DÁIL ÉIREANN

AN COMHCHOISTE UM DHLÍ AGUS CEART AGUS COMHIONANNAS

JOINT COMMITTEE ON JUSTICE AND EQUALITY

Dé Céadaoin, 20 Feabhra 2019

Wednesday, 20 February 2019

The Joint Committee met at 9.45 a.m.

MEMBERS PRESENT:

Deputy Jack Chambers,	Senator Frances Black.
Deputy Peter Fitzpatrick,	
Deputy Jim O'Callaghan,	
Deputy Mick Wallace,	

In attendance: Deputy Donnchadh Ó Laoghaire.

DEPUTY CAOIMHGHÍN Ó CAOLÁIN IN THE CHAIR.

Business of Joint Committee

Chairman: I remind members to switch off their mobile phones as they interfere with the recording equipment. Apologies have been received from Deputies Clare Daly and Brophy and from Senator Ó Donnghaile. I propose we go into private session to deal with housekeeping matters.

The joint committee went into private session at 9.48 a.m. and resumed in public session at 10.08 a.m.

Reform of the Family Law System: Discussion

Chairman: The purpose of the session is to begin a series of engagements on the reform of the family law system. We are joined by Dr. Conor O'Mahony, senior lecturer in constitutional law and child law at University College Cork; from the Children's Rights Alliance, Ms Saoirse Brady, legal and policy director, and Ms Julie Ahern, access to justice manager; from the Law Society of Ireland, Mr. Keith Walsh, chairman of the family and child law committee, and Ms Helen Coughlan, also a member of that committee; and from the Rape Crisis Network Ireland, Dr. Clíona Saidléar, executive director, and Ms Caroline Counihan BL, legal director. They are very welcome and I will shortly invite them to make their opening statements. I propose to invite them to contribute in the order in which I have introduced them.

By virtue of section 17(2)(*l*) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect of the evidence they are to give to the joint committee. If, however, they are directed by it to cease giving evidence on a particular matter and continue to so do, they are entitled thereafter only to qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and they are asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against any person, persons or entity by name or in such a way as to make him, her or it identifiable.

Members are reminded that under the salient rulings of the Chair, they should not comment on, criticise or make charges against a person outside the House or an official by name or in such a way as to make him or her identifiable.

I invite Dr. O'Mahony to make his opening statement.

Dr. Conor O'Mahony: I thank the committee for the invitation. My statement will focus on two of the issues which were suggested for discussion, namely, the obligation to ascertain the views of children and the structure of the court system. As I will explain, I consider these two issues closely connected. As a question of policy, the obligation to ascertain the views of children during family law proceedings has been settled. It is a matter of international human rights law to which Ireland has subscribed and a matter of Irish constitutional law. Article 42A of the Constitution requires that in family law cases the views of all children who are capable of forming views shall be ascertained and given due weight in accordance with the age and maturity of the child. That initial question has been settled. However, Article 42A is not self-executing; its implementation is dependent on legislation. Unfortunately, since Article 42A came into effect in 2015, the legislative response of the Oireachtas has been rather timid. Article 42A is mandatory. It requires that every child who is capable of forming views shall have his

or her views ascertained in family law proceedings. However, when we look at the family law legislation which implements it, we have an uneven and patchwork approach to the question of whether children get to participate in family law proceedings. Different rules are applicable in different family law cases and they often afford significant discretion to courts in deciding whether to ascertain the views of children. Essentially, whether a child is afforded the opportunity to be heard depends on what the case is about, where it is being heard, which judge is hearing it and who is paying the costs. That is a far cry from what the Constitution states should happen. In my written submission I itemise the form that this difficulty takes in various areas, including child protection cases, private family law cases, international child abduction cases and adoption cases. The issues revolve around the question of how much discretion courts have to decide whether they should hear from children, as well as the question of who pays the cost in appointing a guardian *ad litem* or expert to convey the views of the child.

It is clear that we need to engage in significant legislative reform across the wide spectrum of family law cases to ensure the legislative provisions match the constitutional obligation in Article 42A. While legislative reform is a necessary step, alone it is not sufficient. Another significant obstacle to effective child participation is the lack of child-friendliness in the courts. We have significant evidence, some of which I cite in my written submission, that the environment in the courts is not child friendly and acts as a significant barrier to child participation. Legislative reform on the mechanisms used to hear children is likely to encounter an implementation gap, unless we also address the structure of the courts. There have been multiple calls for the establishment of specialist family courts in Ireland for a long time now, dating back to a detailed Law Reform Commission report in 1996. The commission identified multiple problems related to inadequate physical facilities, the absence of specially trained judges, the inconsistency between courts in decision-making and excessive caseloads. The commission made a series of recommendations which, in their totality, moved in the direction of establishing specialist family courts. The recommendations have not been implemented and in the years since there have been multiple calls for their implementation, including by the Law Society of Ireland, the Government's special rapporteur on child protection, Dr. Geoffrey Shannon, Dr. Carol Coulter and the Child Care Law Reporting Project and the UCC child care proceedings research group, of which I was a member.

More broadly, the trend in Europe is towards specialisation in the area of family law among judges and courts. Separation is not so much the key; rather, specialisation is. Having a separate court does not work, unless there is also specialisation among judges and staff within that court. We have evidence from Australia which illustrates that if family courts are staffed by judges who are not specially trained in child and family law, their effectiveness is limited. Conversely, however, there does need to be separation in that the scope of what can be achieved within the general court system is somewhat limited. Judges who also deal with other kinds of case are not incentivised to significantly up-skill in the area of child and family law. In many jurisdictions child and family law has a history of being the poor relation when it comes to resource allocation in respect of court time, physical facilities and so on. Separation is also important in that respect. Some issues would need to be considered in achieving this outside major population centres. It is easier to do it in Dublin or Cork than in rural areas. There are models from other jurisdictions such as Queensland where a mix of regional centres has been established and there are travelling judges. There are references to it in my written submission.

The final point I wish to make is that the establishment of a specialist family court does not require a constitutional amendment, as has been suggested on various occasions. The designation of the District Court as the Children Court for dealing with juvenile justice matters under

the Children Act 2001, as well as other examples, make it clear that it is possible to do this by way of ordinary legislation which could specify the characteristics of a specialist court.

There is more detail on all of these points in my written submission. I will be very happy to take questions later.

Chairman: I thank Dr. O'Mahony and invite Mr. Walsh of the Law Society of Ireland to lead off.

Mr. Keith Walsh: I will lead off and our vice chairperson, Ms Helen Coughlan, will then come in with a couple of practical examples. The Law Society of Ireland welcomes the opportunity to add its voice to the calls for reform and to contribute positively towards it. Everybody is more or less agreed that the current family law system is broken and not working properly and that we need to reform it immediately. There seems to be a great degree of unanimity about having a specialist, not separate, cadre or division of the courts to deal with family law cases. The Law Society of Ireland set out what we believe should happen in our detailed 2014 paper and our submission today. None of this is news to anybody here or anyone involved in family law. All of the groups represented here have been calling for action for almost 20 years, since the Law Reform Commission published its report on the family law courts.

The first thing we want to raise is the issue arising from the problems with security on 20 December in the Dublin Circuit Family Law court. Somebody was able to compromise the security of a courtroom and there were issues arising. That highlighted the complete inadequacy of the Dublin Circuit Family Law Court. There is also a significant issue with the childcare courts in the old Bridewell, our Victorian criminal courts. Parents and children who are attending public law cases, where Tusla is bringing an application to have a child taken into care, have to go to a Victorian prison where the acoustics make it very difficult to hear and the environment and atmosphere are completely unsuitable for adults and, even more so, children, should they be present. The physical premises of the courts need to change, as does the structure of the courts. The Law Society of Ireland agrees that if the specialist court system proposed was taken up, it would not require a constitutional referendum to be held.

