) 11.
175 Dublin District Court directs the CFA to prepare a detailed care plan for a vulnerable teenager who had had large number of emergency placements – 2023vol2#32.
176 Joint Protocol for Interagency Collaboration Between the Health Service Executive and Tusla – Child and Family Agency to Promote the Best Interests of Children and Families (Health Service Executive and Child and Family Agency, Tusla -2020).
177 Full care orders for two children with significant special needs – 2023vol2#24.

disability or mental health issue and whose home life or care placement has broken down.

These children often display self-harming and other challenging behaviours.

In one case, following a two-day hearing, a judge directed the CFA to arrange for the immediate assessment of a child in care. The teenager had previously been referred by her GP to CAMHS but was deemed by them not to be of sufficiently high priority to be placed on their waiting list. She was self-harming and depressed and deeply affected by trauma in her earlier childhood as a result of domestic violence, neglect and abandonment. The judge was not satisfied at the way this child had seemed to "slip through the cracks" in services and directed an immediate assessment.[178]

Difficulties: During this period, we published a report on proceedings heard in 2021 (where the judgment was not published under 2023) in which the High Court heavily criticised the HSE for failing to meet the needs of a young girl with disabilities who spent nearly 60 days in a dark room off a hospital A&E department as the HSE could not find her another placement.[179] During this time, she had not gone outside for fresh air and had had no education or physical activity. For a period, she did not even have a TV or access to WIFI. This case involved a stand-off between two State agencies over who was responsible for providing care to a child with a disability. The High Court has ruled very clearly that the duty to provide disability services, including an appropriate residential placement, lies with the HSE, not the CFA. The High Court, in line with international human rights law, also stated that a child should not be admitted to care solely on the basis of their disability. This case highlights the need for a culture shift away from departmental and agency silos.

In another case a teenage girl, who was both in care and a Ward of Court, was held in the paediatric wing of a hospital due to an escalating pattern of self-harm.[180] CAMHS had refused to admit her to one of its inpatient units. After a failed attempt at mainstream residential care, the teenager was placed in the 'least worst option' of a children's hospital. She remained in this hospital for several weeks where she shared a room with a young child before being admitted to a special care unit.

A third case concerned a teenage boy with autism and speech and language difficulties.[181] The social worker gave in-depth information on their efforts to secure HSE services for the child and of their frustration at the lack of progress. The GAL said this was a "spectacular example of statutory agencies not working together" where the HSE were still talking about catchment areas. The child, who was now 17 years of age, had received a diagnosis at the age of five, he had had a chaotic and disruptive life in his family and had never received any interventions. She said he was in a placement previously which had deteriorated, there had been no response from CAMHS mental health and no supports were put in place.

Unfortunately, the following sentiments set out in our 2021 Analtyical Report remains true: "Time and again, the child's history provided to the court included a description of where help was sought for a child (by the child themselves, parents or a professional) but the request went unmet by psychology, disability or Child and Adolescent Mental Health Services (CAMHS). We see a pattern where the child's wellbeing and behaviour deteriorated and their risk of harm increased. In many cases, we also observed an escalation of the level of intervention needed to care for the child with the children often entering first to foster care, then residential care and in some cases special care or an individual tailored care placement."

We have also observed cases of poor interagency co-operation and State failings in the area of education. In one case of a boy in residential care the judge said he was "incandescent with rage" that a child in care was almost 15 and had not had one day of secondary education.[182]

178 Judge directs immediate assessment for deeply troubled child not permitted onto CAMHS waiting list – 2021vol2#11.
179 High Court rules that detention of a vulnerable girl with a disability in hospital emergency department for almost 60 days was unlawful – 2023vol2#43; *Y & Anor v Health Service Executive* [2021] IEHC 803.
180 Teenage Ward discharged from hospital into special care following lengthy dispute about mental health needs – 2022vol2#54.
181 Court hears of a "spectacular example of statutory agencies not working together" in case of autistic teenager – 2024vol1#56.
182 Following intervention by court home tuition provided for teenager who had had no secondary education – 2023vol2#33.

3.4 UNACCOMPANIED MINORS

The Child Care Act 1991 Act does not contain any specific reference to unaccompanied or separated minors. The Act is thus silent on the appropriate provision under which such children should (or may) be admitted to or maintained in care. Neither is there any policy guidance on how the CFA should respond to the needs of this cohort of children. The 2023 General Scheme does not address this gap.

In practice, one of three approaches is employed: (i) the provision of accommodation for homeless children under section 5; (ii) admission to care under a voluntary care agreement under section 4; or (iii) by way of a judicial care order under sections 13, 17 and 18. Each of these provisions bestows on the child different rights and also grants the court and the CFA varying levels of authority in respect of the child.[183] In our work we only observe cases where the CFA has applied for a judicial order.

As of end July 2024, there were 144 unaccompanied minors in the care of the CFA.[184] However, there is a larger cohort being provided with accommodation under section 5. During 2023, 530 referrals were made to the CFA service for Separated Children Seeking International Protection,[185] 432 of whom were admitted to care or accommodated by the service. A third of the referrals were from the Ukraine with the remainder from about 30 different countries.[186]

Among our reports, 24 concern an unaccompanied or separated minor. Of the 12 for whom we had information on their region of origin seven were from African countries, three from Afghanistan and two from Ukraine. Their reason for fleeing their country of origin was mentioned in 10 reports. Four girls were fleeing forced marriages (including to a member of an Islamic militant group), two were trafficked, and four were fleeing war, one fled the Taliban and another was being forced to join a militia. Many of the children had experienced significant trauma in their home countries and on their journey to Ireland.

In one case the court heard that the boy left Afghanistan because his life was in danger from the Taliban. His father had been killed and his mother had been forced to marry another man. The child was forbidden from going to school. He was smuggled out of Afghanistan with no shoes, food or money.

He travelled through several countries before he arrived in Ireland.[187]

Efforts were made by the CFA to reunify these children with their families, however this can be complicated by safety concerns and a lack of information on their whereabouts, leading to stress and anxiety for the children. Most of these children were described as doing well in their placement, were engaged in education, although a few had significant health and mental health needs. One boy told the court he had food and peace of mind and gave the judge a hand-made 'thank you' card.

The impact of the lack of clarity on how the CFA provides care to these children was apparent in two cases. In one, the judge heavily criticised the CFA for an unjustifiable delay in bringing an application for an interim care order for an unaccompanied minor from Africa.[188] In another, an application was brought to ask the court to direct the CFA to make an aftercare plan for a teenager from the

183 For further discussion: Child Law Project Scoping Paper on Care Status of Unaccompanied and Separated Children (6 Nov 2023).
184 Monthly Service Performance and Activity Report July 2024 (Child and Family Agency, Tusla - 2024) 3.
185 Child and Family Agency - *Tusla,* Annual Review on the Adequacy of Child Care and Family Support Services Available 2022 (Child and Family Agency - 2023) 67.
186 *ibid* 18.
187 Care order for unaccompanied minor – 2022vol2#29.
188 Judge appoints solicitor to unaccompanied minor – 2023vol1#40.

Ukraine. This application was unsuccessful as the child was not in care but rather being provided with accommodation under section 5 and so the judge did not have jurisdiction.[189]

3.5 TRAFFICKING AND EXPLOITATION

Unfortunately, our reports included at least nine cases where a child was a suspected victim of trafficking or exploitation. These cases highlight the important safeguarding role played by the CFA along with immigration personnel and the Gardaí.

One of these involved a teenager from Ukraine who arrived in Ireland in the company of a man whom she knew but who was not a relation.[190] The girl was interviewed by social workers at the airport who were concerned about the situation and was subsequently taken into care under an emergency care order. There was a concern that the child, who might have had an intellectual disability, might have suffered neglect and been groomed in her home country. Similar issues arose in two other cases.

In a second case the adults travelling with children were detained when entering the country as the Garda was not satisfied that the adults were the parents of the child or had appropriate permission to travel with the children giving rise to the possibility of trafficking.[191]

In a third case it was suspected that the child in care was a victim of trafficking. The court directed that no information should be given to anyone about the child, including her location, given the concerns for her safety.[192]

Of particular concern in our reports are a number of cases where there were fears that the child was being sexually or criminally exploited and that the level of support in their current care placement was not sufficient to stabilise them and address these risks. For some, as their case returned to court for review, the situation deteriorated and became very bleak, with staff scrambling to keep the child safe.

In one case, it was alleged that the teenager, who had the cognitive ability of a 10-year-old, had been raped while in the care of the CFA. There were also beliefs that the teenager was being sexually trafficked throughout the country.

The case came back before the court on over ten occasions, but the girl was still without a special care bed.[193] The judge said that he was lost for words that this was the third case before him with similar circumstances, but this was by far the worst case. He said: "It beggars' belief that in 2024 this would come before a court." Eventually the child was placed in a unit in the UK. This case highlighted the lack of provision within the care system of a safe house for suspected victims of trafficking.

An issue that arose in many of these cases is that the child had freedom to leave their care placement at any time and the child had unfettered access to their phone and to the internet. The only legal framework to deprive a child of their liberty or to impose restrictions on their access to telecommunications is under a special care order or under the High Court's inherent jurisdiction.

189 District Court judge refuses to direct the Child and Family Agency to prepare an aftercare plan for an unaccompanied minor from Ukraine, on basis that the child was not in care – 2023vol1#43.
190 Emergency care order for suspected child victim of trafficking from Ukraine – 2022vol1#32.
191 Interim care order for two children granted under Brussels IIb, children arrived in Ireland with adults who were detained – 2023vol2#6.
192 Wardship sought for suspected child victim of trafficking – 2022vol2#52; Wardship sought for suspected child victim of trafficking, orders granted prohibiting contact from family members – 2023vol2#53.
193 No bed for very vulnerable girl under special care order; allegation she had been raped while in care, fear of sexual exploitation; Judge: "This is the worst case I have ever come across." – 2024vol1#70.

3.6 TRAVELLER CHILDREN

While some Traveller children are thriving in education, sport and other areas, the marginalisation of Traveller children is well documented and reflected across all policy areas, including disproportionate rates of infant mortality, homelessness and poor education outcomes. In our 2015 Final Report we stated that Traveller parents accounted for 4.5 per cent of respondents in child protection proceedings.

During the 1980s, there were Traveller-specific residential care homes, Trudder House and Derralossary House – some children have subsequently made allegations of abuse while in these homes. A legacy of distrust therefore exists between the Traveller community and the State including in relation to child protection interventions and the treatment of Traveller children in care.

Since it first began reporting in 2012, the Child Law Project has identified the fact that children from Traveller, Roma and migrant backgrounds are disproportionately represented among the population of children subject to child care proceedings. In our latest tranche of reports, the identity of families as coming from the Traveller community was less apparent: there were three of 343 reports concerning Traveller and no reports involving Roma families. This data is likely to be an under-representation of the true picture as the Child Law Project only records Traveller and Roma ethnicity when it is specifically mentioned in the oral discussion during proceedings.

A dearth of official data means it is unknown if Traveller children are disproportionately represented in the national figure of children in alternative care. Travellers are disproportionately represented among children detained in the Oberstown campus.[194]

There is no recent empirical research on child protection and the Traveller community in Ireland. Earlier research is now obsolete as it is over twenty years old.

In our 2021 report, the Child Law Project recommended that research be commissioned on the reasons for and implications of a disproportionate number of children subject to care proceedings being from Traveller and minority ethnic backgrounds. This has not yet occurred, and we reiterate here the need for it to be undertaken. Any such research must be carried out in a sensitive manner and should involve consultation and participation with relevant stakeholders and experts. In order to have the confidence of the Traveller community, all of the research needs to be carried out in partnership with a Traveller organisation.

194 Oberstown Annual Report 2023 (Oberstown Children Detention Campus - 2023) 27.

3.7 CHILD WELFARE IN CASES OF DOMESTIC HOMICIDE

In our 2021 Analytical Report the chapter on domestic homicide said that these cases, while thankfully rare, raise a number of problems for the CFA, the legislature and the courts. The issues include the fact that the children will have suffered trauma as a result of the sudden and violent death of their mother, possibly witnessed by them; as a result they will require specialised care and ongoing support; they are likely to lose their father, who is now the sole legal guardian, to incarceration for either a short or long time; their extended family will be fractured by the violent event with possible conflict between relatives over their future care; in cases where the families have immigrated to Ireland (which was the case in three of the four cases we attended) there will probably be no extended family available to the children in Ireland; in addition, a child of immigrants in foster care in Ireland may not have easy access to their culture, language and community.[195]

While we have not explicitly been asked to examine this issue, we consider it to be one that requires to be addressed, and this is also a recommendation of the *Study on Familicide & Domestic and Family Violence Death Reviews* and referred to further below.

