



Submission to the Joint Oireachtas Committee on Justice and Equality

February 20th 2019

Thank you for the invitation to speak to the Committee today on the reform of the Family Law System. RCNI recognises the expert and detailed consideration given to the issues of interest to this Committee in reports over the past 12 months from the Garda Inspectorate, the Child Care Law Reporting Project, HIQA and the Child Rapporteur. Rather than repeat them I will focus today on RCNI's particular area of expertise and specialist concern, sexual violence and in this context, the child victim of familial sexual violence; incest.

We have three priorities

1. the establishment of a specialist family court
2. Transparency and accountability of our child protection system including the family law system,
3. the development of a national strategy on child sexual violence.

Child sexual violence is a crime, not just a civil matter. However, in child sexual violence and incest, very often the criminal justice system fails and the protection of these children can become the subject of the family law courts, both publicly and privately.

Tusla receives approximately 3,000 referrals on child sexual violence per annum (the number of children concerned will be fewer). I'd invite you to consider what happens to these 3,000 reports.

International in-depth studies of disclosures, from whatever source, of sexual violence committed against children¹ allows us to say that we can expect some false allegations at a rate of approximately 2% – 8% with the lowest rate of false allegations being detected for the child who discloses themselves.

In accordance with the law and protocols all cases are notified to An Garda Síochána. Difficulties with these protocols are detailed in the specialist reports cited above and are part of the implementation plan arising in particular from the Garda Inspectorate report². I don't propose to dwell on those matters here.

According to the Garda Inspectorate, for these cases there is a 4% prosecution rate, with less than 2% resulting in a criminal conviction.

Less than 2%.

Therefore, our criminal justice failure rate in reported child sexual violence is between 90% and 96%.

For these children, risk needs to be managed and they need protection regardless of the absence of a criminal conviction. The protection of these children is one of the complex tasks we expect families and communities to undertake informally and which the legislature have mandated Tusla to undertake formally on all our behalf. In the course of this work,

¹ Garda Inspectorate Report Responding to Child Sexual Abuse in 2012: 'Thankfully, false complaints of child sexual abuse represent only a small proportion of all such complaints. A US study of 576 child sexual abuse investigations found that 6% of allegations made by parents and 2% of the allegations made by children could be classified as having been intentionally false.'

Most recent meta-analysis of the literature on false allegations on child sexual abuse, William O'Donohue, Caroline Cummings & Brendan Willis (2018) The Frequency of False Allegations of Child Sexual Abuse: A Critical Review, *Journal of Child Sexual Abuse*, 27:5, 459-475

Sources include an Australian study of 551 reports of child sexual abuse documented a 2.5% rate of false allegations. A Canadian study, which reviewed 798 child sexual abuse investigations, found that 6% of them were intentionally false. The highest rate of malicious and false reports – 8.5% – was reported in a study of 350 child sexual abuse investigations in the UK. The report cites this source: Trocme, N. and Bala, N., (2004) False Allegations of Abuse and Neglect when Parents Separate p.1336, <http://leadershipcouncil.org/docs/Trocme.pdf> (Accessed on 15 June, 2010). See also (Jones, D. P. H., and J. M. McGraw: Reliable and Fictitious Accounts of Sexual Abuse to Children. *Journal of Interpersonal Violence*, 2, 27-45, 1987; Oates, R. K., D.P. Jones, D. Denson, A. Sirotnak, N. Gary, and R.D. Krugman: Erroneous Concerns about Child Sexual Abuse. *Child Abuse & Neglect* 24:149-57, 2000; Everson, M.D., and B.W. Boat: False Allegations of Sexual Abuse by Children and Adolescents. *Journal of the American Academy of Child and Adolescent Psychiatry*, 28, 230-5, 1989.

² <http://www.gsinsp.ie/en/GSINSP/Responding%20to%20Child%20Sexual%20Abuse%20-%20A%20follow%20up%20review%20-%20Full%20Report.pdf/Files/Responding%20to%20Child%20Sexual%20Abuse%20-%20A%20follow%20up%20review%20-%20Full%20Report.pdf>

Tusla relies on the family law courts for some of its actions such as applications for care orders.

In addition, these cases arise in private family law because for many child victims, the family is not a safe place, it *is* the location of the harm.

The Inspectorate Report (December 2017) found that, in 44% of child sexual violence cases, the alleged perpetrator was a family member. When we look at different age cohorts within childhood which the RCNI did in our National Rape Crisis Statistics 2015, I can tell you that in 62% of all under 13s' cases of child sexual violence, they were reported as perpetrated by family members.