The other issue the Law Society of Ireland has is with the Children and Family Relationships Act 2015 which gave effect to the change to Article 42A of the Constitution. It was greatly welcomed by the Law Society of Ireland and is being implemented by our members in the District Court and the Circuit Court throughout the country. The difficulty is that no resources were allocated to give effect to hearing the voice of the child. We have Rolls Royce legislation with no resources attached to it. District Court judges are attempting to hear the voice of the child without the assistance of any expert and without any great funding from the Courts Service. A recent regulation, about which the Law Society of Ireland has a concern, fixes the cost of an expert report on hearing the voice and welfare of the child under section 32 of the 2015 Act at €250 or €300. That will mean that experts will not produce these reports. They typically involve at least four visits to the family and the parents to determined what will happen. As the person who produces a report will be cross-examined in court, there may also be attendance at court and, in addition, the expert will have to produce the report, into which at least 20 hours will have to go. People will not do that. The current system is that judges in the District Court may hear the voice of the child in person. The facilities for that are completely inadequate. The training is on a patchwork basis. It also means that the judges are taken from their normal work. From a resource point of view, therefore, it is not efficient at all.

The Law Society states that a specialist division of family law courts and judges would

greatly assist in dealing with family law cases more efficiently as it would be likely that the same judges would be available to deal with cases which appear regularly before the courts and a greater degree of consistency would be established. It has been noted elsewhere that judges should not be confined to this speciality but should be general judges who could be assigned to family law but would not necessarily spend all their judicial career in family law. However, they would have to be trained and spend sufficient time there as well.

More focus should be placed on settling cases earlier in the process. Obviously, an exception is domestic violence where cases may not able to be settled or may not be suitable for alternative dispute resolution, ADR. Active intervention in family law cases by judges, not by county registrars who are currently the court officials who deal with it or other officials, with an emphasis on resolution in ADR could result in significant savings of time resources for all concerned. ADR obviously happens before people get to court as well because of the new Mediation Act and the provisions in the Family Law (Divorce) Act.

The Legal Aid Board appears to be chronically underfunded. It is not economically possible for solicitors to make a living from the private practitioner scheme relating to the Legal Aid Board. That has led to a flight of solicitors from the District Court where it currently operates.

One of the questions we were asked was about a dedicated court system and whether it would remedy the issues. A dedicated family law court structure throughout the country would fix many of the problems at present, but only if it was properly resourced. The family law court system must be integrated with ADR and the Legal Aid Board would have to be involved, with the courthouses providing facilities not only for courts but also for ADR and the Legal Aid Board. Proper premises would have to be provided in the family law courts. If it was simply a case of creating a family law division within existing structures, a referendum would not be required. Equally, changes to the District Court and Circuit Court would require some consideration. We have proposed alternatives to this model but from a practical point of view and to move this forward, given the consensus regarding the specialist courts, we fully support the calls for a specialist court and would like to see that implemented sooner rather than later.

The issue of costs also arises and we have set out our views in that regard. The best way to deal with the issue of costs and whether cost orders could be used to punish bad behaviour is to encourage settlement at every opportunity, increase the case management and to have a cost order potentially as a punishment for those who insist on going ahead with their cases when a very fair offer has been made by the other side and they are unlikely to do better in court. However, where people persist in proceeding, which uses up valuable court time and increases costs on both sides, there should be some sanction available to the court. There is something called a Calderbank letter which effectively means that one sets out one's position in writing, and that can be used subsequently for an order for costs. That should be considered but it should be done on a case-by-case basis.

We again call for consistent judicial supervision of cases to ensure that alternative dispute resolution is considered before one goes to court and, when one goes to court, at the start of the court process and at every stage along the court process so it is dealt with by a judge and there is more active case management. We believe that would be a far more efficient use of resources and would also lead to cases being resolved much earlier for the parties in the majority of cases. Some cases are simply too acute to settle, but very active judicial case management would work.

Legal aid has not kept abreast of developments in the complexity of the law, the needs of

the clients or what is involved to defend and represent a client. The resourcing of legal aid is very important.

My final point on behalf of the Law Society relates to the rights of fathers. The Law Society family and child law committee is composed of people who do this work every day of the week and are in a variety of courts. We represent the solicitors who act for parents whose children may be taken into care, people who act for the health board and people who deal with divorce and separation every day in the District Court. We have a wide variety of people who are in the courts. We have seen that the current access model does not necessarily work, particularly for fathers and definitely not for children. We probably need to do some research on how access currently works in the court. The model of every second weekend with an overnight on a Wednesday is perhaps the standard default access for fathers in many cases. Where there are accommodation problems, particularly in Dublin, access is a genuine issue and real hardship is caused for children and families as a result.

In summary, there should be action on this. There has been plenty of discussion up to now, but a change is needed. The change can be introduced by legislation, but legislation alone is no good. There must be resources to back up whatever changes are made. Ms Coughlan will deal with some practical examples of the problems.

Ms Helen Coughlan: I will deal with the practical implications of the current delays in the system. I work as a family law solicitor in Kildare. If somebody comes to see me today seeking maintenance or access, I will submit an application to the court. It will be four months before that application will first come before the court. It goes before the court for mention only so unless it has been resolved it will then be put into a further list a further four months down the road. For the person who comes to see me today, it could conceivably be October before that matter is adjudicated in court. That is the situation in Kildare. There are similar delays elsewhere. According to the Courts Service, in Letterkenny one would be waiting 13 weeks, in Carlow it would be 12 weeks, six to eight weeks in Wexford and four weeks in Dundalk. Those figures are from 2017 and I have not seen more up-to-date figures.

That is the case if one has the resources to go to a private practitioner. If one is going to the Legal Aid Board, before one can get one's application off the ground one will face delays in even seeing a solicitor for the first consultation. For example, in Blanchardstown there is currently a 44-week delay before one will see a solicitor. If one is in Ennis, the delay is 21 weeks, it is eight weeks in Wexford and 17 weeks in Wicklow. That is before one even gets one's application into court. It is to see a solicitor initially to get advice.

There is a very serious issue in terms of access to justice. In practical terms those delays mean that parents may not be seeing their children and they might not be getting suitable financial resources for their children. Mr. Walsh mentioned childcare and the facilities in Chancery Street. Childcare cases are heard in Chancery Street at present. This was the old Bridewell. Hearings where the most vulnerable people are before the court, where their children will be taken into care by the State, are downstairs in what is equivalent to what the dungeons were. That is where the family law childcare cases are heard at present. We are not serving the most vulnerable in society with the facilities we have.

Chairman: I thank Mr. Walsh and Ms Coughlan. I changed the order in which I intended to introduce each of the speakers so I apologise to Ms Brady. I had indicated that I would stick to the listing in which I introduced the witnesses. I now invite Ms Brady and Ms Ahern to offer the contribution from the Children's Rights Alliance.

Ms Saoirse Brady: We thank the committee for the opportunity to attend this meeting. This is a very timely hearing to examine family law matters given the recent reforms that have taken place and the urgent need for further reform. We will probably echo much of what our other colleagues have already stated.

The Children's Rights Alliance unites over 100 members who work together to make Ireland one of the best places in the world in which to be a child. We change the lives of all children by ensuring that their rights are respected and protected in our laws, policies and services. We also provide legal information and advice to children, young people and their families through our newly established legal information line. We offer legal advice outreach clinics nationwide. That will inform some of what we have to say today.

Like Dr. O'Mahony, we will focus on two key aspects. These are the role of children in family law proceedings, particularly with regard to the voice of the child, and the need to reform the family law court structures to meet, in particular, the needs of children and young people. The family law courts have not been designed to meet the needs of children and families, who are often embroiled in difficult family law disputes. The physical environment does not provide them with the necessary space and privacy to deal with very sensitive private family matters. Judges are making decisions in courts about intimate family law issues in the same rooms in which they hear cases relating to, for example, driving offences. Despite the fact that most proceedings involving children are subject to the *in camera* rule, we have heard from lawyers about the lack of privacy in court settings. They are giving legal advice in stairwells and corridors and not in private consultation rooms, never mind child-friendly consultation rooms. Children who are present in the courts often witness disturbing, upsetting or even violent behaviour. That needs to be addressed.

Guidance is available on how we can adapt our structures to make them more child-friendly. The Council of Europe has issued child-friendly justice guidelines. These provide that states should ensure that any proceedings involving children are dealt with in "non-intimidating and child-sensitive settings". They call for interviewing and waiting rooms for children "in a child-friendly environment" be provided in court settings. They say that children should be familiarised with the court setting, the layout and the roles and identities of officials ahead of the actual proceedings so that they know what is going on and understand what is happening. They also advise that court sessions involving children should be adapted to the child's pace and attention span, with planned regular breaks and hearings that are limited in duration so that children can properly participate.