Our 2021 Analytical Report stated that:

> "The issues arising involve the legislation that deals both with family relationships and child protection and welfare; the need for a specific national policy to deal with such circumstances; and the need for specialised social work practice, along with support for the professionals involved, where there are cases of domestic homicide leaving children without one or both parents.

> When one parent dies the surviving parent is the sole remaining legal guardian. If the father kills the mother, it is likely he will be in custody, at least initially. If on bail, the question arises as to whether it is in the interests of the children that they are in his care, or indeed in contact with him at all. It is likely that the CFA would obtain an interim care order in these circumstances, but the father is still the legal guardian until a full care order is made, and as such the only person who can make decisions concerning aspects of the child's care, including giving permission for therapeutic intervention. He may outsource this to his extended family, if there is extended family living in Ireland.

> At the moment there are no guidelines in this jurisdiction on who may be the best person or people to care for the children, or whether specific training might be required for their carers."

An early draft of this chapter was shared with the authors of the *Study on Familicide & Domestic and Family Violence Death Reviews* published on 31 May 2023 by the Department of Justice.[196] Many of the comments and recommendations in our 2021 Analytical Report were incorporated into their final report, in particular the analysis in Chapter 3.11.11 The Complexity of Children's Needs and the recommendations in Chapter 7.3.18.1 to 5.

195 Child Care Law Reporting Project, Ripe for Reform (2021).
196 Department of Justice, Study on Familicide & Domestic and Family Violence Death Reviews (Department of Justice 31 May 2023).

Chapter 4

ISSUES SPECIFIED IN CONTRACT

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ISSUES SPECIFIED IN CONTRACT

This chapter explores five spotlighted issues. These are included at the request of the Department of Children, Equality, Disability, Integration and Youth (DCEDIY) as part of our 2021 Funding Agreement.

Section 4.1 examines children's direct participation in proceedings and also looks at guidance for instances where children wished to directly address the judge. Section 4.2 reviews cases where parental disability is a factor. Section 4.3 explores supports for parents and children in child care proceedings and refers to the provision of relevant information. Section 4.4 looks at child care proceedings and domestic violence; section 4.5 looks at factors leading cases to be long and complex.

4.1 PARTICIPATION BY CHILDREN IN PROCEEDINGS

This section responds to a requirement of the Funding Agreement that "Develop guidance for instances where children/young people wish to directly address the judge, based on research from other jurisdictions."

In a welcome development, the second national participation strategy published in 2024 provides as one of its eight action areas to "enable decision-making in court and in the courts system to include the voice of children and young people".[197]

As noted in the Introduction, the Child Care (Amendment) Act 2022 gives statutory effect to the provision of Article 42A of the Constitution on hearing the views of the child. This is a welcome development. However, these provisions have yet to be commenced. Hence, the current legal position remains that it is at the judge's discretion if the child will be appointed a GAL under section 26 of the 1991 Act and there is little clarity on how and if a child may be heard directly.

Child as Party: As mentioned in the Introduction, a child does not have legal standing in court so requires a next friend to initiate judicial proceedings, appeal an order, make an application to have an order discharged or a direction varied. In child care proceedings the child is the subject of the application and is not automatically a party to the proceedings. Under s.25(1) of the 1991 Act, the court may join a child – who is subject to proceedings – to all or some those proceedings. We have rarely seen instances where this provision was engaged. One example was a judge appointed solicitor for an unaccompanied minor.[198]

Attendance: It is also rare that a child attends court. During this three-year period of court reporting, we only observed one incidence of a child attending court. On that occasion the child came into the court room in an unplanned manner, became distressed and had to be removed from the court by a member of the Gardaí.[199]

Conveyed Views: Two instances where the views of the child were conveyed to the court we believe were of particular importance. The first concerned an application to vary access. The teenage girl had been in care for 15 months and since her reception into care she had disclosed significant abuse, including sexual abuse by various men with whom her mother associated.[200] The girl refused to have access with her mother. It was described in court that the CFA allocated someone to work with her on the issue of access and asked for a year if she wanted contact but had now accepted her position, but said the matter would be kept under review.

197 Department of Children, Equality, Integration, Disability and Youth Participation of Children and Young People in Decision-making Action Plan 2024-2028 (Department of Children, Equality, Integration, Disability and Youth - 2024) 15 and 45. Action Area 6.
198 Judge appoints solicitor to unaccompanied minor – 2023vol1#40.
199 Interim care order for boy from war-torn country after supervision order not complied with – 2024vol1#7.
200 Interim care order extended where teenage girl refuses contact with mother; sexual abuse alleged – 2023vol2#13.

This case raises a question as to what processes are in place within the CFA to respect the evolving capabilities of a child to autonomy and decision-making in relation to access with a parent.

The second instance relates to disputes over placement changes. We observed two cases where the child wished to remain in a placement but the CFA applied (unsuccessfully) to the court to change the placement.[201]

Children's Participation: Of the 380 cases documented in the District Court survey, only a handful of instances were observed where the child directly participated in the proceedings with a number of different methods employed. In a few cases the child wrote to the judge and in a number of cases a child met with the judge. In one case, the judge wrote to the child [202] As far as we are aware there is no guidance available to a child on how they can directly address the judge.

Guidance for the judiciary in relation to the participation of children must be framed within the context of the existing structure for the guidance of judges, primarily the Judicial Council and its Judicial Studies Committee. The work of this committee is based on international best principles, that judges train judges, and to this end the Judicial Council has enlisted the assistance of the Dutch Judicial Training Institute (SSR), the Judicial College of England and Wales and the European Judicial Training Network (EJTN). Similar bodies from Scotland, Northern Ireland, New South Wales, South Africa, Canada and California have also been involved.

While the Judicial Studies Committee has conducted training sessions on judicial ethics, unconscious bias and vulnerable witnesses, all of which may have a bearing on the conduct of cases involving children, no specific training has yet taken place on children addressing the court in proceedings concerning them.

A 2019 research report by the authors of this report includes a section on hearing the voice of the child in child protection proceedings, including a survey of the practice in a number of jurisdictions.[203] Academics in University College Cork (UCC) and Trinity College Dublin are currently conducting research into child participation in family court proceedings. A 2023 publication from UCC provides a comparative review of the voice of the child in private family law proceedings.[204] Lessons can be drawn from this and applied to child care proceedings.

Guidelines for Members of the Judiciary: Guidelines have already been developed in some important judgments in the Irish Courts. In 2013 Mr Justice Abbott, in *O'D v O'D*, published a judgment containing seven guidelines that should be followed when judges hear children in the course of family law proceedings.[205] While they were developed in the course of private family proceedings, they apply equally in public family law.

201 Judge refuses CFA application to remove a teenager from foster placement; directs CFA and foster carers to engage in mediation immediately – 2023vol2#29; Teenager returns to foster family following section 47 application by foster parents and GAL; thanks court for intervention – 2023vol2#31.
202 High Court rules that detention of a vulnerable girl with a disability in hospital emergency department for almost 60 days was unlawful – 2023vol2#43.
203 Maria Corbett and Carol Coulter, Child Care Proceedings: A Thematic Review of Irish and International Practice (2019).
204 Professor Conor O'Mahony, Liam O'Driscoll and others, The Voice of the Child in Private Family Law Proceedings: A Comparative Review (The Child Law Clinic School of Law University College Cork - 2023).
205 *O'D V O'D* [2013] 3 IR 189 [10].

These guidelines are:

1. "The judge shall be clear about the legislative or forensic framework in which they are embarking on the role of talking to the children as different codes may require or only permit different approaches.

2. The judge should never seek to act as an expert and should reach such conclusions from the process as may be justified by common sense only, and their own experience.

3. The principles of a fair trial and natural justice should be observed by agreeing terms of reference with the parties prior to relying on the record of the meeting with children.

4. The judge should explain to the children the fact that they are charged with resolving issues between the parents of the child and should reassure the child that in speaking to the judge, they are not taking on the onus of judging the case itself. The judge should also assure the child that while the wishes of children may be taken into consideration by the court, their wishes will not be solely (or necessarily at all) determinative of the ultimate decision of the court.

5. The judge should explain the development of the relevant convention and legislative background relating to the courts in more recent times actively seeking out the voice of the child in such simple terms as the child may understand.

6. The court should, at an early stage, ascertain whether the age and maturity of the child is such as to necessitate hearing the voice of the child. In most cases the parents in the litigation are likely to assist and agree on this aspect. In the absence of such agreement then it is advisable for the court to seek expert advice from the Section 47 procedure, unless of course such qualification is patently obvious.

7. The court should avoid a situation where the children speak in confidence to the court unless the parents agree. In such cases, the children sought such confidence and the judge agreed to give it to them subject to the stenographer and registrar recording same. Such a course, while very desirable from the child's point of view, is generally not consistent with the proper forensic progression of a case unless the parents in the litigation are informed and do not object, as was the situation in this case."

O'Mahony and O'Driscoll comment that these principles are not being uniformly met.[206]

Two important judgments have since been delivered by the Court of Appeal relating to the principles that must be adopted when children are heard by judges. In both *DK v PIK* and *K v K*, Mr Justice Collins (now a member of the Supreme Court) emphasised the fact that interviews with children could not be considered as evidence.[207] He upheld an appeal against a judgment of Ms Justice O'Hanlon in the High Court where she had relied on interviews with the children in her judgment (refusing a relocation application) but the material was not made available to the parties and they did not have any opportunity to consider it before she gave her judgment.

"That, on its face, represents a serious departure from the rules governing the administration of justice in the State." Mr Justice Collins said. "The basic ground rules of constitutional adjudication required disclosure."

As well as drawing attention to the Abbot judgment, the judge also quoted from the *Guidelines for Judges Meeting Children who are Subject to Family Law Proceedings*, drawn up by the Family Justice Council of England and Wales and approved by the President of the Family Division of the High Court there. He pointed out that it mirrored in many respects the Abbott principles, and that it stressed in particular that interviews with children could not be treated as evidence.[208]

These Guidelines, along with those outlined by Mr Justice Abbott, and considered in the light of academic research, can assist the courts, legal practitioners and those involved in child care proceedings, social workers and GALs, in assisting children and members of the judiciary in directly hearing the voices of children.

206 Professor Conor O'Mahony, Liam O'Driscoll and others The Voice of the Child in Private Family Law Proceedings: A Comparative Review (The Child Law Clinic School of Law University College Cork - 2023).
207 *DK v PIK* [2021] IECA 54 and *K v K* [2022] IECA 246 (Court of Appeal (civil), 28 October 2022.
208 Family Justice Council, Guidelines for Judges Meeting Children who are subject to Family Proceedings (Family Justice Council - 2010).

4.2 PARENTAL DISABILITY AS A FACTOR IN CHILD CARE PROCEEDINGS

This section responds to a requirement of the Funding Agreement that we examine the "factors associated with cases that are prolonged and expensive in terms of resources, including: "The identification of cases where parental disability is a factor in child care proceeding and suggestions [as] to the supports required by such parents to mitigate risk factors."

The legal context in which the State interacts with people with disabilities includes the constitutional protection of the right to equality of all citizens and the European Convention on Human Rights, incorporated into Irish law by the European Convention on Human Rights Act 2003, which requires all public bodies to actively promote fairness, prevent discrimination, and safeguard the human rights of all impacted by their policies. The United Nations Convention on the Rights of People with Disabilities (UNCRPD) has been ratified by Ireland but not fully implemented. It provides for the vindication of the rights of people with disabilities to participate fully in society free from discrimination. The recent commencement of the Assisted Decision-Making (Capacity) Act 2015 requires the provision of assistance to people whose full capacity to make important decisions is or has been impaired by disability.

The mitigation of risk to children, therefore, must take place within the context of the recognition of the rights of parents with disabilities, while also meeting the constitutional requirement that the best interests of the child are the paramount consideration.

As referred to above, the Child Law Project has been asked to identify the prevalence of cases where parental disability is a factor and to suggest supports for such parents. There are, at a minimum, two stages in child care proceedings where supports would arise: when the CFA follows up a child protection referral and seeks to work with the parents to mitigate any identified risk, and when it brings an application to court seeking an order, usually to remove the child or children from the parental home. The supports needed by parents in both phases will be different and the Child Law Project can only report on the evidence given in court. We do not know what supports may be offered to parents with disabilities, if any, outside of court directions, and whether such supports vary around the country.

