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Opening Statement

Joint Oireachtas Committee on Equality and Justice

13th March 2019
Dr Kenneth Burns, Senior Lecturer in Social Work, School of Applied Social Studies, University College Cork.

A chairde,

Thank you for the invitation to address the Committee today on the important topic of “Reform of the Family Law System”. I plan to focus on three issues:

a) the impact of the in camera rule on hearing from children and families.

b) the need for consistency between courts.

c) articulating a clear model for child care proceedings.

My knowledge of these issues is based on my role as Principal Investigator of two research studies at University College Cork examining child care proceedings in the District Court\(^1\) and voluntary care agreements\(^2\), as co-editor of a book examining child welfare removals in eight countries\(^3\), as an educator of social work students and as a former front-line practitioner and manager in child protection and welfare.

I endorse previous contributions to the committee by Dr Conor O’Mahony, School of Law and Dr Carol Coulter and Maria Corbett of the Child Care Law Reporting Project. I am intentionally not addressing themes which I feel are important as they were already addressed in earlier contributions.

**Updating the in camera rule: the voice of parents, children and young people**

Through our research, and discussions with experienced judges and legal practitioners, it has become clear that the in camera rule is poorly defined in Irish law, despite recent clarifying amendments in 2007\(^4\) and 2013\(^5\). The precise parameters of what is prohibited are not set out, and whether any particular conversation about a set of in camera proceedings would breach the rule largely comes down to the subjective opinion of individual judges. These amendments focus largely on permissions for attendance in, and the reporting of, these proceedings and do not appear to cover research with participants outside of the proceedings. In essence, any person who is involved in a in camera proceeding (whether in the field of child protection, private family law or elsewhere) risks being held in contempt of court every time that they discuss the proceedings with anyone other than their legal representative or the other parties to the proceedings. The law neither clearly allows nor prohibits interviews with children, young people and their parents. In the absence of clarity, researchers, children, young people and parents are at risk of being held in contempt.

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\(^4\) Child Care (Amendment) Act 2007, s. 3, as implemented by the Child Care Act 1991 (s. 29(7)) Regulations 2012 (SI 467/2012).

\(^5\) Courts and Civil Law (Miscellaneous Provisions) Act 2013, s. 8.
This is not just an issue of academic concern. We should be proud of recent developments in Irish legal, constitutional and practice reforms which have sought to promote the participation of children, young people and parents, to ascertain their views, and to facilitate greater involvement in decision-making. We now have a considerable amount of quality-Irish research on the operation of child care proceedings. However, the specific issue I have documented with the in camera rule has had a chilling effect on research, thereby silencing the voices of children, young people and parents who are most impacted by these proceedings. Further to observations previously made by Dr O’Mahony at this committee, this is further evidence that there is a significant implementation gap which is frustrating the realisation of the child’s right to be heard.

**Lack of consistency between courts**

A key finding in our Child Care Proceedings in the District Court study (2012-2018), feedback from front-line practitioners during children’s rights and child protection training in the EU-funded IDEA project and a dominant theme in our ongoing Voluntary Care in Ireland Study (2018-2020), is professional frustration and concern regarding a lack of consistency between courts and about how child care proceedings should be conducted. This lack of consistency and significant differences in court cultures and practices is problematic for a number of reasons. Firstly, all participants should expect a degree of predictability in court proceedings. Secondly, citizens participating in court proceedings involving state intervention in family life should not experience significantly different models of practice depending on their address. Thirdly, there is some concern that in courts where an adversarial approach is dominant, that a focus on the welfare of the child can be lost, that this model is not conducive to facilitating children’s participation, it can lead to significant delay in decision-making and significant extra court time for professionals. Clearly, this issue is inextricably linked to other reforms items such as: a lack of specialist family courts and judges, limited judicial and inter-disciplinary professional training, the absence of a judicial council, the need for investment to address judges’ high caseloads and suitable child- and family-friendly facilities.

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7 Five country training project co-funded by the European Union DG Justice and Consumers and University College Cork (Burns, O’Mahony and O’Callaghan): [https://ideachildrights.ucc.ie](https://ideachildrights.ucc.ie)


Articulating a clear model for child care proceedings

There is a pressing need for the Oireachtas, through the Child Care Act 1991 review process and through the establishment of specialist family courts, to articulate a clear vision of what the orientation of these proceedings ought to be. The revised Act should be detailed in describing the model to reduce implementation discretion and to promote consistency. Lessons from other jurisdictions11 illustrate that there is no ‘ideal’ model that can be adopted ready-made from the shelf. Indeed, will need to be exercised to try and avoid unintended consequences such as those discovered with time limits for child protection proceedings when introduced in England and Wales12. However, there is clear evidence in other countries of significant reforms of their court and court-like decision-making models for child welfare removals13. When comparing Ireland’s child care proceedings with the reforms in other countries, the Irish system appears dated and has changed little, despite wider changes to the child protection system, and legal and Constitutional developments. Difficult decisions will have to be made, significant investment is required, and change may be hard, but the research and practice-level evidence now available is clear that reform is required.

Whatever model is proposed, it should attend to these questions:

1. Is the new model child- and parent-friendly, maximising participation and amplifying the proceeding’s focus on the welfare of the child?
2. Are decision-makers sufficiently trained and resourced to make timely and evidence-informed decisions in the best interests of children?
3. What principles should underpin the revised model and what practical changes are required to implement them?
4. What type of implementation strategy is required to ensure that there are no significant deviations in the model across the country?

Reform discussion will need to examine: the inclusion of some decision-makers with specialist knowledge who are not judges, the merits of pre-proceeding processes, what would non-court like buildings and rooms look like?, time-limits on proceedings to ensure timely decisions, consistency in the implementation of thresholds for care orders, protocols for referrals to mediation or similar processes to address an impasse, articulating in detail the principles underpinning the model and codifying these in law, adopting child-friendly justice principles and practices14, exploring how the testing of evidence could be undertaken in lieu of adversarial cross-examination, consideration of a wide range of methods to facilitate direct and indirect participation of children, and the establishment of specialist family courts.

Based on our research, there is consensus that reform is required, but there is less consensus on what types of reforms should be implemented. An independent, focused consultation process with stakeholders from civil society groups, experts by experience, social work, law, professional associations, the courts service and relevant state agencies could go some way to informing decisions about these reforms. What is clear is that children and parents can’t wait another decade before meaningful reforms are decided upon and implemented.