As a priority, we recommend the development of suitable accommodation for children and young people in the courts. A key aspect of this will be progressing Hammond Lane and the dedicated children and family courts that we have been promised for so long. All stakeholders should be consulted in developing and designing the new family courts, including legal professionals, families and those who work to support them. Most importantly, children and young people should also be consulted. This has happened previously in the context of the development of the children's court in Smithfield. Other experts should be brought in. For example, Barnardos was invited to help to design the child-friendly spaces in the Criminal Courts of Justice. We recommend that this be done in this instance as well.

As Dr. O'Mahony stated, most child and family law cases are heard by generalist judges in the general courts system. However, specialised family or children's court systems are commonplace across Europe and in other common-law jurisdictions where in which there are specially designed court facilities and the member of the judiciary and lawyers have specialised

training. We have also seen good examples elsewhere. In the UK, Mr. Justice Peter Jackson wrote a letter in accessible language to a 14-year-old in a custody case. It was so unique that it made news headlines. He also wrote a judgment in emojis to help very young children understand what was going to happen to them in a way they found accessible. We think we could look to some of these examples and try to adapt them here. In the context of any family law reform, we recommend specialised training for all professionals working in the family law courts. This should reflect child-friendly justice principles. We need to train judges, lawyers and everybody involved in family law proceedings in order that they will know how to communicate effectively with children and young people. I invite my colleague, Ms Ahern, to talk about the role of children in proceedings a bit further.

Ms Julie Ahern: In addressing the role of children in proceedings, I will focus on two key issues. First, I will talk about the voice of the child in family law proceedings and, second, I am comment on the provision of information to children and families.

The right the child to be heard is one of the fundamental values of the UN Convention on the Rights of the Child. The child-friendly justice guidelines Ms Brady mentioned also provide that judges should respect the views of children and their right to be heard in all matters affecting them. Importantly, they also recommend that children should be consulted about the manner in which they would like to be heard. It should not just be assumed that children should be heard in one particular manner. Rather, children should be asked how they would like to have their voices heard. The guidelines also provide that children should not be presumed to be unable to give their views based solely on their age. In fact, we should look at children's level of maturity and understanding. Everyone in the room will know two 12 year-olds who would be very different in their understanding of what is going on in life and in any particular situation. It is important that we look at the individual child and not make a blanket assumption of someone's capacity based on their age.

Dr. O'Mahony has very kindly outlined the legal position on hearing the voices of children. We want to highlight the Children and Family Relationships Act 2015. For the first time, this Act placed an obligation on judges to hear the views of children when determining the best interests of the child. It is very important to remember that the Act is not prescriptive about the way in which children's voices are to be heard. There are a variety of ways in which children's voices are currently heard and can be heard. This can include judges hearing them in chambers, hearing them in open court if appropriate, and if needs be bringing in an expert to help the court elicit children's views. We note that in his recent report as special rapporteur on child protection Professor Geoffrey Shannon recommended the development of guidelines on how judges can interact with children and young people in family law cases.

On our legal information line, I hear directly from children, young people and their families who feel their views are not being adequately heard in the family law system. I get calls from children and from mothers and fathers who feel the courts are not listening to what children have to say when they come into court. Similar to the Law Society of Ireland, the Children's Rights Alliance is very concerned about some of the provisions of the regulations on child's views experts. In particular, we are very concerned that the regulations place a burden on families to pay for the experts to hear the views of children. As this plays out, families who can afford to employ a child's views expert will have their voices heard. Children whose families cannot afford it will not. The right of the child will be dependent on their parents' ability to pay. We echo the view of the Law Society to the effect that the cap placed on the number of child's views experts is incredibly low. In very complex cases, no experts are willing to take on the

role. We are extremely concerned about this because children in the most vulnerable situations may not have their right to be heard vindicated.

The second point I wish to make relates to information provided to children and families. I hear every day from children and families that they do not understand the nature of the process in family law courts. They do not know what to expect or what is going on. They want information about their rights, how to go into the court and how to navigate the process. They want basic information to assist them in going into what is a really unfamiliar and scary environment, particularly for a child or a young person who has never walked into a courtroom before. The Council of Europe's guidelines on child-friendly justice have been very helpful in setting out what information should be provided to children. This should include information on their rights, the system and how it works, what their role will be and the available support mechanisms. The last point in particular is very important. If children, young people and families are supported, they will hopefully find the process a lot easier to navigate and much less traumatic.

Consideration could be given to providing information to children and families in a format that is child-friendly and adapted to the needs of the families and the age and maturity of the child. Consideration should also be given to employing digital technology and making the information widely accessible. While there is some very good information out there, I find that families and particularly children want to get information from someone they know and trust. Alternatively, they look online. A quick Google search for information about how the family law process works produces results that are very difficult to understand. As someone working in the area even I wonder what it is meant to mean. It is very important that it is very accessible and that people can find it in their own right. It must also be there for people who work with families to guide them through the process.

Another method of providing support is the employment of specialist child court liaison officers. This person would be an official who children and families could go to for information. He or she would be there to support them in the really difficult process of going through the family law courts. We recommend considering this as part of any proposed change to the family law system. We recommend in particular the prioritisation of information for children and young people.

Chairman: I thank Ms Ahern. I invite Dr. Saidléar to make an opening statement on behalf of Rape Crisis Network Ireland, RCNI. If Ms Counihan wishes to contribute at any point I will leave it to her.

Dr. Clíona Saidléar: I thank the committee for the information to speak on the reform of the family law system. RCNI recognises the expert and detailed consideration given to the issues of interest to this committee by our peers today and in the last 12 months. I refer in particular to the Garda Inspectorate report, the Child Care Law Reporting Project, the Health Information and Quality Authority, HIQA, and the special rapporteur on child protection. Rather than repeat them, I will focus on RCNI's particular area of expertise and specialist concern, sexual violence and in this context, the child victims of familial sexual violence and incest. We have three priorities, the first of which is the establishment of a specialist family court, as our peers have also advocated. Our second priority is transparency and accountability of our child protection system including the family law system, while the third is the development of a national strategy on child sexual violence.

Child sexual violence is a crime, not just a civil matter. However, in cases of child sexual violence and incest, the criminal justice system often 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 child sexual violence referrals per annum, although the number of children concerned will be fewer. I invite the committee to consider what happens to these 3,000 reports. International in-depth studies of disclosures, from whatever source, of sexual violence committed against children allow us to state that we can expect some false allegations at a rate of approximately 2% to 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 in the footnotes and are part of the implementation plan arising, in particular, from the Garda Inspectorate report but I do not 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 criminal convictions. Therefore, our criminal justice failure rate in reported and true 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 has mandated Tusla to undertake formally on all our behalf. In the course of this work, 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 and is the location of harm.

The inspectorate's report, published in December 2017, shows 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 statistics report of 2015, we see that in 62% of all cases of child sexual violence against children younger than 13, they were reported as perpetrated by family members. Where a child discloses incest, some but not all cases will result in the family breaking up. This can be expected to be a highly acrimonious situation which is likely to escalate into the private family courts. 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 service processes on average 11,600 cases involving guardianship, custody and access matters. The Child Care Law Reporting Project and the Legal Aid Board have tried to estimate how many of these involve child sexual violence. RCNI believes this figure should not be a matter of a guesstimate. It should be possible, if novel, for our court services to gather and release statistics on how many private family law cases involve allegations of child sexual violence. We recommend that the Courts Service gathers and publishes this information regularly as an imperative matter of justice and public interest. 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. RCNI advocates 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 and the Child Care Law Reporting Project among others. It is long overdue.

As noted by the committee, family court hearings 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 on 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, among other things, that a child's disclosures of rape and sexual violence must not be reported directly to the State's investigative authorities, An Garda Síochána, but must 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 Service data is a minimum for the discharge of oversight when such grave matters are at issue.

Finally, we recommend that this committee adds its voice to the call 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 and specialisation, children and their voice will remain disturbingly silent.

Chairman: I thank Dr. Saidléar and all of our guests for their contributions and for their written submissions, which are very helpful. Before I invite members to ask questions, I wish to point out that we have made this the substantive issue for address in the first session of this year's Dáil sittings. We have scheduled three hearings on the issue, of which this is the first. Having listened to the contributions of our guests, it is without question that our knowledge of and exposure to the issue that influenced our making this decision did not fully appreciate how absolutely awful the situation is currently. Our guests have underscored that very well indeed. The following members have indicated that they wish to speak: Deputies O'Callaghan and Wallace and Senator Black. Deputy O'Callaghan is first.