4.2.1 The existing situation regarding supports for parents with disabilities

Between 2019 and 2023 the Centre for Disability Law and Policy at the University of Galway undertook a research project on the experiences of disabled people making reproductive choices in Ireland. The topics included fertility and contraception, abortion, pregnancy and birth and parenting, including child protection, fostering and adoption. The project, entitled "Re(al) Productive Justice", based its understanding of disability on the UN Convention on the Rights of Persons with Disabilities, and defined disability as including "those who have long term physical, mental, intellectual or sensory impairments which, in interaction with various barriers, may hinder their full and effective participation in society on an equal basis with others."[209]

209 The CDLP invited Carol Coulter of the Child Law Project to participate in its research advisory group, which she did, contributing specifically on the Child Law Project 's observations of the experience of parents with disabilities in the child protection system.

In its chapter on parents with a disability, the report states: "The legislative and policy frameworks around parenting for persons with disabilities in Ireland are complex. The focus of all law and policy in this field is the best interest of the child, which means that the rights of disabled parents are often a secondary consideration."[210] The report acknowledges that it is recognised that the best interests of the child are generally best served by being supported in their family of origin, but comments this is often undermined for disabled parents when the supports they need to parent effectively are not available. "While there is a recognition that disability cannot be the sole basis for interference with a family by external factors, the failure to provide reasonable accommodation and appropriate supports often results in the interference."[211]

These observations are borne out by the scant detail on supporting parents with disabilities contained in the 2018 the CFA Child Protection and Welfare Handbook. It includes a chapter on parental mental health and one on parental disability as risk factors for children.[212] While the Handbook states: "Assessing professionals should consider the available supports that can be offered to the parent experiencing mental health difficulties to assist in their recovery and to mitigate the risks to the child and reduce the severity of the possible interventions. It also may be appropriate to liaise with HSE Adult Mental Health Services and other non-statutory services, such as GPs, support groups, etc", such liaison is not presented as mandatory and no further detail is given. The rest of the chapter focuses entirely on the risks posed to children by parental mental ill-health.

The chapter on parental disability, which is here confined to intellectual disability, states: "When working with families where a parent has an intellectual or learning disability, it is essential that professionals also consider the rights of the parent with the intellectual or learning disability." However, there is no guidance offered on what these rights are or how to uphold them. Again, the focus is on the impact of parental disability on the child or children.

In 2017, in the absence of any clear guidance on the supports available to a parent with a disability, a lawyer representing a parent with a mild intellectual disability sought to establish in child care proceedings what supports could and should be offered to such a parent in parenting her child.[213] The case was attended by the Child Law Project in the District Court of a provincial city. The CFA had applied for a care order for an infant for a two-year period on the grounds that the mother could not meet the child's needs due to her intellectual disability. The mother's solicitor challenged the application on the basis that the CFA had not undertaken a full and comprehensive assessment to identify the mother's strengths and needs and what supports could be put in place to support her to parent her child. The court made a six-month care order, but in addition the District Court judge stated a consultative case to the High Court to seek the guidance of the court on the extent to which the District Court could direct services and supports under s. 47 of the Child Care Act 1991.

The District Judge asked the High Court: Am I entitled to make orders under s.47 directing the CFA to: 1."Ascertain the cost of carrying out an appropriate assessment as to what services, if any, would be required and suffice to enable [the parent to parent her child]; 2. Carry out such an assessment; 3 Provide such services as may be indicated by such an assessment, in the event that such assessment indicates that such services will enhance her capacity for parenting sufficiently to justify the provision of such services and that such parenting is in the interests of the child."

The High Court heard the case stated in June 2018 and issued a written judgment on 12 July that year. The lawyer for the CFA had argued that the case stated was flawed as it did not contain sufficient information or evidence of findings of fact. He also argued that the case stated did not fall within the scope of s.47 as it was not focused on the child's welfare or best interests, instead it was approached from the mother's perspective. The senior counsel for the mother argued that the case was framed in terms of the constitutional duty to ensure intervention in family life was proportionate.

210 The University of Galway Re(al) Productive Justice (2023).
211 Op cit.
212 Child and Family Agency, Tusla Child Protection Handbook, Chapter 2 (2018).
213 High Court asked to state case on Section 47 powers in relation to a mother with an intellectual disability – 2018vol1#7.

"All the questions are designed to see if there is a method to enable the child to remain with her parent." He added: "If you can protect the child by leaving the child with the mother that is proportionate – you must take that route – if you can show that route then that route must be pursued."

The judgment in the High Court case stated was delivered by Justice MacGrath on 12 July 2018.[214] The judge ruled that he was unable to answer the questions that the District Judge had raised due to an absence of a finding or findings of facts that it was in the best interests of the child, on the evidence considered, that the questions raised should be answered. He found that the central emphasis of the power exercised by the District Court under Section 47 the 1991 Act and amending legislation was that it be exercised in the best interests and welfare of the child. On his reading of the case, he did not find that the District Court judge had expressly found, or stated that it was in the best interest of the child concerned, that the question required to be answered. "Regrettably, I must conclude that in the absence of a finding or findings of fact that it is in the best interests of this child, on the evidence considered, that the questions arise and should be answered, I am unable to answer the questions raised by the learned District Judge," he concluded.

The extent to which parental disability is assessed when the CFA becomes involved initially with a family where a parent suffers from a disability, the degree to which appropriate parental supports are considered and the provision of such supports, if identified, remains unknown and the courts, to date, have not ruled on the matter.

4.2.2 Extent of parental disability: the International experience

The international literature suggests that parents with a disability are disproportionately represented in child care proceedings, and can account for up to a third. In the UK, a study by Tarleton *et al.* found:

"It is … clear that parents with learning difficulties are far more likely than other parents to have their children removed from them and permanently placed outside the family home. Worldwide, studies of parents with learning difficulties report rates of child removal in the range of 40–60% (McConnell et al, 2002). The English national survey of adults with learning difficulties cited above found that 48% of the parents with learning difficulties interviewed were not looking after their own children (Emerson et al, 2005). Other work in the UK indicates one sixth of children subject to care proceedings have at least one parent with learning difficulties, with this figure rising to almost a quarter if parents with borderline learning difficulties are included, with children being permanently placed away from home in 75% of these cases (Booth et al, 2005a)."[215]

Mental illness, defined as a disability by Galway University's Centre for Disability Law and Policy, is also strongly associated internationally with involvement with child protection services. A 2019 US survey by Kaplan *et al.* found that parents with serious mental illness were eight times more likely to have contact with child protection services than parents without serious mental illness.[216]

214 *The Child and Family Agency v L.B. and M.L.* (2018) IEHC 423; High Court asked to state case on Section 47 powers in relation to a mother with an intellectual disability – 2018vol1#7.
215 Beth Tarleton, Linda Ward and Joyce Howarth, 'Finding the right support? A review of issues and positive practice in supporting parents with learning difficulties and their children' (2006) *The Baring Foundation.*
216 Katy Kaplan, Eugene Brusilovskiy, Amber M. O'Shea and Mark S. Salzer, 'Child Protective Service Disparities and Serious Mental Illnesses: Results From a National Survey' (2019) *Psychiatric Services* 70(3).

The study contained an important caveat – parents with mental illness are more likely to have additional vulnerabilities: "Parents with a serious mental illness were less likely to be white, were younger, and were less likely to be married, to have more than a high school education, and to have a household income above $50,000 at the time of the survey."

Domestic violence also features in child protection concerns and this can often be combined with mental illness or cognitive impairment. According to a chapter on the children of parents with mental health difficulties from the Greater Manchester Safeguarding Partnership, "There is … a well-established relationship between mental ill health and domestic abuse. Between 50% and 60% of women mental health service users have experienced domestic abuse, and up to 20% will be experiencing current abuse. Domestic abuse is one of the most prevalent causes of depression and other mental health difficulties in women."[217] The same chapter also pointed out that there is a relationship between mental ill health and substance misuse. Therefore, any finding related to the prevalence of disability among parents involved with child protection services needs to be understood in the context of the likelihood of such parents also suffering from poverty, social isolation, domestic violence and/or substance misuse, all contributing to increased risks to children's welfare.

4.2.3 Prevalence of disability: the irish experience

In analysing Child Law Project reports for the prevalence of disability for the purpose of the current report, the present author took the definition used by the Re(al)productive Justice project, which followed the UN Convention on the Rights of People with Disabilities (CRPD) in its understanding of disability. Elaborating, the Principal Investigator, Professor Eilionoir Flynn told the author: "For the purpose of our research on reproductive justice we defined 'persons with disabilities/disabled people' as follows: including people with chronic or long-term illness, people with physical disabilities, people with sensory disabilities (including people who are blind or have low vision), people with intellectual disabilities (who may also use the terms 'additional needs, 'extra support needs' or 'special needs' to describe themselves), people with experience of mental health services (including those who identify as survivors of psychiatry), the Deaf community, autistic and neurodivergent people, and those who do not identify with any label or diagnosis but have experienced discrimination because they are perceived by others as disabled."[218]

Using this definition, the Child Law Project examined the reports published on our website relating to the period mid-2021 and mid-2024, and looked at the prevalence of disability, thus defined, in the reports. This may not capture all cases where parental disability was an issue, as domestic violence, drug and alcohol abuse feature in a very significant number of cases, and these might have been combined with or masked a disability, without the disability being identified by the CFA in the course of preparing its application.

Disability was an issue in 69 of 177 cases where we had information on the parents, including a reference to physical illness in eight. However, there was little evidence as to whether the physical illness referred to was temporary or ongoing, apart from one where the mother died during the case and another where the mother was described as having a degenerative illness. Cognitive disability was identified both by specific reference being made in the evidence, or by the appointment or presence of an advocate. Of the remaining 61, cognitive disability was referenced in 23 and mental illness in 38. It is important to stress that this was frequently accompanied by evidence of domestic violence, addiction, or other issues. Thus mental illness featured in 21.5 per cent of all cases and 62 per cent of cases with a disability, while cognitive impairment represented 13 per cent of all cases and 38 per cent of disability-related cases.

217 See the website of the Manchester Safeguarding Partnership https://www.manchestersafeguardingpartnership.co.uk/.
218 Interview and follow-up email with the author Carol Coulter, 20 Nov 2023.

This means that either a cognitive disability or mental illness was identified as a factor in the child protection proceedings in 29 per cent of all cases we observed, which corresponds to the international experience.

These figures closely correlate to those found by an Australian analysis of court reports quoted by Llewellyn and Hindmarsh, where they quote an earlier report: "Llewellyn, McConnell, and Ferronato reviewed court files of the 285 cases involving 469 children finalized over a 9-month period in 1998–1999 at two Children's Courts in NSW Australia. Nearly one third [...] featured parental disability; 9% of all 285 cases were parents with intellectual disability. The highest prevalence was parental psychiatric disability (e.g., psychotic, mood, anxiety and personality disorders) at 22%."[219]

It is notable that according to the Child Law Project reports less than a quarter of those with some kind of disability had an advocate, or were due to have one following a judicial direction (15 out of 61). Parents described as having mental health issues very rarely had the assistance of an advocate. In two cases specific reference was made to the parent's incapacity to instruct lawyers, and in others the parent was not in court at all as she (in these cases it was the mother) was in a psychiatric hospital or ward.

While the presence of an advocate suggests that assistance was available to the parent or parents (in some cases both parents had advocates) to participate meaningfully in the proceedings, there was no assessment in the vast majority of cases of the capacity of the parent with a disability to instruct her or his lawyer. There is no way of knowing what proportion of the 75 per cent of parents who did not have an advocate were fully able to understand what the concerns of the CFA were, how to address them, and, when this presumably failed, how to participate adequately in the subsequent court proceedings and give instructions. This raises questions as to the right to full access to justice on the part of parents with disabilities.

4.2.4 Required supports for disabled parents in the child protection system

As outlined above, there is very limited support for disabled parents, over and above the family support available to all parents, in Ireland. We outline what does exist in Chapter 4.3. The Re(al) Productive Justice project identified the barriers facing parents with disabilities as including a denial of support and advocacy for those experiencing legal interventions in the care of their children; unsupportive health professionals; and discrimination, particularly around issues during pregnancy that could accumulate once the child is born and that can lead to interventions separating the child and parents. It advocated fully accessible and appropriate parenting evaluations that are disability specific; adaptive parenting strategies including adapting the home environment; disability awareness training for all professionals; creating formal peer support networks and inclusive parenting programmes.