62% involved incest.

For many of these families, where a child discloses incest, some but not all, will result in the family breaking up. This can be expected to be a highly acrimonious situation which are likely to escalate into the private family courts³. This means that we can expect that a significant proportion of family separation and child custody cases going through our family courts, involve the rape and sexual abuse of children by family members in the absence of a parallel criminal conviction.

The Family Court Services process on average 11,600 cases involving guardianship, custody and access matters. Both the Child Care Law Reporting Project and the Legal Aid Board have tried to estimate how many of these involve child sexual violence. RCNI believe this figure should not be a matter of a guesstimate. It would be possible (if novel) for court services to gather and release statistics on how many private family law cases involve allegations of child sexual violence. **We would recommend that the Courts Services should gather and publish this information regularly as an imperative matter of justice and public interest.**

The fact is our family courts are handling highly criminal matters of the most sensitive and urgent child protection nature in unknown numbers, without criminal authority, without the appropriate tools and in the absence of appropriate specialisation.⁴ RCNI would advocate strongly for a special family law court which addresses these concerns.

Such a court was recommended in 1996 by the Law Reform Commission, and since then by the Child Rapporteur, the Child Care Law Reporting Project amongst others.⁵ It is long overdue.

³ **It is the RCNI position that mediation and Alternative Dispute Resolution is not appropriate or safe in cases involving child sexual abuse and domestic violence.**

⁴ Child Care Law Reporting Project March 2018

⁵ Law Reform Commission Family Courts Working Group (1996)
<https://www.lawreform.ie/fileupload/Reports/rFamilyCourts.htm>
Department of Justice and Equality

Transparency:

As noted by the Committee, the family courts are held *in camera*. This means that apart from the very welcome Child Care Law Reporting Project and the work of the Rapporteur there is little by way of gathering and collating of data to allow for accountability and reassurance.

A thorough review of how the *in camera* rule impacts transparency and accountability, should be considered.

In addition to the *in camera* rule, confidentiality and non-disclosure clauses imposed on parties in the family courts do sometimes occur – whereby the court rules, amongst other things, that a child’s disclosures of rape and sexual violence must not be reported to the state’s investigative authorities, An Garda Síochana, directly but must instead be mediated through appointed individuals or Tusla who will decide when a child’s voice can be heard by our mandated criminal justice investigative authorities.

There is no data or analysis generated by the courts services or Tusla to make publicly transparent how many children and their guardians are bound by civil court-ordered, non-disclosure clauses.

While we recognise the complexity of the cases we would recommend that achieving greater transparency on these matters, through Courts Services data, is a minimum for the discharge of oversight, when such grave matters are at issue.

A National Strategy

Lastly we would recommend the Committee add their voice to calling for an urgent child sexual violence national strategy that would ensure that the child victim of rape and most particularly of incest, does not continue to be at risk of falling through the cracks.

Until we increase our family courts and allied child protection structures transparency and accountability, children, and their voice remain disturbingly silent and indeed potentially systemically and institutionally, under the sanction of our civil courts, contained.

<https://merrionstreet.ie/en/News-Room/Speeches/address-by-the-minister-for-justice-equality-and-defence-alan-shatter-t-d-a-new-structure-for-family-courts-consultative-seminar-in-law-society-blackhall-place-saturday-6-july-2013.html>

Law Society of Ireland, Submission to the Department of Justice, Equality and Defence Family Law – The Future (2014)

<https://www.lawsociety.ie/globalassets/documents/committees/family/familylawsubmission2014.pdf>

Geoffrey Shannon, 11th Report of the Special Rapporteur on Child Protection

https://www.dcy.gov.ie/documents/child_welfare_protection/2018121811ReportSpecRappChildProtect.pdf

Child Care Law Reporting Project Final Report CCLRP-Full-final-report_FINAL2 (1).pdf

Ends

Appendix

Matters a special family court could address:

- standardised thresholds,
- the voice of the child,
- interagency input
- the criteria, accountability and availability of specialisation of the various actors and
- the support structures in place for what is a harrowing and wearying area of legal practice.

Recommended data that could and should be made public:

- How many cases in front of civil family law courts include allegations of child sexual violence and domestic violence, including coercive control?
- A set of data points around the communications and interactions between the criminal and civil authorities in regard to those cases,
- Data points tracking people's engagement in the system so that the multiplicity and length of these cases can be better understood,
- Data tracking how many children are bound by (directly, through their guardians or both) 'non-disclosure' or 'confidentiality' clauses on direction of the civil courts with regards potential future disclosures of criminal matters of sexual violence?