Deputy Jim O'Callaghan: I thank all of our guests for attending. I wish to make them aware of the process involved here. We are going to produce a report but, obviously, this is an area of some complexity, which is why we need outside expertise to assist us in preparing that report. There is a lot of agreement between the witnesses here on some fundamental areas. However, it is also worth pointing out that family law is legitimately regarded as different to the determination and resolution of other disputes. Other disputes which are before the courts can affect one part of a person's rights or life but family law disputes seem to involve orders being made by the courts which fundamentally affect the personal relationships that somebody has in their lives. It is of unique importance in terms of the consequences that a family law proceeding will have on people and on the family involved.

I will begin by asking a few questions about article 42A of the Constitution and its implementation through the Child and Family Relationships Act. Dr. O'Mahony stated that everyone agrees that we must try to ascertain the views of the child. Perhaps Mr. Walsh or Ms Coughlan, as practitioners can assist here, but in practical terms, has that increased the amount of work in a family law case because now one must ascertain the views of every child? How is it done, practically?

Mr. Keith Walsh: It really depends and it varies greatly from district to district. The structure of the District Court is that every county has its own district, so we have approximately 26 districts. Each District Court judge is not really answerable to the President of the District Court; he or she is completely a law unto himself or herself. A specialist court system would allow more of a whip in terms of that, to some degree, or certainly a degree of consistency. How the voice of the child is heard differs from case to case. In Dolphin House, there are three

judges presiding today who are dealing with access and custody issues. Depending on which judge, there might be three different views on how the voice of the child can be heard. One way that the voice of the child can be heard is through the evidence of the parents. Another way is an expert report and yet another way is the judge speaking to the child in chambers. The latter is the least used method, in my experience, because of the time involved and the lack of training. District Court judges are far more likely than Circuit Court judges to hear children in chambers. Circuit Court judges really do not get involved in that, whereas District Court judges would. The referendum and Article 42A is about hearing the voice of the child but the most important thing is that the welfare of the child is to be paramount in any proceedings involving custody, access or guardianship and also adoption matters. If there is a dispute about what is in the best interest of the child's welfare, and if the parents' evidence will be very different, one needs to bring in an expert. It is quite difficult to hear the voice of the child without an expert. In the District Court, what has happened is that there are many constitutional, legislative imperatives on the judge without any resources. The experts are simply not available to do the reports.

Deputy Jim O'Callaghan: In Mr. Walsh's practical experience, if there is a dispute involving a couple who have five children, for example, and the children are capable of having their views ascertained, how is that done? Is it done through affidavits signed by the children, or by giving oral evidence, or by expert reports?

Mr. Keith Walsh: It should be expert reports. If one wanted to get an expert report, as we stated in our submission, what happened prior to the 2015 Act was that one would go into court and probably be dealt with on the first date unless there was a for-mention-type situation. Currently, in a Dublin court, one would have to apply for the report on the first day, return another day to get the report and return yet another day to figure out how long the report will take and whether it can be agreed. Before one gets anywhere, therefore, one will have had four court dates and appeared on the list four times but one will not even have received a hearing date. At the hearing date, the expert will probably give evidence if there is a conflict, which there will have to be because if there are two parents, the expert will not necessarily solve the problem. We read the 2015 Act as providing that the voice of the child must be heard and that is generally done by providing an expert report.

Ms Helen Coughlan: In practical terms, it is a matter of resources. If a family can afford an expert report, they will get it. Such reports cost in the region of €3,000 or €4,000, in my experience. The latest legislation allows for €250 for the preparation of that report but I cannot see any expert doing it for €250. In practical terms, it depends on the judge of the day and whether he or she wants to hear the child. In general, if the judge has the facility to have an expert elicit the child's view, in my experience he or she will use it.

Deputy Jim O'Callaghan: There is no consistency across the board as to how the view of the child is ascertained.

Ms Helen Coughlan: No, none.

Deputy Jim O'Callaghan: Am I correct that the constitutional provision, which we all support, and the basis of its legislative enactment have made family law proceedings longer, more expensive and more complicated?

Chairman: Deputy O'Callaghan had initially directed his question to Dr. O'Mahony. Perhaps he could offer his response and take up on that point before the other witnesses continue.

Dr. Conor O'Mahony: On the question of experts, the 2015 Act and, in particular, private family law proceedings, there is a gap in the Act in the sense that, as outlined by the Children's Rights Alliance and the Law Society, costs must be paid by the parties themselves but cannot be, which means that an expert cannot be appointed. The Act is silent on how to ascertain the views of the child where there is no expert, which leaves open the possibility that the views of the child simply are not heard.

By contrast, there are better approaches to the issue. The Brussels IIa regulation on international child abduction cases, for example, requires the court to certify either that the child's views have been heard or the reasons that has not occurred, while the Child Care (Amendment) Bill 2018, which is working its way through the Oireachtas, contains a provision which states that if a guardian *ad litem* is not to be appointed, the court must state in open court why not and, more importantly, how the views of the child will be alternatively ascertained. That is missing, however, from the 2015 Act, which leaves open the possibility that it simply does not happen.

On the question of lengthening the proceedings and making them more expensive, that is inescapable but we have committed to it. We either follow through on the commitment or hold a referendum to repeal Article 42A and withdraw from the UN Convention on the Rights of the Child.

Deputy Jim O'Callaghan: The failure is that we have not resourced the system sufficiently to take on board our extra responsibilities as a result of a constitutional change. On the costs, sometimes there is an option in respect of litigation but in family law one does not really have an option.

Ms. Coughlan spoke about the delay that exists for people who simply cannot afford lawyers. How does she regard the quality of legal representation litigants receive when availing of legal aid? How do they cope with the delay in getting representation or legal advice? I presume that most people will find it difficult to pay for solicitors and barristers in family law proceedings. How do they cope with that and the delay in the Legal Aid Board appointing them a solicitor?

Ms Helen Coughlan: It must have a significant impact on a family. If a case concerns marital or relationship breakdown or if there are issues with seeing one's children or with getting financial support for one's children, the family will naturally be in crisis. Waiting three or six months to even see a solicitor through the Legal Aid Board must have a serious effect.

Deputy Jim O'Callaghan: What can be done to change that? Should the Legal Aid Board have greater resources?

Ms Helen Coughlan: The Legal Aid Board certainly needs to be better resourced and needs to have more solicitors in order that those delays in even seeing a solicitor for the first consultation are reduced. There was a private practitioner scheme for dealing with matters in the District Court in respect of custody access and maintenance. From our experience, however, due to the fee structure that was put in place, most private practitioners no longer do it because it is not cost effective for them. That feeds back into the delays with the solicitors employed by the Legal Aid Board to deal with cases

Deputy Jim O'Callaghan: Are State-funded mediators available to people in family law proceedings?

Mr. Keith Walsh: Yes, there is free mediation in the family mediation service. A pilot proj-

ect for mediators, which has been running in Dolphin House in Dublin for a couple of years, deals with some of the cases and is successful. The mediators are on the premises of Dolphin House and it seems to have worked. A similar project has been rolled out in Ennis, County Clare. Mediation and alternative dispute resolution are the kinds of features that everyone would like to have available in courthouses. The solicitors who work in the Legal Aid Board are utterly overworked due to the volume of cases and there is a constant pressure on them to service people. Perhaps outsourcing services or providing more resources would help but the waiting lists are unacceptably long.

Ms Julie Ahern: On the impact of delays on families and, in particular, children, I hear directly from children who are sitting at home and wondering what is going on. For example, they know that something has happened in the family and that they will have to go to court. They know that the parents are going to court on the Friday, which happens, and they think that the matter will be resolved but it is not. They do not know what is happening. Families are going through turmoil because of the delay. I have received calls from parents who have taken a day off work without realising they would have to return. They think that they are going to go in for one day and have the case heard and sorted to allow them to move on with their lives. The delay has an impact on families and, in particular, children and the relationships they have with their parents. Sometimes, children might not be able to see one parent during the period, or they might have limited contact, or there might be arguments about when the contact can be. The impact of delays on children, therefore, is particularly significant.