In the UK there have been a number of cases seeking to establish what supports the child protection service in local authorities should provide to parents with disabilities. The Greater Manchester Safeguarding Partnership, which brings together all the bodies charged with safeguarding children and vulnerable adults, produced a procedures manual which collates rulings from the various court cases, as well as lessons from research on parenting by people with disabilities. They list the following:

219 Gwynnyth Llewellyn, Gabrielle Hindmarsh, 'Parents with Intellectual Disability in a Population Context.' (2015) *Curr Dev Disord Rep* 119–126.

"Parents with learning difficulties can be 'good enough' parents when provided with the requisite and ongoing emotional and practical support and that this approach should be followed by professionals; they should not be measured against parents without disabilities; multi-agency work is critical to provide effective support and the courts have a duty to ensure this is done and courts should ensure that the 'supposed inability of the parents to change is not … an artefact of professionals' ineffectiveness in engaging with the parents in an appropriate way."[220]

Further recommendations included: accessible information and communication; clear and co-ordinated referral and assessment procedures and processes, eligibility criteria and care pathways; support designed to meet the needs of parents and children based on assessments of their needs and strengths; long-term support where necessary; and access to independent advocacy, particularly in relation to child protection cases. This should be at the earliest opportunity.[221]

A 2022 UK judgment further elaborated that there should be timely referrals to adult social care for a parent with learning difficulties, that such parents should have their own advocate as a priority and that the support available to them should be distilled into a simple document, to be discussed with the parent in the presence of their advocate.[222]

The lessons from the UK caselaw (which has persuasive, but not binding, authority in the Irish courts) is that parents with a disability should receive an assessment of their ability at the earliest opportunity, that the presumption should be in favour of them parenting with appropriate support, which should be identified and provided, and that they should always have their own independent advocate.

4.2.5 Advocacy service

The most pressing need for people with disabilities in the child protection system is for an advocate to assist them in negotiating their relationship with the CFA and, frequently, child care proceedings, including participating in parenting capacity assessments. Often these are conducted in the course of legal proceedings aimed at taking children into care. At this point many parents have already had engagement with social services, frequently without the support of an advocate. However, access to appropriate advocacy is limited and haphazard, as the National Advocacy Service is seriously under-resourced. The support it offers, along with other bodies, is outlined in Chapter 4.3.1.

4.2.6 Parents with disabilities and legal proceedings

Even for people without disabilities court proceedings, including the need to instruct lawyers, is daunting. Given the specialised language used by social workers and lawyers, and the complex procedural requirements of court proceedings, they will be especially forbidding for people with disabilities, who face huge obstacles in accessing justice.

220 Greater Manchester Safeguarding, 'Children of Parents with Learning Difficulties/Disabilities' (Greater Manchester Safeguarding, 2024).
221 *ibid*
222 Nottinghamshire County Council v XX, YY and Child H (Rev1) [2022] EWFC 10.

This issue has been explored by Professor Charles O'Mahony for the Irish Human Rights and Equality Commission, which looked at the general right of access to justice for people with disabilities as outlined by the UN Convention on the Rights of People with Disabilities. He concludes that despite law reform and policy development Ireland does not fully comply with the ten principles developed by the UN Special Rapporteur on Disability in 2020, based on Article 13 of the CRPD, the right of access to justice.[223]

He writes in the Executive Summary of his report:

"A key issue is the misalignment between Irish law and international human rights standards, particularly the UN Convention on the Rights of Persons with Disabilities (CRPD). Urgent action is needed to bring Irish law into conformity with the CRPD and ensure it aligns with international best practices."

There is a pressing need for a more holistic approach to research and policy development. Better data collection and research should be prioritised to understand the experiences of persons with disabilities in the justice system. The lack of awareness and understanding of disability rights among key personnel in the justice system is a significant concern. Comprehensive training in human rights, equality and disability is urgently needed. The research also identifies unmet legal needs, delays in legal proceedings, and limited access to legal aid as substantial barriers. Expanding legal aid and introducing a statutory right to independent advocacy are essential measures.

Among the report's conclusions are that:

"There is significant evidence that persons with disabilities cannot participate in the administration of justice on an equal basis with others. In particular, unmet legal need, the lack of awareness of rights, the inadequacy of advocacy services and deficiencies with legal aid mean that persons with disabilities cannot exercise the right to participate in the administration of justice on an equal basis with others."[224]

The majority of parents involved in child care proceedings are represented by lawyers from the Legal Aid Board. However, in the absence of comprehensive training of these lawyers in taking instructions from people with disabilities, especially cognitive disabilities, this does not guarantee access to justice unless the person has appropriate assistance, in particular, the help of an advocate.

4.3 SUPPORTS FOR PARENTS AND CHILDREN IN CARE PROCEEDINGS

This section responds to a requirement of the Funding Agreement that we examine the "factors associated with cases that are prolonged and expensive in terms of resources, including: "Identification and timing of support for parents and children in child care proceedings; How relevant information might best be provided to parents and children in child care proceedings; What supports, if any, are available for the parent/s of a child that is placed in care."

In our 2021 Analytical Report we wrote: "We observed cases where a vulnerable parent (including minors in care themselves) needed support to participate in proceedings, whether due to literacy difficulties, intellectual disability, mental health difficulties, language barriers or unfamiliarity with state systems. A GAL or advocate was appointed for the parent in some cases but there was a lack of clarity on the need for and provision of such support."[225] This has not changed.

To date there is limited research in Ireland with parents on their experience of judicial child care proceedings. There has been some qualitative research undertaken by Helen Buckley and others with parents who have had contact with statutory child protection services. Parents described such contact to be "intimidating and stressful"[226] and

223 Dr. Charles O'Mahony, Forthcoming "Access to Justice: A Baseline Study of Article 13 of the UN Convention on the Rights of Persons with Disabilities" (IHRC- 2024).
224 *Ibid.*
225 Ripe for Reform (Child Care Law Reporting Project – 2021).
226 Helen Buckley and others, 'Like Walking on Eggshells: Service Users Views and Expectations of the Child Protection System' (2011) 16(1) *Child and Family Social Work* 101, 101.

the process of a child protection conference to be "disempowering, fearful and stressful"[227].

It is recognised internationally that parents of children in care can have difficulty in understanding the concerns of social workers and the reasons why their children are the subject of care proceedings, especially if they have learning difficulties.

The use of advocates in child care proceedings, especially for parents with disabilities, has been an established aspect of child protection in the UK for some time. Lindley and Richards (2002) of the Centre for Family Research, University of Cambridge, defined the goals of advocacy in child protection proceedings as twofold: to empower parents to participate in the child protection process from an informed position, speaking for themselves wherever possible; and to promote good communication and a positive working relationship between the parents and the local authority (the CFA in an Irish context) all without compromising the safety of children. In consultation with a wide range of stake-holders, they drew up a Protocol on Advice and Advocacy for Parents (Child Protection).[228]

4.3.1 Advocacy support for parents with mental health or cognitive issues

The supports available to parents in Ireland at the moment are very limited, and such as exist are only available to parents with a recognised disability or lack of capacity. A parent whose children are subject to child care proceedings has no specific statutory entitlement to access a support service. There is also no national policy or protocol on how to support parents with a disability. The responsibility of the CFA and its social workers is the safety and welfare of the child rather than meeting the needs of the parents, though this may be done through the CFA's family support service. However, a parent with a disability has an implied entitlement to support under the Disability Act 2005. The District Court occasionally allows a GAL to assist a vulnerable young parent facing care proceedings (despite the parent being a party to proceedings).

There are currently two separate mechanisms, funded by two different statutory agencies, whereby a parent with impaired capacity can be provided with support during child care proceedings. These are a Support Person sourced and paid for by the Legal Aid Board, which operates under the Department of Justice and Equality, and an Advocate provided and funded by the National Advocacy Service for People with Disabilities, which operates under the Citizens Information Board and the Department of Social Protection.

The Legal Aid Board's (LAB) service was set up following a 2006 case. A solicitor in a child care case sought to have a type of GAL appointed for his client, the child's mother, as the solicitor did not understand her instructions. Judicial review proceedings were initiated in the High Court but the case was settled following an agreement that the LAB would put in place arrangements to fund the engagement of a support person for clients with impaired capacity. The LAB subsequently published Circular 2/2007, known as the Brady Circular, which provides guidelines on the appointment of a support person, including that "the person

227 Marie Gibbons and Declan Quinn, A report on parental experiences in TUSLA Child Protection Conferences in Galway and Roscommon (2016).
228 Bridget Lindley and Martin Richards, 'Protocol on Advice and Advocacy for Parents (Child Protection)' (2002) Centre for Family Research.

[requiring support] must have some capacity, but the solicitor must be of the opinion that the capacity is so impaired that it is essential that the solicitor have professional assistance to communicate effectively with the client in relation to the subject matter of the proceedings."[229]

The support person is not directly instructing the solicitor nor is he or she acting as a GAL as they do not have responsibility for presenting the client's best interests. The term 'advocate' is not used in the Brady Circular. If there is any disagreement between the support person and the client, the solicitor is obliged to act in accordance with the client's instructions. The support person must have some level of speciality or professional expertise and must not be personally connected to the client. According to a report by Michael Browne commissioned by the National Advocacy Service, the LAB authorises and supports the appointment of approximately ten support persons a year, which is only a tiny fraction of the parents identified by the Child Law Project in Chapter 1.5.8 as having some capacity issue.[230]

The National Advocacy Service (NAS) provides advocacy support to parents with an intellectual disability and/or mental health difficulties who are subject to child care proceedings in the District Court, as part of its broader remit. They have also provided advocacy support in related administrative decision-making fora, including CFA case conferences prior to court proceedings and in child-in-care reviews. However, as outlined below, the NAS acknowledges that it cannot come near to responding to the need that exists for its services among parents with disabilities facing child care proceedings, which are particularly demanding of its resources.

In an interview with this author, a spokeswoman for the NAS said that there had been no increase in the number of advocates, despite an increase in the number of referrals and the complexity of cases "We have the highest ever waiting lists. It puts people off," she said. "We have had to restrict access to child care cases, which puts us in a very difficult position. We can only work with a certain number of child care cases at any one time. They are very protracted and time-consuming. In an ideal world we would love to promote the service, but we can't or we'd be overwhelmed."

In 2022 the NAS had 119 cases assisting people involved in the child protection system, and in 2023 the figure was 110. Given that there were over 5,500 children in care in those years, and if we estimate that almost one third of them had a parent with a disability, this suggests that the overwhelming majority of parents with a disability had no access to an advocate. According to figures supplied to the Child Law Project by the NAS, the issues dealt with by its advocates included assistance in dealing with child protection conferences and liaising with social workers and guardians *ad litem*, resolving issues around access, help with accessing legal aid and providing support during legal proceedings. In many instances the advocate helped the client with a number of these issues.

The disabilities experienced by the clients in 2023, as noted by the NAS, were acquired brain injury (11), autism (1), intellectual disability (39), learning disability (26), mental health (51), physical disability (8) and sensory disability (1), and some did not disclose their disability. Some people experienced more than one kind of disability, which explains why the total exceeds 110.

Where the NAS does manage to provide an advocate, they may assist the parent both during their initial engagement with the CFA and during child care court proceedings. This often has a very positive impact on the parent's experience of the child protection system, according to the NAS spokeswoman. "The social worker reports can be inaccurate and the advocate can engage with the solicitor to challenge the report. There is often a failure to get reports in advance, and the advocate helps with getting an adjournment [in order to examine the report]. The advocate can also get the social worker to understand the barriers the person faces. The advocate can often help the court to see where the parents have not got the support they need to be able to parent their child. There is often no family reunification plan. It's capacity-building."

229 Legal Aid Board Circular 2/2007: Arrangements to appoint persons to assist clients of impaired capacity in child care proceedings.
230 Michael Browne, 'Advocacy Support for Parents with Disabilities in the Child Care Legal System: Experience, Contextual Factors and Issues Arising. A Case Study Involving the National Advocacy Service for People with Disabilities' (Citizens Information Board 2016) 13.

Referrals often come late in the day, she said. Given that there is a waiting list for people seeking an advocate, the case moves on and people disengage before they have a chance to obtain the assistance of an advocate.

In some cases a court may appoint a GAL to support the parent during the court proceedings. In addition, Empowering People in Care (EPIC), the organisation that works with young people in care and care-leavers, also offers an advocacy service to young people in care or leaving care, including those who are parents confronting the child protection system.