The overall issue is that the system was not created with families and children in mind. It is again a matter of hearing the views of children. While it is true that the 2015 Act is silent on how the views of children are heard, the system we have created has not made a provision that the court must be a child-friendly place with child-friendly proceedings in which children can have an active position and take part if they wish. I have heard from children who have been heard through an expert but who do not feel that their voices have been heard, and they themselves sometimes want to speak with the judge. While there is no consistency, the looseness exists for a reason because every child, family and situation is different. The system needs to catch up with that reality and become more friendly for families.

Ms Saoirse Brady: On the practical ways of standardising how the views of the child are heard, there is the guardian *ad litem* system, as noted by Dr. O'Mahony, and a national executive office will be set up in the Department of Children and Youth Affairs, which is a welcome development for public law proceedings. We also feel this could be a way to extend it to private law proceedings, and that over time that should be looked at as a potential way to ensure equality between children and family law proceedings and those who are going through childcare. Sometimes there is a mix of both. We certainly brought this to the Department of Justice and Equality and it is in talks with the Department of Children and Youth Affairs about how this could potentially be done. I know it is a longer-term objective but it is really practical. We should not create inequalities between different children, depending on the type of court proceedings they come across.

Dr. Clíona Saidléar: In practical terms, the impact would be dissipated. Many of these people end up relying on services in the community and welfare. We are not adding all that up. The domestic violence bodies and services are really looking at how homelessness and domestic violence are interlinked. Currently, with homelessness, we are not really talking about domestic violence; we separate and silo those. There is a fair amount of work to be done on how this has an impact on poverty and homelessness.

Deputy Jim O'Callaghan: With family law proceedings, any time anybody goes to court in a non-criminal context, I suppose the best solution is for the parties to sort it out themselves. Could we insert into our report a recommendation that would try to make parties in family law recognise they would be in a much better position if they could try to resolve disputes through mediation and get agreement on access to children that way? That is in preference to the cut and thrust of a court case, where generally there is a winner and a loser. Is there anything we could do to encourage that in our report?

Mr. Keith Walsh: Currently there are provisions in the Mediation Act 2017 that have greatly strengthened the obligations on solicitors when the client comes in to the door on the first day. A solicitor must now swear a statutory declaration that mediation has been discussed. That has been far more effective than the old system of certificates. That is in place. If matters can be resolved outside the courts, that is the best way and it is certainly in the family law guidance that we give to solicitors. When it gets to court, we need the active case management intervention of a judge immediately. Currently, one goes to the county registrar for case progression within the system but while the county registrar does not have the same "teeth" as a judge, people really only see a judge at the end of a case. What we are considering now is perhaps introducing the judge at the beginning to say that although parties are in court, they can still consider all this alternative dispute resolution, with the judge leading an examination of how far the case would need to go. The judge would do two things. Currently, the county registrar does case progression or management but we could certainly look at having a judge look at case management and stating that although such action could be taken, parties might consider alternative courses of action. That probably would not be the judge who ultimately would hear the case but if a judge could be put into the process quickly, it might help to resolve cases that currently take a lot longer and which could be done much more quickly. The process could be front-loaded. This involves a commitment of resources from the Judiciary and from the practitioners and parties involved.

Ms Caroline Counihan: I completely agree with Mr. Walsh that, as a general rule, front-loading is the way to go with early and active case management. I have been an advocate of that for years on the criminal side whether children or family matters are involved or not. The principle of mediation and alternative dispute resolution has certain limitations and one should be wary of advocating it or using it in any situation where there is an indication of sexual or domestic violence or an abusive situation of some kind or another. There is much potential for the abusive party to manipulate the process completely to the detriment of the other people or family members involved. My fear is there is a risk, if it is not done properly, that in the early stages a party who had witnessed sexual or domestic violence in a domestic setting would feel he or she had no choice, would be constrained or would feel that it would be very hard to avoid mediation, although everything else would scream against such a process with good cause.

Deputy Jim O'Callaghan: I agree entirely. In fairness, the Mediation Act expressly excludes-----

Ms Caroline Counihan: Domestic Violence Act applications.

Deputy Jim O'Callaghan: Yes.

The witnesses mentioned with respect to transparency how there could be non-disclosure agreements. Is it the case that in family law proceedings, if it was disclosed on affidavit or in evidence that there was sexual abuse or an allegation of sexual abuse against a child, it is possible this could be subject to some form of a non-disclosure agreement whereby it might not go

to the authorities?

Dr. Clíona Saidléar: This is part of the data we are seeking. When we speak about transparency, we would like much more data as we do not have anything but anecdotes on this because of the nature of family law and how it is conducted. We have anecdotes that raise the question of how many such cases there are. This begins to intersect with Tusla, the Child and Family Agency. We must examine how Tusla engages on the question. As I have said, if there is a 96% failure rate for child sexual abuse that is disclosed and is probably true, if some of the cases end up in family courts, how are they being handled? Tusla has a system of categorising the 3,000 referrals in terms of risk management as "founded" and "unfounded". It does not disclose and there is no public data on what percentage of these cases it deems to be founded and unfounded. Therefore, what it sends to family courts, how it behaves with respect to the courts and the information it gives would depend on how the cases are categorised as either founded or unfounded. Tusla's policy around how it treats an unfounded case varies. There is not a standard way of handling the risk assessment and such cases naturally would always need to be individualised. There would need to be an individual response to such cases.

On the question of whether we can end up with a situation where there is child sexual abuse in a private family case, we would say "yes" for all the reasons we have mapped out here. What is critical for us to know is whether we can begin to log this, put a number on it or count it. We think there is much that is hidden. As Ms Counihan said with respect to alternative dispute resolution, we do not know how many such processes involve people in cases of coercive control and domestic violence who make a calculation that it is easier to compromise. We do not know to what extent the cases that are long and protracted, where people will not agree, are because there is domestic and sexual violence. We are not counting these allegations that are parts of these cases. That is not to say they are true but that they are part of the case.

Deputy Mick Wallace: I thank the witnesses for the contributions but I think I am more confused now than I was at the start. I am sure after listening to the witnesses and the other groups coming in, we will have much food for thought. It looks like it will be very difficult to make things as good as we would like them to be. The witnesses seem to agree that resources will be a big challenge and it will cost much money to make this fit for purpose. We are up against the wall then of whether those resources will come on stream.

The witnesses have indicated no additional resources have been allocated to pay for the required experts to complete the voice of the child report. The Law Society has called for cases to be resolved earlier in the process, with a focus on alternative dispute resolution. Ms Counihan raised concerns about the use of such processes in cases regarding child sexual violence and domestic violence. How does the Law Society feel about the use of alternative dispute resolution in these complex cases?

Mr. Keith Walsh: We certainly fully agree with the Rape Crisis Network's argument that it should not be used where there is domestic violence or allegations of sexual violence. An alternative dispute resolution, ADR, mechanism is suitable for use in some areas, but we agree that it is totally unsuitable in this area. We have a policy against it. It may be worth dividing up family law into two or three areas. The Circuit Court deals primarily with legal separation and divorce cases, while the District Court deals with public law cases, namely, childcare, taking children into care, as well as access, custody and guardianship cases which are primarily non-marital. There is already a division within the court system in that the Circuit Court deals with people who are married and all of their problems as a bundle in divorce or judicial separation proceedings, while the District Court deals with people who are unmarried in the context

of guardianship and, separately, maintenance cases and, separately again, custody issues. There are also public law childcare cases which involve taking children into care. There are a variety of others, but they are the headline areas. If there are no allegations of sexual violence or other such issues, an ADR mechanism could be trialled in divorce and judicial separation proceedings. The primary issues in judicial separation and divorce cases are money and children. This can be done, either before going to court or afterwards but ideally as soon as possible.

As I said, the District Court deals with custody and guardianship cases. Again, an ADR mechanism would be suitable for use in the majority of these cases and should be tried. We might not solve everything via an ADR mechanism, but we might have a number of issues netted or resolved. An ADR mechanism would not necessarily be suitable for use in public law cases because the decisions are binary. In other words, either the child will be taken into care or he or she will not. There may be a voluntary element. An ADR mechanism works on a case by case basis. Generally, where possible, it reduces the resources required by the courts system, but it does require the provision of alternative resources. It would not be possible to operate it without an additional judge or two, but if it was resourced properly in the longer term, it will definitely pay dividends. Most importantly, it would reduce the legal costs involved for the parties and speed up the timeframe required to resolve all of the issues involved.

Deputy Mick Wallace: Despite the existence of Article 42A, the voice of the child is still not being heard. Deputy O'Callaghan has made the point that it will be very difficult to bring it about. It is a huge challenge. Under the 2015 Act, the appointment of a child's view expert is entirely at the discretion of the court. There is no guidance in the Act on what should happen in cases in which the court decides not to appoint an expert, be it for financial reasons or in the case in which the child is deemed to be able to speak for himself or herself. Given that the courts can be an intimidating place for children and that many judges and lawyers are not trained or equipped to speak to children in that setting, should the appointment of an expert be the default position in law rather than discretionary?

Chairman: To whom is the Deputy's question directed?

Deputy Mick Wallace: It is directed to all of the delegates who are all well versed in the law.

Chairman: I invite Dr. O'Mahony to respond.

Dr. Conor O'Mahony: I am not sure I would go so far as to say it should be the default position on the basis of the point made by Ms Ahern that every child is different. Ideally, there should be a menu of options. If one is dealing with a 16 year old, he or she may very well be able to speak for himself or herself and it may be a better vindication of that child's rights to have him or her participate directly, rather than doing so through the medium of an expert. If one is dealing with much younger children, the communication barrier is more significant. My personal view is that it is more important to have a flexible menu of options than to have a default position into which every child is shoehorned. As I mentioned, because the 2015 Act speaks about the expert but not about the other options, it raises the question as to what those options are and how would they work in cases in which experts are not appointed. We know that there will be cases in which experts will not be appointed.

Chairman: I thank Dr. O'Mahony. Would Dr. Saidléar like to comment?

Dr. Clíona Saidléar: We have mentioned the expert a number of times. We need to look

at the criteria for appointing an expert, including the area of specialisation, where the person would fit in terms of accountability, the professional body and the qualifications he or she would have to have. We need to look at all of those issues, as well as how they would be resourced. For our part, we would be looking at a specialisation that would be able to recognise, for example, coercive control and grooming.

Deputy Mick Wallace: The Guardianship of Infants Act 1964 sets the maximum fee for a child's view report at €325. Mr. Walsh has made the point that in a lot of cases this amount would not cover the cost of a report, but for many families, it is too high. Am I correct that the delegates are recommending that the State put in place a mechanism to foot the bill? If so, how would it be managed and how would costs be controlled?

Ms Saoirse Brady: We think the State should foot the bill because it would circumvent parents having to decide whether to employ a child abuse expert. Some will not be able to afford it. We recommend a scheme akin to the legal aid scheme. A scheme was piloted, but the fees for child abuse experts were set very low. The regulations published in December came into force on 1 January. They were a long time in the making, given that the Act was passed in 2015. We did make submissions on the issue of fees, as did the national advisory council on children and young people. We engaged with Barnardos which operates the guardian *ad litem* scheme on how many hours it would take it to carry out this work. It told us that it would take about 30 hours because the person would have to establish a relationship of trust with the child and ensure he or she was not being coached by one or both parents. There is a responsibility on the State to provide resources to do this work. It is provided for in legislation and to enforce it, we need to ensure the regulations are fit for purpose.

On the issue of who can be appointed as an expert, the regulations set our four professions, one of which is a psychologist who comes under CORU, the body for health and social professionals. One of the issues arising is, if one has a complaint, to whom can one make it. That is not clear from the regulations. Some of our members have asked for the regulations on the professionals who can be appointed as a child abuse expert to be fleshed out further, lest we lose some really valuable expertise. Ultimately, the fees are far too low. That will not help to solve the problem and we need to find a way forward. The national executive office in the Department of Children and Youth Affairs, when established and up and running, could look at how this issue could be addressed.

Chairman: I thank Ms Brady. I invite Deputy Wallace to continue.

Deputy Mick Wallace: On the inappropriateness of the setting in dealing with criminal issues, the delegates mentioned that the existing buildings were not suitable. Are there spaces within existing court buildings that could be refurbished and made good? Do we need new buildings or should we consider using different settings? For example, could a school building be modified and used part time for this purpose? There is a huge cost involved in the provision of new buildings. I presume we would be talking about one per county, as in the case of the other courts.

On Ms Brady's response to my question about the State footing the bill, as a matter of interest, do any of the groups engage with the Department of Justice and Equality on the need for modification and better resourcing of the legal aid system? We can have all of the legislation we like, if we do not resource and enforce it, we might as well not have introduced it. Do the delegates explain to them that it is not fit for purpose and ask what they are going to do about it?

Mr. Keith Walsh: I think all of the groups represented here sit down regularly with the Department of Justice and Equality and the Courts Service to set out all of the issues we have ventilated. We also have a users group with the Legal Aid Board because the Law Society of Ireland wants to support the solicitors with the Legal Aid Board who are overworked and underfunded. We get both sides.

In respect of premises, there is a vacant lot on Church Street, beside the corner of the Four Courts, which approximately four or five years ago was earmarked for the new system of family justice. It was apparently given the green light, but the project is now stalled somewhere between the Department of Public Expenditure and Reform and the Department of Justice and Equality. The Law Society of Ireland and I am sure the other groups represented here have been in constant touch with the Department about moving the project on. If it was enacted in Dublin, it would be the flagship for the integrated system of specialist family justice, with the mediation services of the Legal Aid Board and alternative dispute resolution, ADR, service providers. It would house the Children Court which is where criminal issues involving children go, public law cases, private law cases, the Circuit Court and the High Court. It would be the ideal way to deal with it. We went very far into the detail of its format and lay-out. We say the specialist division of the family court cannot wait and that we must make the best of what we have in the Courts Service. We will have to identify the regional centres and see whether this can be rolled out. We are talking to the Courts Service about this, but we really cannot wait for the buildings to be built. We have to do the best with what we have got. Family law has always been the poor sister or relation in the allocation of resources, but we need to see this specialist court being set up as soon as it can be. It may be that it has to move a little ahead of the premises, but if we are to wait for the buildings to be built, we will never have a specialist division of the family court. We will have to do our best with what we have and perhaps think creatively with the Office of Public Works, the Courts Service and the Department of Justice and Equality and say that while they may not have the facilities required, we want to press ahead with this project. Unfortunately, it will never be fully resourced. The best may be the enemy of the good in that regard.

Ms Saoirse Brady: I agree with everything Mr. Walsh said about progressing the Hammond Lane project.

Deputy Wallace asked about alternative spaces for children and families to conduct some family law cases. There was a great project for child contact centres in operation a couple of years ago which was run by Barnardos and One Family, both of which are members of the Children's Rights Alliance. The issue of access for families and children has been brought up. The centres were operated very effectively in providing a neutral space for children to meet the other parent. Families found them really useful, but the funding for them was cut. They ran for several years and funding was not reallocated. We have been talking to some of our members which provide domestic violence services and they all advocate that we look again at that system. It was cost effective, provided child-friendly spaces for children to access their other parent, particularly, as Mr. Walsh pointed out, single fathers who had particular problems in finding adequate accommodation, given the housing crisis. They need that space to meet their children and access visits.

Dr. Conor O'Mahony: I think the necessity for new buildings varies from place to place. Some court buildings throughout the country are in fairly good shape and with some slight modifications, they could accommodate this service, but there are many that would not. Certainly at District Court level, there are many very small Victorian style District Court buildings which are utterly unsuitable. Reference has been made to the courthouse on Chancery Street in

Dublin which is almost the last place where child protection cases should be heard. It has razor wire on the top of the walls and bars on the windows of the consultation rooms and so on. We could absolutely use other buildings. In some ways, for this type of case, the less it looks like a traditional courthouse the better. It would not be necessary to build shiny specialised court buildings in every town in Ireland. There is a lot that could be done in using creatively other accommodation and then regional centres in having dedicated buildings.

Ms Caroline Counihan: I endorse what all of the other speakers have said about buildings and facilities. I agree completely with the idea of having a menu of options. What will make it easier for an individual child to participate in the process? We should start with the children and the menu of what in the criminal courts would be called special measures and perhaps, in the wider context, criminal proceedings protective measures. That leads me to the need for specialised training, the range of approaches which might be suitable in the case of an individual child and for everybody else, including Courts Service staff, judges and lawyers who appear regularly in the system. Everybody has to have a basic understanding and accept that each individual child needs an individual approach. From there spring ideas and imaginative solutions to the problem of the fabric not being adequate. We could easily become creative and improvise for a period, while waiting for the beautiful new courtroom to be built in an area, just by considering what was essential. It is essential that the place be friendly, safe and not intimidating; that the child have an opportunity to ask questions beforehand about the procedure; that the process in court be child friendly; that there be no bullying of the witness; and that there be no repetitive questions in convoluted legal language and so forth. That is where we need to start.