Eight per cent of EPIC's advocacy work involved assistance with legal proceedings. While some of that concerned young international protection applicants, "a significant trend was observed whereby advocacy was sought by care-leaver parents whose children were being taken into care or were already in care. These cases required multiple levels of support for the care-leaver, including information on the care process, and assistance before, during and after court hearings … Advocates have supported care-leaver parents to understand court proceedings and court reports, and often worked with these young people throughout the duration of the care arrangement of the child."[231]

4.3.2 Other issues requiring support

While a survey of cases reported by the Child Law Project between 2021 and 2024, and discussed above, suggests that almost one third of parents suffer from some disability, the majority of whom suffer from mental health issues, there remain two thirds of cases where no such disability was identified (though it may be masked by another issue, for example, addiction). Many of these may not have a recognised disability but may have limited understanding of English or suffer from literacy problems, and may therefore require some assistance in navigating the child protection system.

Thus the proportion of parents involved in child care proceedings, including non-judicial meetings like child protection conferences and child-in-care reviews, who may need some assistance and support is potentially very high.

It is clear, however, that services outside the remit of the CFA are required for many of the parents who come to the attention of the agency. As discussed above, support for parents with mental health issues is woefully inadequate, as is support for those with a cognitive deficit. Support for other needs is no better.

Addiction: It is not surprising that there is a correlation between deprivation and addiction, as recourse to drugs and alcohol is often an individual's response to trauma, including family disruption, severe poverty and neglect. A study for the Health Research Board analysed the relationship between addiction treatment data and geographic deprivation and found that addiction to opioids in particular were much more prevalent in areas defined as disadvantaged, just below or just above average, as opposed to affluent areas, where recourse to treatment for opioid addiction was relatively rare.[232]

It is noticeable that there have been few studies of the impact of addiction on family welfare and child protection in Ireland.

A major Government study on the costs of addiction, including alcohol addiction, examined the cost to society in terms of crime and the criminal justice system, the health system and productivity, but did not examine the impact on families and the cost of children being removed from them due to addiction.[233]

231 Empowering Children In Care EPIC National Advocacy Service Report 2022 (EPIC 2023) https://www.epiconline.ie/epic-national-advocacy-service-report-2022/.

232 Collins, Patrick, Carew, Anne Marie , Craig, Sarah, Galvin, Brian , Lyons, Suzi and Quigley, Martin, 'Analysis of the relationship between addiction treatment data and geographic deprivation in Ireland' (2023) *Drugnet Ireland* 84, Winter 2023, 6-13

233 Deirdre Collins, Patrick Moran, Lucy Bruton, Sarah Gibney & Terence Hynes, 'Focused Policy Assessment of Reducing Harm, Supporting Recovery: An analysis of expenditure and performance in the area of drug and alcohol misuse' Spending Review 2021 (Government of Ireland - 2021).

The primary responsibility for dealing with drug and alcohol addiction lies with the HSE, which provides addiction services, and also supports organisations in the voluntary sector doing so. However, access to these services can be difficult. In February 2021 there were over 3,500 people waiting for a drug or alcohol detox bed in Ireland, with over 2,200 on the waiting list for at least nine months, according to *thejournal.ie*.[234] This had been exacerbated by the Covid pandemic. The same newspaper quoted Paula Byrne, Chief Executive of Merchants Quay Ireland (MQI) saying that "speedy access to these beds is important, as it is hard to keep motivated and prevent relapse if you have to wait a number of months for a bed. It's very difficult and takes a lot of work across multi-disciplinary teams, families and ourselves."

Timely access to drug treatment is of particular importance to parents whose addiction is seriously impacting their children and placing them at risk of harm.

If the parent cannot access drug treatment facilities quickly, they may give up on the hope of reunification and the likelihood is that the children will remain in care. Coordination between the HSE and the CFA in recognising the urgency of drug treatment for parents who need it is essential, but there is little evidence that such coordination is systematic. The most recent *National Drugs Strategy Strategic Plan 2023-2024*, contains two references to the CFA.[235] One aims to "build the capacity of services to recognise hidden harm and to support families in the communities affected by substance use, to mitigate the risk and reduce the impact", and the other to "work to mitigate the risk and impact of hidden harm and consider foetal alcohol spectrum disorders as a particular form of hidden harm". It is unclear how these aspirations have translated into action.

In our 2021 Analytical Report we recommended the introduction of a drug and alcohol programme within the Family Court, similar to the Drug and Alcohol Courts that exist in some areas in the UK, and which have been found to be effective in helping parents overcome addiction and being reunited with their children.[236] Such a programme in Ireland, as part of the proposed Family Court structure, could assist in bringing together all the agencies involved in supporting families affected by addiction and protecting their children, bringing about reunification where it is safe to do so.[237]

Domestic Violence: Our qualitative data, whilst not statistically representative, suggests that approximately one in five of our reports involve violence towards either a parent or child. See section 4.4 below for further discussion.

Ethnic Minorities: In our 2021 Analytical Report we suggest the commissioning of research on families from Traveller and migrant backgrounds, who are disproportionately represented in child care proceedings. Our examination of the reports from 2021 to 2024 saw specific reference to Traveller ethnicity in only three cases, but there may have been others where their identity did not emerge in evidence. In our earlier reports Travellers were disproportionately represented in child care proceedings and there is no reason to think that this situation has changed.[238] See also section 3.6 of this report.

There were 34 cases where one or both parents was from an ethnic minority, including from the UK, representing 20 per cent of all cases. This did not include children who were unaccompanied minors or suspected victims of trafficking, by definition from ethnic minorities, but did include children

234 Maria Delaney, 'Over 3,500 on wait list for a detox bed, with over 140 residential beds still closed' *The Journal* (Dublin, 28 April 2021) https://www.thejournal.ie/detox-bed-waiting-list-5421391-Apr2021/.
235 Department of Health National Drug Strategy, Strategic Action Plan 2023-2024 (Department of Health - 2023).
236 Ripe for Reform (Child Care Law Reporting Project – 2021).
237 For further discussion see Maria Corbett and Carol Coulter, Child Care Proceedings: A Thematic Review of Irish and International Practice (2019) Theme 8.
238 See for example, Final Report 2015 (Child Care Law Reporting Project – 2015) 64.

where the parents had had some contact with the CFA but had abandoned their children. According to the 2022 Census, 12 per cent of the population were non-Irish citizens.[239] While child protection proceedings do not record the citizenship status of respondents, these figures do suggest that people from ethnic minorities are disproportionately represented in child protection proceedings.

The issues that featured in the proceedings involving people from ethnic minorities included mental health (8), abandonment of the child (4), suspected trafficking (4), physical abuse (3), domestic violence (2), special needs of the child (3), Hague Convention/habitual residence (3), cognitive disability (2) and cultural or identity issues (2), with the rest made up of concerns about neglect, addiction and child sexual abuse. In the course of the hearings, issues also emerged relating to interpretation and to misunderstanding between parents and State authorities.

With the exception of suspected trafficking and cultural or identity issues, including recourse to physical discipline, this indicates that the needs of parents from ethnic minorities include those of other parents in the child protection system – access to mental health services, support where there is a cognitive impairment, alcohol and drug abuse and protection from domestic violence. However, without research it is not really possible to say what additional needs there may be, and the observations of the Child Law Project in previous reports that research on the needs of ethnic minority parents, informing special training of social workers, remain relevant.

Parents Dead or Missing: In a significant number of cases (21, representing 12 per cent) one or both parents were dead or missing. Where one parent was dead or missing, the surviving parent was not only parenting alone, but likely to need additional support with bereavement. This is likely to also impose an additional burden of trauma on the child or children.

Care Experienced Parents:

In 14 reported cases over the three years one or both of the parents was currently in care, or had recently been in care, and were facing the sad prospect of their infant child following their path into care.

Seven of these were published in 2022. It is not clear from the case reports whether the young people in question were in residential or foster care, which should be the subject of further inquiry. However, it would appear that pregnancy and birth is more likely for teenagers in care than for this cohort in the general population.

The incidence of pregnancy and birth among children in care is not known, and the reports from the Child Law Project can only provide an educated guess. According to the Courts Service Annual Report for 2022, 926 care orders were granted that year, obviously for children of all ages.[240] The Child Law Project published reports on the granting of 24 care orders that year, approximately one in 38 of all those granted. It is very likely that the seven births to young people in care in 2022, or just leaving care, represents only some of such births, which could run to dozens a year. But even seven births to the approximately 1,329 children in care aged 15-17 means one in 189 older teenagers in care had a child.

According to the latest Census, in 2022 798 teenagers had babies. It is reasonable to assume that many of the births were to older teenagers (18 and 19-year olds) undoubtedly accounting for at least half. As there were 215,099 children in Ireland

239 Central Statistics Office, 'Press Statement Census 2022 Results Profile 5 - Diversity, Migration, Ethnicity, Irish Travellers & Religion' (Central Statistics Office - 2022) https://www.cso.ie/en/csolatestnews/pressreleases/2023pressreleases/pressstatementcensus2022resultsprofile5-diversitymigrationethnicityirishtravellersreligion/.

240 The Court Service, The Court Service Annual Report 2022 (The Court Service 2023).

between the ages of 15 and 17, 400 births to that cohort would represents a very small segment of this age-group, approximately one in 538. In January 2023, according to the CSO, 26 per cent of the 5,112 children in care in January 2023 were aged 15, 16 and 17, giving an approximate figure of 1,329 children in this age cohort in care.[241] Even seven of these giving birth makes it a more common occurrence (one in 189) than among the general population, but, as argued above, it is highly unlikely that the Child Law Project captured all cases where the parent was in care.

This clearly raises questions about the extent to which family planning advice is part of a young person's education in care. It also suggests the preparation of young people in care for parenthood should form part of both the care package while in care and on leaving it into after-care.

Prison: According to our reports, in 14 cases a parent was in prison. This obviously imposed an additional burden on the other parent and family members. While there were some references to telephone access, it was clear that contact between the parents in this situation and the child was very limited, which was likely to have an impact on the relationship into the future, whether the child was reunited with his or her birth family or not. This is yet another instance where a State agency other than the CFA, in this case the Probation Service, should coordinate its support for the prisoner with assisting the CFA in responding to the needs of his or her children.

Homelessness: While many parents facing child care proceedings are dealing with housing insecurity, there were eleven published cases where the parent or parents were actually homeless, including living in a tent.

4.3.3 Suggested Supports

It is clear that people with disabilities form a very significant proportion of parents in the child protection system. It is also clear that most of them do not receive tailored supports to assist them in addressing the concerns that sometimes arise about their parenting and there is no systematic approach to meeting their needs. The need to do so is rendered more urgent by the coming into operation of the Assisted Decision-Making (Capacity) Act and the need for Ireland to fully incorporate the UNCRPD into law.

Two groups predominate among those with disabilities in the child protection system: people suffering from mental health problems and those with intellectual disabilities, whose problems differ.

People with mental health issues may, and often do, recover, usually with appropriate therapeutic and medical help. However, in order to do so, and to parent their children safely, there needs to be adequate mental health support, and liaison between mental health services and child protection services.

This is seriously lacking in Ireland. Substantial expansion of mental health services, and coordination between them and the CFA, is needed to address the needs of parents whose mental health issues bring them in contact with child protection services. Obviously the provision of adequate mental health services for adults is not the responsibility of the CFA, but the lack of it impacts on vulnerable parents and their children and underlines, once again, the need for a whole-of-government approach to their issues.

Intellectual disability does not go away, but people with intellectual disabilities can be helped to meet challenges, including the challenges of parenting.

241 Central Statistics Office, Educational Attendance and Attainment of Children in Care, 2018 - 2023 (Central Statistics Office - 2023).

While sometimes those challenges may be too great to be overcome to a degree that would permit the parent safely to care for their child, their ability to do so is likely to vary depending on the stage of development of the child, and each case will be different. This makes early assessment of the ability of a parent with a disability essential. It also requires all professionals involved, including those in the judicial system, to be trained in dealing with people with disabilities. Work already done by the Irish Human Rights and Equality Commission, Galway University Centre for Human Rights and Disability, the Disability Federation of Ireland, the National Advocacy Service, EPIC and others provides a valuable resource for the development of a comprehensive rights-based policy to support parents with disabilities. Such a global policy, involving all relevant government departments, to address the needs of parents with a disability and their children, needs to be developed.

This will not happen overnight. But it should start, and in the meantime, as an urgent priority, the National Advocacy Service should be resourced to respond to the needs of parents with disabilities both in their engagement with the CFA and in the courts.

4.3.4 Advocacy, information and advice service for parents of children in care

Since late 2021, progress has been made towards improving the availability of relevant information and advocacy support to parents and children subject to child care proceedings.