Deputy Mick Wallace: I think Dr. Saidléar has said many cases of child sexual violence end up being dealt with in family law settings, rather than the criminal justice system. We know that conviction rates are incredibly low in cases of child sexual violence. I think I read that they are at a figure of 4%. As well as the low rates, the courts are not gathering statistics for child sexual or domestic violence cases in the civil family law court. How will Dr. Saidléar go about data collection and publication? Has Rape Crisis Network Ireland thought it out?

Dr. Clíona Saidléar: The prosecution rate found by the Garda Inspectorate was 4%, with a conviction rate of 2%. That leaves everything else and accepting that some of them will simply not be true at a figure of between 2% and 8%. Not every one of those cases will end up in the family law system, but many of them will in some way, shape or form. As Mr. Walsh said, the family law system is broken. Sexual violence cases disappear into a broken system in which we lose sight of them. That is why it is critical that we figure out how to count them to keep track of them. That is a matter for the Courts Service. We are asking the servants of the courts to log cases going through them and to say, for example, if there is an allegation of sexual violence in a case, they make no judgment on whether it is true but simply that it is present. We would then have an indication of the percentage of child sexual violence allegations present in the family law court, in public and private cases. In public cases it will be straightforward; the blind spot is in private cases. In a footnote to our submission we mention that some of these cases are interminable, something with which the practitioners will be familiar. In the area of the criminal law there are cases that are *sub judice*, but there are others that are finished and we can talk about them. When we venture into this space these cases seem interminable but the system does not track them as one case, so they pop up again and again. The system does not know how long the same people remain in the system coming back over and over again. Consequently, we could really fix that part as well in order that the system understands just how long and interminable some of these cases are because one continues to be brought back in, if one likes. That is especially likely where there are situations of coercive control and domestic

violence where the courts are essentially being used in that way. This type of visibility where the Courts Service can begin to track these data would give us a handle on it and allow us to begin to have a conversation whereby we ask how we manage it in terms of the case management and the practices and specialisations we need.

Deputy Mick Wallace: I have two final questions.

Chairman: Could Deputy Wallace ask the two of them together please?

Deputy Mick Wallace: Yes, I will. Dr. O'Mahony said that we do not need a constitutional amendment for the establishment of a specialised family court. What legislative changes does he envisage as being necessary? The Law Society recommends establishing it within the Circuit Court system, whereas he suggests that family law divisions should be set up within the District, Circuit and High Courts. In terms of practicality and costs, which does he think is the most realistic option?

Some fathers feel they do not get a fair deal. I went through the system myself. How does one address that? Is a re-education process required for judges?

Chairman: I will start with Dr. O'Mahony and then someone from the Law Society can respond. I will open the floor up to all hands afterwards.

Dr. Conor O'Mahony: There are various approaches one could take and I will suggest what is probably the cleanest and quickest way to deal with the situation. At present different aspects of family law are allocated to different courts. Mr. Walsh alluded to that earlier. Some decisions are made in the District Court, some in the Circuit Court and some in the High Court. What could very easily be done is what happens in other areas, for example, in the Children's Court for criminal matters involving children. For those family cases one would designate the courts when they are hearing those issues as the family District Court, the family Circuit Court or the family High Court. The legislation would then set out what are the characteristics of the family District Court to differentiate it from the regular District Court, be that procedural, in terms of facilities or specialist training for judges or other staff members. In that way, one would slot it into what we already have but one would then separate it out in terms of that level of specialisation around the staffing and facilities that make it a specialist court.

Ms Helen Coughlan: As for the issue of fathers, very little research has been done on how fathers are treated in the family law system. We would call for proper research to be done to ascertain the exact position. Anecdotally, it seems to be that the perception is that fathers do not get a fair crack of the whip. We need more research and data to see how they are treated. Following on from that, it comes back to what we are also advocating, namely, that there is a need for specialist judges and for judges to be trained. Society has changed. The role a father would have had 20 or 30 years ago could be very different to the role a father has now. We do not know whether that is being reflected in court orders in respect of maintenance and especially access so we need some research on it.

Dr. Clíona Saidléar: I wish to back up a lot of what Ms Coughlan has just said. What this comes down to is data because right now we do not know what the situation is. We have other pieces of data, for example, on the distribution of care in the raising of children. As 70% of the time it is mothers who are doing the caring, the question is how that impacts when one goes to court. We have income inequality between women and men as well, which also plays a part. Until we have data on what is happening in the courts, we cannot even have the conversation.

This is another area where the Courts Service could begin to illuminate matters for us so that we could have a conversation based on evidence.

Deputy Mick Wallace: I thank the witnesses.

Senator Frances Black: I thank the witnesses for coming in today and for the great work they are all doing. My head is spinning a little, given what has been said. The presentations indicate the situation is a minefield. If in Ireland we cannot make our vulnerable children a number one priority, then I do not know what kind of country we are. There is no doubt it should be a number one priority. The image of the Bridewell and children going into that family law scenario is so traumatic. I cannot imagine what it must be like for the children.

There are a couple of areas I want to touch on, which Deputy O'Callaghan touched on a little in terms of prevention and how the witnesses see that. I will give an example to explain what I mean by that. I work in family therapy, specifically in the area of addiction. I wish to refer to addiction a little bit because I am sure it plays a significant role across the board in family law and court cases. A family I might work with could involve one parent in addiction and the other parent being so preoccupied, stressed, worried and anxious because of the chaos it brings into the home that the children can often be left neglected, as the parent who is not in addiction cannot function. As a result, the older child can be taking care of the younger children and they are looking after themselves. All of the chaos is going on and then there is a court case. I advocate that there should be some way of preventing all of that through the provision of resources for addiction services or by having the services working together. For example, Tusla could work with the addiction services to see if there was some way of preventing people from getting to the last stage of a court case to avoid children being obliged to go through all of that. What is the view of the witnesses in that regard?

Dr. Conor O'Mahony: As a general matter, Tusla as an organisation is under-resourced. Senator Black focused specifically on addiction in her comments. There is a very distinct link between addiction and the child protection issues that come to the attention of Tusla. Tusla's social workers are so overburdened in trying to address the critical cases that this keeps them from doing the kind of work on early intervention that they might like to do and that might catch things further upstream and prevent them becoming more acute, as Senator Black suggests. As a general matter, when we talk about child protection, if we want early intervention to work then we need to resource Tusla to be able to do that.

Ms Saoirse Brady: Prevention and early intervention are important. To follow on from Dr. O'Mahony's point, the area-based childhood programmes have now been taken into Tusla, the Child and Family Agency, and they specialise in prevention and early intervention. That will form part of Tusla's wider work, which is welcome. Senator Black is correct that there needs to be a more joined-up approach and that needs to happen well before there is any crisis. It is evident from Carol Coulter's childcare law reporting project that parental addiction and alcohol abuse plays a part in many of the cases she has seen come before the courts. A number of helpful measures have been put in place. I am so used to talking about the Public Health (Alcohol) Bill that I forget it is now an Act but measures such as that will hopefully help address some of the addiction issues. We now have an early years strategy, First 5, and that is built in there as well, so in addition to the affordable childcare scheme we will see provision for vulnerable families. A number of agencies will be tasked with identifying those families and providing them with quality full-time childcare to help with the family support piece and prevention and early intervention because if one can get children into a good quality service such as that, where there are wraparound services, it can identify those problems earlier, signal them to Tusla and

try to put in place the family support and parental support programmes that are needed in order to address them. There is some work happening. We can send the committee further information on it. We will be launching our report card next week, which will deal with some of those issues. The committee will see how we can join up some of the existing work, which might be useful for its own report.

Senator Frances Black: There are a couple of other questions on which I wanted to touch. Regarding legal aid, Mr. Walsh mentioned that many legal aid lawyers are completely overburdened and overworked. What would he recommend? I do not understand how it all works. What attracts somebody to legal aid work? How can their lives be made easier? Do they need more resources? What is the major problem?