The Child Law Project has published a plain English *Care Proceedings: Guide for parents and children* on its website.[242]

For many years Clare Care has been operating a regional information and advocacy service, but there has been no access to such supports in other parts of the country.[243] Since 2021, a national pilot project providing advocacy and support has begun, delivered by Barnardos.

In 2021 the CFA asked the Children's Rights Alliance (CRA) to organise tendering for a pilot project to support parents of children in care. The Child Law Project has been deeply involved in this project, with Carol Coulter sitting on the committee which oversaw the tendering process and continuing to be represented on the oversight group overseeing its operation. The pilot project includes an evaluation component.

A detailed scoping exercise was carried out in order to identify the kind of supports parents and their children involved in child care proceedings needed, how best to convey the information they needed, and how to support parents whose children were placed in care, including supporting them toward reunification, where possible. This provided the basis for the tender, which was won by Barnardos.

The new service provides face-to-face advocacy to parents of children in care in Dublin North City, Waterford and Wexford, which had been chosen as the sites for the pilot project due to the large number of children in care in these areas. A national helpline was also set up to support parents of children in care with information and advice, including parents outside of the pilot areas. Four information leaflets were prepared for national distribution, explaining what is child protection, who is in a social work team, what happens in a child protection conference and retrospective abuse.

The pilot project includes an independent and expert evaluation and monitoring programme run by Clive Diaz of Cardiff University.

An interim report was drawn up in June by the Barnardos head of the service, Niamh McCarthy, who kindly agreed that the Child Law Project can refer to its findings. The new service was currently working with 82 parents, an average of 20.25 per advocate, and between January and June of 2024 a total of 489 face-to-face meetings had taken place, with a further 622 taking place online or on the phone. The range of assistance provided included attending child protection conference, meetings with social workers and GALs, pre- and post-court meetings, access review and safety network meetings and meetings concerning voluntary care. Parents were accompanied to court on 195 occasions. Over 1,000 meetings with professionals and 120 meetings with lawyers took place.

242 Child Law Project, Care Proceedings: Guide for Parents and Children (2023).
243 See the website of Clare Care: <https://clarecare.ie/advocacy-service-for-parents-of-children-in-care/>.

The main needs that emerged from the service's engagement with parents were: strengthening communication with the CFA; access to updates on their child; family contact with the child in relation to access arrangements; understanding reunification planning; understanding the court proceedings; engaging with solicitors; access to legal aid and understanding the child protection system.

The website is up and running and had a total of 295 users between January and June 2024. The advice and advocacy service has a waiting list, as the number of parents per advocate exceeds what was intended, and the service's information and advice officer was supporting the parents on the waiting list, providing information and advice in preparation for meetings while they were on the waiting list. In relation to the monitoring and evaluation being conducted by the Cardiff team, parents and professionals were being recruited to participate. If, following the evaluation, the service is scaled up, it will undoubtedly greatly assist many parents in dealing with the child protection system.

4.3.5 Supports for Children in Care Proceedings

Several non-governmental organisations provide support to children. Of particular relevance here is EPIC, Empowering People in Care, a national organisational which provides independent advocacy to children in care and care leavers. Among its services it can provide advice and information on a range of care related matters. In 2023 EPIC worked with 581 children and young people on a total of 869 advocacy cases.[244]

4.3.6 Conclusions

As outlined above, many of the appropriate supports for parents and children in child care proceedings require active collaboration between the CFA and other State agencies, in particular, but not only, the HSE. The provision of an advocate for parents with cognitive difficulties as soon as concerns emerge, who can support the parent from the earliest contact with the CFA, assistance in accessing mental health, addiction or disability services before decisions are made to seek court orders, a focus on reproductive choices and parenting for teenagers in care, the introduction of a drug and alcohol programme within the Family Court system, assistance in accessing support from domestic violence services, including, where necessary, the CFA seeking orders under the Domestic Violence Act 2018, coordination with the Probation Service, would all help parents confront their difficulties and, in some instances, avoid their children going into care, or reduce their time in care.

244 EPIC, National Advocacy Service Report 2023 (Empowering People in Care – 2024).

4.4 CHILD CARE PROCEEDINGS AND DOMESTIC VIOLENCE

This section responds to a requirement of the Funding Agreement that we assess "the extent to which Part Two of the Domestic Violence Act 2018 impacts on child care proceedings and outcomes on child welfare and family functioning."

There is no official data available on the incidence of domestic violence in child protection cases. Our qualitative data, while not statistically representative, suggests that approximately one in five of our reports involve violence towards either a parent or child.

In our reports, we observe references to violence that can be categorised as either adult-focused or child-focused. Adult-focused violence includes domestic violence and, in extreme cases, domestic homicide of the mother. Child-focused violence encompasses physical abuse of a child, including serious assault, emotional abuse, including threats to kill, and the child witnessing domestic violence.

Domestic violence frequently features in proceedings, often in combination with parental addiction, mental health issues, past trauma, and current homelessness. Parental disability and ethnicity sometimes play a role, and parents are often difficult to engage with. The violence is typically perpetrated against the child's mother, though sometimes both parents are accused of instigating violence.

Observations from court proceedings reveal that while domestic violence is common, it often is not the primary concern for the CFA. The focus is primarily on the impact on the child. Under the Child Care Act 1991, the grounds for granting a care order are broad, encompassing assault, ill-treatment, neglect, sexual abuse, or avoidable impairment of the child's health, development or welfare. Notably, domestic violence is not specified as a ground in itself. Domestic violence is often listed among multiple grounds for seeking a care order, including neglect and various forms of abuse.[245]

Domestic violence and child care hearings are conducted separately, with different judges, lawyers, and methods for hearing the child's views. There is little connection between the criminal law on domestic violence and that on child care. While the Domestic Violence Act 2018 allows a judge to direct the CFA to investigate a child's circumstances, only the CFA can apply for a care or supervision order.

We have observed three cases where the CFA made applications under the Domestic Violence Act 2018. In one case, the District Court granted an interim barring order against a man who was in custody but who was likely to be released back to the family home on bail the following day.[246] It was an unusual case because the barring order had not been sought by the man's partner, but by the CFA, as provided for under section 11 of the Domestic Violence Act 2018. This was the first time we had observed this provision of the 2018 Act being used. The mother had applied for a barring order but later withdrew it. The child in question was in the care of the CFA and the CFA sought to protect the mother and her children from the threat of violence.

245 See for example Two-year care orders for two children amid concerns about abuse and domestic violence – 2022vol1#6.
246 Judge directs service of a protection order on a father where wife too afraid to make the application – 2023vol1#61.

In the second case, the judge granted an extension of an interim care order for a child of junior post-primary school age, who had made and subsequently retracted, a serious allegation of sexual abuse against her father.[247] The judge also granted the CFA its application for an interim barring order against the father under the 2018 Act in a situation where the CFA advised the court that while the mother did not seek the barring order, the health and welfare of the children would be in danger unless the order was made.

In a third case, the CFA had applied and been granted a protection order on behalf of a teenage mother who was in care in a mother and baby unit. The protection order was against the father of the baby.[248] At one point the court heard the young mother was given security for whenever she went anywhere.

4.5 LONG AND COMPLEX CASES

This section responds to a requirement of the Funding Agreement that we examine the "factors associated with cases that are prolonged and expensive in terms of resources, including: expert reports and witnesses; engagement with the family prior to the making of the application; the preparation of the cases; the extent to which the conditions for the reunification of the family form part of the application."

In 2018, we published a report on ten lengthy, contested and complex child protection cases in the District Court.[249] All of these cases – seven heard in provincial courts and the remaining three in Dublin – took a week or more of hearings often with multiple adjournments leading to them lasting many months or even more than a year.

This study concluded:

"The prolonged and complex cases examined here share certain features. These include allegations of very serious harm to a child or children, involving the likelihood of a criminal investigation; lack of coordination between State agencies concerning the allegations made; the involvement of a substantial number of expert witnesses; the requirement that there be professional assessments of the children and sometimes also of the parents; delays in obtaining such assessments; and disputes between experts as to the findings of the assessments. Seven of the prolonged cases, and all except one of those that took over a year, were heard outside Dublin, with six of them heard by moveable judges."

It also found that early identification of complicating issues in a case, careful preparation of cases, the conduct of cases in the District Court to avoid prolonged adjournments, and coordination between different State agencies involved in the case, all needed attention. The Family Courts Bill, currently going through the Oireachtas, will provide for Family Courts at each jurisdictional level of the courts and for the vertical transfer of cases, with particularly complex cases going to the Circuit Court. The identification of factors that contribute to complexity will obviously be important in the context of this new family court system.

The reports published related to the period mid-2021 to mid-2024 were examined to identify those which were exceptionally long. The cut-off point chosen was three days' full hearings or more. Most cases saw the Child Law Project publish successive reports on the same case as it repeatedly returned to court.

Eight cases met the criterion of three days' hearings which we examine below.

247 CFA seeks interim barring order to protect children already under care order – 2022vol2#32.
248 Interim care order for teenage mother extended amid concerns about violent boyfriend – 2022vol1#17.
249 Carol Coulter An Examination of Lengthy, Contested And Complex Child Protection Cases In the District Court, Executive Summary, (2018).

CASE A: This concerned a case in a rural town where the court had made a care order for a teenage boy, who entered care aged 14 and subsequently had spent time in special care, detention and residential care. [250] Evidence was heard of the boy's very serious behavioural problems, including addiction to aerosols from the age of 10, an eating disorder and violent attacks on staff.

The psychologist had conducted parenting capacity assessments on both parents, and found them unable to parent the boy, due to the father's health issues and domestic violence and the mother's traumatic background, abuse of alcohol and heroin, and mental health issues. She was worried about the boy's extreme emotional and behavioural problems, and his fixation on his mother. The GAL described him as "one of the most complex young people I've ever worked with". The care order was made.

The case returned to court for review three months later as there was no placement for the boy and he had not been assessed by CAMHS. The case returned to court again several months later, when it heard that the boy was living in a holiday home as no suitable placement could be found for him. This placement did not have the approval of the HIQA. He had still not had a CAMHS assessment.

The judge said the matter should come back to court with representatives of the CFA and of HIQA appearing, and said the GAL had permission to write and inform the Ombudsman for Children of the position of this teenager and to HIQA on the placement's non-compliance.

CASE B: This case, again in a rural town, concerned two children, a girl and a boy, where the parents were separated and the mother was seriously ill.[251] The relationship between them was described as "toxic". The court heard that the two children had been treated very differently, with the girl treated as a scapegoat and blamed for all the ills in the family. She was subjected to physical and emotional abuse, and the Gardaí were investigating the physical abuse allegations. Her brother escaped the physical abuse, but was affected by the violence in the family. The girl had been referred to CAMHS. She had said she had been self-harming from when she was in junior infants. The boy had tended to disengage from the conflict and play with his X-box in his room. He was "closed down" emotionally. Both parents fully contested the care order application, which was heard over a number of days. The care orders were eventually granted, but were appealed to the Circuit Court, leading to a further lengthy hearing, which upheld the District Court decision to grant the orders.

CASE C: This case first came before Dublin District Court where an interim care order was sought for a boy who had been joy-riding and where there had been allegations of physical abuse against the father, who was not Irish and had a diagnosis of PTSD due to his earlier experiences in a war-torn country.[252] His engagement with the CFA was very limited, but he participated in the earlier proceedings. A supervision order was also granted for the boy's younger sister. Other, older children were in care. The mother had addiction issues, she did not attend the court, and the parents were separated.

At a later hearing the court heard that the boy had been before the Children's (criminal) Court for stealing cars and was in Oberstown detention centre on bail but was due to be released. Eventually he was convicted and sent to Oberstown. Following a three-day hearing, an interim care order had been granted for his sister.

The interim care orders were extended on a number of occasions for the boy, always opposed by the father, and heard that he continued to abscond, engage in criminality and risk taking behaviours. Eventually care orders for both children were granted.

CASE D: This case was also in a rural town.[253] Unusually, it concerned the terms of a supervision order, first made in 2019, but the case returned to court. The primary school-aged child was autistic and had a learning disability, and the supervision order required him to attend an appropriate school. It was consistently opposed by the child's mother.

250 Judge said "disgraceful" that no CAMHS assessment or placement for teen whose situation GAL said was "as bad as it gets" – 2021vol2#7.
251 Circuit Court dismisses parents' appeals against District Court care orders for two teenage children until the age of 18 – 2024vol1#2.
252 Interim care order extended for teenage boy who was joyriding, interim care order also for sister – 2023vol1#12.
253 Supervision order with directions for child with special needs who had never attended school - 2022vol2#3.

The Circuit Court had also made an order under the Education (Welfare) Act 2000 that the child attend school. The orders required the boy to attend assessments and secure a school placement, but these orders were not complied with by the mother.

The court found that the Constitution imposed obligations on parents and gave rights to the child. The judge ruled that the threshold for the supervision order has been met.

At a hearing three months later, the District Court judge adjourned the review of the supervision order as little progress had been made. The mother had applied for a judicial review of the decision to grant the supervision order. The mother was not present in court but was legally represented by a barrister.

CASE E: This case involved the granting of full care orders for four young children from one family, all of whom had experienced significant adverse childhood events, following a number of days' hearing.[254] Evidence was heard from two social workers, a Garda and a clinical psychologist, who had assessed the children and gave lengthy verbal evidence.

The court heard the mother and children had been known to the CFA for some time. The mother had been in receipt of extensive supports from the agency and a safety plan for the children had been in place.

The safety plan had broken down on foot of a number of serious incidents, prompting Garda intervention, an emergency care order and the CFA making applications for full care orders for each of the four children.

The Court heard that the father had a number of convictions and the CFA were also concerned about the effect of the mother's subsequent boyfriend on her and the family as he had been convicted of manslaughter and sentenced to 12 years in jail. He also had a record for domestic violence. A social worker said that there had been a drastic and quick decline in the family's circumstances following the mother's involvement with him.

One of the incidents giving rise to concern was when the children's mother and two of the children had been in a car with a friend of the mother when the boyfriend chased after them and rammed the car. There was another quite serious domestic violence incident after that, during which he had been very violent and aggressive. He was arrested. Following his arrest there had been a number of serious attacks at the mother's home, including one in which her car had been firebombed and another when a man in a balaclava had come to the house and threatened her.

CASE F: This case concerned an application by the CFA to remove a child from his foster placement, it was heard in a provincial District Court over five days.[255] The teenage boy had been in the same foster home since infancy. However, the CFA considered there was a risk of physical or sexual abuse in the light of historic allegations against the foster parents' son, now an adult, that had not led to any action. The CFA had failed in the same application two years earlier. The foster carers, the GAL and the child's mother were legally represented and all opposed the application to move the child.

Both the GAL and the child's psychiatrist said that a move would have a very serious adverse impact on the boy, who was unlikely to find a stable alternative placement.

254 Care orders for four children who witnessed serious violence – 2023vol1#38.
255 Full care order granted for young boy who had moved placement following allegations against child of foster parents - 2022vol2#24.

The mother said she regarded the foster parents as a "second family" to her and if her son had to leave the placement, it would destroy him. He would probably try to run away and return to his foster family.

The judge refused the CFA's application and pointed out that the parties had been advised to seek mediation two years earlier and had failed to do so. He commented: "Both parties have become entrenched and A's welfare was lost in the process."

As noted by the judge, this lengthy dispute was caused by the failure of the CFA and the foster parents to abide by an earlier court direction.

CASE G: This case concerned an interim care order for an infant granted by Dublin District Court following a very protracted hearing, heard over several months and before different judges, centring on allegations of the sexual abuse and sexual grooming of older children in the family.[256] Evidence was given by three social workers, the baby's GAL and the mother.

The parents were from a non-EU country and were provided with interpreters. The mother had three older children, all girls, from an earlier relationship with an Irish national. She and the children had lived with her parents in Ireland, and during that time her father, the children's grandfather, had been convicted of the sexual abuse of the six-year-old friend of one of the grandchildren and placed in the sex offenders' register. A safety plan was put in place for the children, which included them never being alone with the grandfather. The safety plan was not adhered to, two of the girls were taken into care (the oldest was over 18) and when the baby was born the CFA sought the interim care order. The baby's father also had older children, who came from his home country to Ireland and were found alone in a playground. After a brief period with their father and the baby's mother, these children went to live with another family and the CFA was concerned about the father's ability to care for his baby.

The CFA solicitor outlined the history of non-engagement from the family with the CFA and the mother's failure to accept the basis for its concern. The parents had not provided a support network that could assist them in protecting the child.

The barrister for the mother said that the CFA's concerns were not sufficient to take a new-born infant into care. This should be a measure of last resort after all other avenues had been explored. Any non-engagement by the family was due to their fear and vulnerability. Their lack of a support network was linked to the reluctance of friends to engage with the CFA and Garda vetting due to their undocumented status.

When granting the interim care order, the court then heard the mother had been arrested and held overnight on two counts of ill treatment and two counts of neglect of her older children and was before another court that day in respect of those charges.

The evaluation of, and arguments about, the hearsay evidence from the older children contributed to the complexity of this case.

CASE H: This case involved a four-day hearing, in which a judge in the Dublin District Court transferred jurisdiction to a UK court of child care proceedings concerning a baby born in Ireland to British parents. The court found that the transfer was in the child's best interests given that the majority of the relevant history of social services' engagement with the family, along with institutional knowledge, was in the UK.

The judge provided a written judgment, in which he set out that he granted the application to transfer jurisdiction for the case in its entirety to the UK on the grounds that this was in the child's best interests

256 Interim care order made for baby of immigrant parents where older children alleged neglect, physical and sexual abuse – 2024vol1#6.

given that the majority of the relevant history of social services' engagement with the family resided in the UK along with institutional knowledge of the case. Therefore the court found that the UK social services were in a better position to make informed decisions with regard to the short, medium and long term care of the child in question.[257]

4.5.1 Conclusions

The first observation that emerges from these cases is that in relation to long and complex cases things have improved significantly since the report of 2018, which was based on cases going back to 2013.

In this sample of cases, there were no prolonged adjournments, none of the cases observed by the Child Law Project since 2021 took up to or over a year, and some were concluded over a number of consecutive days. Issues that arose in 2018, like inadequate cooperation between different state agencies, were not a cause of delays in these cases, though CAMHS came in for severe criticism from the court for its failure to assess a child with serious problems.

In all but one (case H) of the cases there had been extensive engagement between the family and the CFA prior to the making of the application. However, usually this engagement was difficult, and in three cases it was the failure of the parents to implement recommended changes that led to the application being made. In case D the mother failed to abide by court directions that she send her child to school, in case E the mother was managing to parent her children, with substantial CFA support, until she became involved with a violent criminal, and in case G the mother had failed to implement a safety plan regarding the threat posed to children by her father. A fourth case, F, was unusual, in that it involved a dispute between foster parents and the CFA, but here both parties had failed to follow a previous court direction that they engage in mediation to resolve the difficulties between them.

Four of the cases concerned children who, at this point, had special needs or serious behavioural and/or mental health issues. This was often accompanied by dysfunctional relationships between the parents.

In case A the parents were separated, the mother had mental health issues and sexual abuse allegations had been made against the father by two of his daughters. The boy had exhibited serious problems from the age of 10, going into care at 14. Many of the subsequent hearings were focused on finding a placement that met his significant needs. The question of reunification did not arise.

Similarly, case B involved parents with what was described as a "toxic" relationship, featuring domestic violence and physical health issues on the part of the mother. The girl in the case, described as the "scapegoat" for all the family's problems, had been self-harming from an early age and now had serious mental health issues. Reunification was not considered, and care orders were granted until the two children were 18.

In case C again the parents were separated, the mother was not engaged and the father, a non-national, had mental health issues. The child had serious, and life-threatening, behavioural issues, but being in care was not protecting him, as he frequently absconded. This caused further friction between the CFA and his father. Given his age and his behaviour, reunification was not under consideration.

In case E the children were now all diagnosed as suffering from developmental trauma, and requiring a safe and stable environment. Reunification was not part of the application.

257 Judge transfers jurisdiction to UK for child born in Ireland, whose parents came here to evade UK social services and potential adoption of the child – 2024vol1#37.

Two of the cases concerned infants, one where jurisdiction was transferred to the UK, and the other where the family's previous engagement with the CFA led to the interim care application. This was an interim care order, and the judge said reunification should be considered along with preparation of a care order application. However, in the meantime the mother was facing criminal charges relating to allegations made by her older children.

In case F involving foster parents, reunification did not arise. The child suffered from foetal alcohol syndrome, but was under the care of a psychiatrist and was doing well in school and in foster care. The mother already had a close and satisfactory relationship with the foster parents.

Given the nature of these cases, where in the majority the children had complex needs, there was expert evidence given of those needs. While allegations of child sexual abuse featured in three of the cases, it formed the basis for the application only in one. However, exposure to domestic violence or allegations of physical abuse featured in three.

Three of the cases saw extensive legal submissions, concerning the jurisdiction of the court where the family had come from the UK, the satisfaction of the threshold for the order sought and its proportionality, and the obligations of both parents and the State under the Constitution.

In each of the cases described above the District Court gave close and careful consideration to the issues raised, and brought the cases back for review in order to ensure that its directions were being met. However, it is worthy of consideration that cases which involve multiple witnesses and extensive legal submissions should be referred to the Family Circuit Court when it is established.

Chapter 5

CONCLUSIONS AND OBSERVATIONS FOR REFORM

Chapter 5: CONCLUSIONS AND OBSERVATIONS FOR REFORM

This final chapter provides an overview of the reports' findings. As well as highlighting flaws and failings in the child protection system, it spotlights key human rights vulnerabilities arising from the research findings. It then sets out observations for reform, grouped under three themes (i) national plan on alternative care, (ii) reform of the family justice system and (iii) reform of child care law. Finally, the chapter provides some concluding remarks reflecting on the findings from our research over the past three years.

5.1 OVERARCHING FINDINGS

This report illuminates significant challenges within Ireland's child care proceedings. Our analysis reveals a system under strain, struggling to meet the complex needs of vulnerable children and families.

Key issues include:

Placements:

The lack of suitable placements is having a domino effect that risks collapsing the care system.

The knock-on effects of a lack of appropriate placements include the continued use of unregulated placements and use of emergency placements for protracted periods, the detention of children in special care for longer than necessary while other children cannot gain the access they need to special care, and children experiencing multiple placement moves, often over a short period of time. This cycle of poor practice also has a knock-on effect of demoralising those working in child care and foster carers. There is also concern that the lack of available placements will lead to a delayed response to apply for a care order. Finally, these failings create a vulnerability that the State may breach the child's constitutional, European international human rights.

Services: A significant number of children in our reports present with complex needs including mental health, disability and addiction needs.

Our reports illustrate many instances where there has been a dismal response by the HSE to meeting the needs of children in care or at risk of entering care.

While we did see examples of the Joint Protocol between the HSE and the CFA being applied, in many other cases there was inadequate interagency cooperation, including very late planning for aftercare. There is also a lack of clarity on how best to keep children safe who are in care but at risk of exploitation and trafficking, and whether or not an unaccompanied minor is to be admitted to care. The shortage of social workers is having a negative impact on children in care including that some children in care do not have an allocated social worker.

In addition, our analysis showed that a significant proportion of parent suffer from a disability or mental health difficulty, while other are victims of domestic violence. There is insufficient support for such parents to parent their children and to navigate child care proceedings.

Judicial Proceedings: Our reports and survey findings describe problems in the functioning of the courts themselves: Lists are often too long and cases may not be able to be heard properly on the day they are listed and there are long wait times on hearing day.

The decentralised District Court system means practice can vary in different parts of the country, in some courts cases are still heard as part of mixed list, including private family law and even some criminal and civil matters.

There remains inadequate support for parents with disabilities or mental health issues to participate in child care proceedings and limited participation of children in proceedings. Finally, there continues to be delays in proceedings due to poor interagency cooperation.

5.2 HUMAN RIGHTS VULNERABILITIES

Based on findings from our research, the section below sets out key areas we have identified where action is needed to ensure Ireland is fully compliant with human rights law or where the State may be vulnerable to a challenge.

5.2.1 Right to Protection from Harm and Right to Alternative Care

A child has a right to protection from all forms of harm.[258] It is a violation of the child's right if State authorities knew, had reason to suspect or ought to have known that abuse was going on and failed to act to protect children from abuse.[259] A child deprived of his or her family environment has a right to alternative care and periodic review of their care placement.[260] Our research includes:

- Cases where a child was known to State authorities for a period of time and on admission to care the child's health had been significantly impacted evidenced by developmental delay and dental decay.
- Cases where a child was known to State authorities and concern existed that the child was being exploited or at risk of exploitation while living at home or when absent from their care placement.
- Cases where appropriate care orders have not been sought because of the lack of appropriate placements, including special care. A judgment on this matter has been handed down by the Supreme Court.[261]
- Cases where a placement in a 'secure' special care unit was not available for exceptionally vulnerable children and so the child remained in a community care placement.

258 CFREU Art 24(1); ECHR Art 3; RESC Arts 7(10); and CRC Arts 19 and 34-36.
259 *Z v UK* (2002) 34 EHRR 3 and *DP & JC v UK* (2003) 36 EHRR 14. Of relevance are Articles 40 and 42A of the Constitution.
260 CFREU Art 24(1); RESC Art 17(1)(c); CRC Arts 3(2), 20 and 25; CRPD Art 23(5); and Guidelines for the Alternative Care of Children, A/Res/64/142, 24 February 2010.
261 M McD v Child and Family Agency (2024) IESC 6.

- Cases where pre-school age children are placed in residential care due to a lack of foster care placements.
- Cases where a child is ready to transition out of special care but there is no appropriate onward placement so their detention continues.
- Cases where children have been placed in unregulated placements (Special Emergency Arrangements) some of whom were staffed by poorly qualified carers and with a lack of access to education. In some instances these have been described as positively harmful.
- A two-tier system exists whereby some unaccompanied minors are taken into care and others provided with homeless accommodation. The rationale for this differentiated approach is not set out in national law or policy.

5.2.2 Right to Respect for Family Life

All individuals, including parents and children, have a right to respect for family life.[261] This right comprises three components. First, the child has a right to know and be cared for by his or her parents.[262] Secondly, the child has a right not to be separated from his or her parents unless it is necessary for the child's best interests;[263] and no child shall be separated from parents on the basis of a disability of either the child or one or both of the parents.[264] Finally, the State must take steps to reunify a child with his or her parents, where appropriate.[265] Our research includes:

- *Separation on the basis of a parental disability:* As seen in Chapter 4.2, almost a third of parents of children who are the subject of child protection proceedings suffer from a disability, predominantly either mental ill-health or a cognitive disability. In many of these cases this is accompanied by other risks to children, notably parental addiction or domestic violence. A combination of these factors is likely to meet the threshold for taking a child into care as set down in the Child Care Act. However, the absence of systematic assessments of parents with a disability from the point of view of establishing what supports would be required to enable them to parent their child safely leaves the Irish State open to challenge on the grounds of discrimination against people with disabilities. It also violates the right of a child not to be separated from their parent purely on the basis of that parent's disability. It is regrettable that the High Court declined to give any guidance on this issue when presented with a Case Stated from the District Court, on the basis that the facts cited were not based on the welfare of the child.

- *Separation on the basis of a child's disability:* Cases where children are coming into care, not because of a failure on the part of their parents, but because the child is suffering from a disability or severe behavioural problems that have not been adequately addressed. In some of these the parents are no longer able to care for the child at home, in others the parents see a care admission as their best route to access services.

- *Reunification:* Cases where parents express their frustration that it is not clear what steps they need to undertake to secure reunification. There is no statutory or policy guidance on reunification. There is also no entitlement to a written decision from the District Court, nor to access alternative dispute resolution mechanisms.

5.2.3 Right to be Heard and Participate in Decision-Making

A child has a right to be heard in any judicial and administrative proceedings affecting him or her, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.[266] In addition, parents have a right to be involved in the decision-making process "seen as whole, to a degree sufficient to provide them with the requisite protection of their interests".[267]

262 CRC Art 7; RESC Art 16; CRC Art 18(2) and CRPD Art 23(2).
263 CRC Art 9(3) and CRPD Art 23(4).
264 CRPD Art 23(4).
265 See a further discussion see Maria Corbett, 'An Analysis of Child Care Proceedings Through the Lens of the Published District Court Judgments' (2017) 20(1) *Irish Journal of Family Law.*
266 CRC Art 12.
267 *Dolharme v Sweden* App no 67/04 (EctHR, 6 June 2010), [116].

- *Child's views:* While the Child Care (Amendment) Act 2022 strengthens the statutory basis for the views of the child to be heard and taken into account the relevant sections have yet to be commenced. In addition, there is no practice guidance on how the CFA can respect the views of the child who does not wish to have access with a parent.

- *Parental participation:* Only a minority of parents with disabilities have an advocate to assist them in navigating the child protection system, and in understanding and fully participatingin court proceedings.

5.3 OBSERVATIONS FOR REFORM

The findings of this report paint a picture of a child care system that, despite the dedication of many professionals working within it, is failing some of our most vulnerable children and families. The issues identified are systemic and require urgent, coordinated action across Government.

5.3.1 National Plan on Alternative Care

We welcome the establishment in 2024 by DCEDIY of an inter-agency committee on vulnerable children on an administrative basis to ensure cooperation on the provision of services. We support the proposal to widen its membership and place the group on a statutory footing, alongside a statutory duty to co-operate.

Short-term Roadmap: To inform the work of the DCEDIY's inter-agency committee, we believe consideration should be given to developing a short-term action plan to address the current crisis in accessing appropriate care placements, with a particular focus on residential care.

Longer-term Strategy: In addition, we believe consideration should be given to investing in the development of a national strategy on alternative care which would allow space to reflect beyond the immediate crisis and set out a vision for how the alternative care system will operate over the coming ten to twenty years. The strategy could explore creative community based initiatives to prevent care admissions; methods to attract and retain the next generation of foster carers and residential care staff. It could also explore the introduction of new placement options including high support units connected to therapeutic services and potentially operated in conjunction with the HSE; and a 'safe house' model of care for suspected victims of trafficking and exploitation which may involve remote placement locations and restricted access to phone and internet communications. The strategy could also examine how the status of a child as a child in care or at risk of entering care could be taken into account as an additional vulnerability in prioritising timely access to therapeutic, mental health and disability services.

These proposals acknowledge that while the CFA has operational responsibility for alternative care the needs of the child fall under the responsibilities of other departments in particular relating to mental health, disability, addiction, criminal justice, immigration and education.

Consideration should be given to establishing advisory fora to inform work in this area comprising representatives from civil society, academia, service providers and from care experienced children and young people.

5.3.2 Reform of the Family Justice System

The Department of Justice has commenced a programme of modernisation and reform of the family justice system, as set out in the *Family Justice Strategy 2022-2025*. The foundational element of this reform is the proposal to establish a specialist Family Court division at each court level, as set out in the Family Courts Bill 2022. Since our inception we have stressed the urgent need for Family Court

and warmly welcome the 2022 Bill. This legislation if enacted will address our finding that most child care is heard in a generalist court within mixed lists with judges who are not specialist in child care law. We call for the timely enactment and commencement of the Family Court Bill 2022, accompanied by the appointment of a sufficient number of judges to hear child care cases on dedicated child care days.

More specifically, we welcome section 42 of the Bill which will allow for the introduction of a common practice direction for all family courts. This will help address the lack of uniform practice. We also welcome section 37 which will permit the horizontal transfer of child care cases to another District Court outside the immediate area of residence of the family concerned; section 70 which will permit vertical transfer by empowering a District Court judge to decline jurisdiction in complex child care cases, and refer them to a higher court.

In addition, we would urge the programme of reform to explore the following three initiatives. First, child care proceedings are often delayed due to difficulty in securing the timely completion of child and parental assessments and expert reports. In some Australian states, a Children's Court Clinic has been established to streamline the provision of such services to the court. Consideration should be given to establishing 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.[268]

Secondly, parental addiction is the core reason for a significant proportion of children coming into and remaining in care. Many of these parents have the potential with support to overcome their addiction, to be able to parent safely and to be reunited with their children. Family Drug and Alcohol Courts operating in different jurisdictions have had a positive impact on the rate of family reunification and so reducing the numbers of children in care, and have been found to be a cost-effective intervention. Consideration should be given to introducing 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.[269]

Finally, at present applications for a care or supervision order, a special care order or wardship which concern the same child are heard by different judges in different courts. Consideration should be given to providing for the judicial continuity whereby cases could be transferred between the different jurisdiction of the Family Court so cases concerning the same child may be heard by the same judge.

5.3.3 Reform of Child Care Law

The Department of Children, Youth, Disability, Integration and Youth (DCEDIY) has committed to reform the Child Care Act. We welcome the enactment of the Child Care (Amendment) Act 2022 which gives statutory effect to key elements of Article 42A of the Constitution, which came into law in 2015. The provisions of the Act on the best interests of the child have been commenced, which is to be welcomed.

The provisions of the Act on hearing the views of the child are not yet commenced. We acknowledge that significant work has been undertaken by DCEDIY in relation to setting up a national guardian *ad litem* service to address an area which at present is unregulated. It is hoped that the new service can be operational early in 2025, allowing the remaining provisions of the 2022 Act to be commenced.

We were encouraged to see the publication of the Heads and General Scheme of the Child Care (Amendment) Bill 2023 which among other things proposes to address a number of difficulties identified by the Child Law Project over the past twelve years. In particular we welcome the proposed reform of interim care orders, the provision of additional safeguards on the use of voluntary care and enhanced powers afforded to the court. However, as noted in Chapter One, we have raised concern about some of the proposals and hope that these will not be included in the Bill once published.[270] In addition to the General

268 Maria Corbett and Carol Coulter, Child Care Proceedings: A Thematic Review of Irish and International Practice (2019).
269 *ibid.*
270 Child Law Project, Observations on the Heads and General Scheme of the Child Care (Amendment) Bill 2023 (11 May 2023).

Scheme, there are several additional areas which we believe would benefit from statutory guidance including the admission of hearsay evidence from children; the operation of child protection conferences and child-in-care reviews including a requirement that they be independently chaired; the introduction of child rights-based provisions on unaccompanied minors, children who are homeless and child victims of domestic homicide.

Finally, we believe consideration should be given to developing an inter-agency guide to child care proceedings, led by the CFA. The aims of the guide would be to promote a consistent approach to child care proceedings across the country by informing and guiding CFA staff. The guide would seek to support CFA staff to prepare and manage child care proceedings. It could include a description of the relevant law in plain English and be regularly updated to take account of evolving caselaw. Topics could include advice on giving instructions to their legal representatives, preparing social work reports and providing oral evidence in court.

5.4 CONCLUDING REMARKS

Our 2021 Analytical Report was entitled "Ripe for Reform" to emphasise our view that there was then a body of knowledge (ours and other academic work) that documented the weaknesses in the current system of child care proceedings and that the Government had made a number of positive proposals for reform. We acknowledge and warmly welcome the progress made over the past three years to reform the family justice system, to amend child care law and to commence providing supports to parents involved in child care proceedings.

Despite commendable progress in these areas, over the past three years we have also witnessed a crisis unfolding. We have observed an acute shortage of appropriate care placements; a dismal response by the HSE to meet the mental health and disability needs of children in care or at risk of entering care; and weak interagency cooperation. These problems are having a detrimental impact on a cohort of vulnerable children and it is these cases that now dominate much of the discussions in child care proceedings.

We have entitled this report "Falling through the Cracks" to draw attention to the gaps in State services for vulnerable children and their families. These gaps have been accentuated by a siloed approach to funding and the restricted mandate of State agencies. Our reports evidence that the system is currently ill-equipped to meet the needs of a child who presents with a child welfare or protection concern and has a disability, mental health or addiction need. When you add in engagement in criminal activity, risk of exploitation, immigration issues or the child approaching adulthood the cracks widen even further.

We have sought to highlight issues of concern in this report and to sound a warning bell on the need for immediate and urgent cross-government action to address the shortage of appropriate care placements and support services for children in care or at risk of entering care.

A significant challenge now exists for the Government to maintain its focus on modernising the family justice system and child care statute and in parallel to take immediate action on placements and services to ensure the State can vindicate the rights of children and to build trust in the care system.

Child Law Project

The Child Law Project (CCLRP CLG) examines and researches judicial child care proceedings. Established in 2012, the Project published its first volume of reports in Spring 2013. We currently attend and report on District Court child care and High Court special care hearings, relevant judicial reviews and wardship cases involving children and young adults who have previously been in care.

We provide information to the public on the operation of the child care system in the courts with the aim of promoting transparency and accountability. We operate under a Protocol to protect the anonymity of the children and families subject to proceedings.

We use information from the cases attended to identify emerging trends and conduct legal and policy analysis and research to identify possible reforms that would address the difficulties seen in our court reporting work.

To date, we have published 1,050 case reports from our attendance at child care proceedings. We have also published a number of analytical reports drawing on the information in these reports along with observations on proposed legislative reforms. Our publications are available at: **www.childlawproject.ie**.

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. This provision 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).

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