Mr. Keith Walsh: The major problem is the volume of people who need to seek legal aid. It is means-assessed so one has to be earning less than a certain amount of money to qualify. The number of people who fall into that bracket and who are involved in family law proceedings is quite large. The Legal Aid Board is involved in roughly one third of all Circuit Court cases and a slightly smaller portion of District Court cases. The Legal Aid Board is a huge player in this area. From my experience, the type of person who is attracted to work with the Legal Aid Board is somebody who wants to make a difference and who is not necessarily motivated by money, because it is not hugely well-paid work. They are people who genuinely want to help people resolve problems.

Resourcing is a massive issue. More resources should be given to the Legal Aid Board so that it could hire more solicitors and set up private practitioner schemes that would work to take some of the burden off the board. We are not talking about hugely well-paid schemes but about adequately funded schemes. This would mean, for example, that instead of a Legal Aid Board solicitor spending a full day in District Court doing one case, that work could be hived off to private practitioners. A restructuring of how the Legal Aid Board does business is certainly required. The board constantly looks at that. We meet its chief executive, Mr. John McDaid, and other members of the board regularly and they say they require more resources due to the volume of people applying for legal aid.

Delays in respect of legal aid usually affect the other person involved. That person may also be on legal aid, which may result in a delay to his or her case, but if he or she is not the court considers equality of arms and fairness. If one of two parties is on legal aid it slows the case down for both people. If somebody applies for legal aid, it slows down proceedings. The Law Society believes more resources are necessary.

Ms Helen Coughlan: One of the other consequences of the overworking of the Legal Aid Board is that many people represent themselves in court. They are quite entitled to do that but very often it is not done by choice but because they cannot wait. That raises questions in respect of access to justice, delays and training for judges in dealing with personal litigants.

Dr. Conor O'Mahony: It should be said that the issues dealt with by the Legal Aid Board are disproportionately on the side of custody and access. The board prioritises child protection cases in which the State seeks to take a child into care because of their nature. If the State comes in with its legal representatives and seeks an application for a care order, the judge will not want to proceed unless there is a solicitor for the parent. Because these cases often involve neglect or abuse, those applications cannot wait. The Legal Aid Board's resources tend to be sucked up in ensuring that people in cases involving applications for care orders have representation. The private cases end up having to wait. The impact on private cases, as has already

been mentioned, may also result in parents not seeing their children.

Senator Frances Black: Mr. Walsh said that the family law courts were the poor relation. Is that how he sees it?

Mr. Keith Walsh: One certainly feels it when one practises in this area rather than other areas. It is not a very sexy area of practice and is not treated particularly well in the hierarchy of the courts. From our perspective, we view it as something that has traditionally had difficulty getting funding allocated to it. It requires a lot of funding but it does not necessarily get it. There is a perception there. One of the difficulties relates to the *in camera* rule. People do not realise what is going on behind closed doors in respect of delays and so on. The *in camera* rule effectively prevents things about the courts being reported on a daily basis. If something happens in any of the other courts it is reported. There is very little reporting of the family law courts. The 2004 Act does allow for certain journalists to go in and report on the courts but the reality is that, because of resource issues in the media, the media does not want to devote resources to people going in to sit at the back of courtrooms.

We need some sort of change to the *in camera* rule to allow people to see into courts. It should not allow anyone's identity to be revealed, but should allow people to see how fathers, mothers and children are treated in the District Court with regard to guardianship, access and custody and how people are treated in respect of separation of divorce. People should be allowed to see how child abduction cases are handled in the High Court. Most people are not even aware that such cases happen. Transparency and further relaxation of the rules would assist the whole system but this is a hugely divisive issue. The people who are going to court do not necessarily want anything reported by the time they get there. It is a really tricky issue for the users or litigants in person and for the lawyers. This is an area on which no two people agree. More transparency is essential, however, otherwise family law will remain the poor relation. We have to acknowledge that this is one of the reasons for it.

Chairman: Before going back to the Senator, can I just say that, going over all that we have addressed this morning, that a camera or a light has most definitely been brought into all of these areas by this exercise this morning. Everyone has done well

Senator Frances Black: I have one final question on the mention of children going into the courts and feeling unheard. Going into court and not being heard is probably one of the worst traumas that a child can experience. Perhaps this was said, I hope the witnesses will forgive me if I missed it, but would they recommend that a therapist or somebody else be there to support children, particularly in cases in which there has been any kind of sexual violence? Should that happen all of the time? What are the witnesses' thoughts in that area?

Ms Julie Ahern: I raised the issue of children telling me on the phone that they feel they have not been heard. This can happen in a variety of circumstances. It could be the case that they wanted to talk to the judge but that the judge did not want to talk to them or did not hear their voice directly. It could be the case that they feel what they have said has been misrepresented in some way. Judges and people working in the courts need to be more aware of what child-friendly justice is and of how they can listen to and hear the views of children and communicate back to them. Ms Brady raised the example of a judge doing a judgment in emojis and explaining to the children that he had heard what they said, the reasons why he did not agree with them, and what was going to happen. When I am talking to children and young people about any area, I find that if one explains to them that one has heard them and then explains why one has come to a particular decision, they are more likely to accept it and it is likely to be

easier for parents. On the other side of it, I get calls from mothers and fathers who say their 12 year old or 15 year old is screaming and does not want to get into the car to go to access. If an effort is made by judges, in the first instance, to explain to children why they have come to a particular decision and the reasons for that decision in a way that will not damage or traumatise them further and that is child-friendly, it could have a really big impact.

The Senator is right. Support services are key. One of the big issues I find arising on the information line I run is that people are not aware of what is there in the community. There are actually an awful lot of supports in the community for children and young people. Some of them have longer waiting lists than others and can be difficult to access. That is another issue, but people are not actually aware. They do not know that they can contact different people and get different supports. Work on information is needed in that respect. People need to be linked to the right places at the right time.

Ms Caroline Counihan: I would endorse what Ms Ahern has said. She is absolutely right. Information about what services are available is very important for everybody who is involved in the justice system to have, if not in their heads then at least readily available to them. They must also ensure, as far as possible, that what they are talking about is appropriate to the situation. In the context of the criminal justice system, the Criminal Justice (Victims of Crime) Act refers to specialist support services. It refers to information about the appropriate kind of service, if not a single service. It is very important that those who work in the Courts Service and lawyers who regularly deal with family law cases at least have an idea of where to go to find out information or who to go to for a decent referral for a particular therapist, for example.

On the question of therapists being in court on the day, I am not sure if that is necessary. It is much more important that all of the professionals have an understanding that every child is an individual and may need individually tailored supports in order to have his or her voice heard and to have a menu of options available.

Dr. Clíona Saidléar: The only thing I would add to that is, as with Tusla, the services out in the community are desperately underfunded, including ours. Our waiting lists are enormous. There are almost no services for teenagers in this circumstance. That must be taken into account if we are looking at a joined up process the whole way through the care system for the child. In order to ensure a child centred response, we must look at funding the resources in the community also.

Chairman: We would take that as a given.

Dr. Clíona Saidléar: It is good to put it on the record occasionally.

Chairman: Dr. Saidléar could not possibly go back to her organisation if it was not said.

Senator Frances Black: I may have to leave a little early to vote in the Seanad and apologise to the witnesses in advance.

Chairman: The next speakers will be Deputies Ó Laoghaire, Jack Chambers and Fitzpatrick, in that order. As we are under time pressure, I ask the remaining contributors to try to avoid repetition.

Deputy Donnchadh Ó Laoghaire: I will do my best to avoid repetition. Go raibh míle maith agaibh go leir as bheith anseo. I thank our guests for attending. As Deputy O'Callaghan said earlier, all of these issues might not be front and centre of the news very often but they have

huge implications for people's right to relationships and to safety. These are fundamental rights and it is important that we get this right. Some of the difficulty with the *in camera* rule is that cases are dealt with away from the public eye but the rights involved are fundamental.

I am pleased to note that UCC is very well represented. My first question is straightforward. Our guests will have to forgive my ignorance on this matter. There has been a lot of reference to experts. Am I right in assuming that in the vast majority of cases, the expert being referred to is a child psychologist? Are there examples of other experts who might be involved?

Mr. Keith Walsh: The regulation we discussed sets out a number of categories of expert, one of whom is a child psychologist. Family therapists are not included in the definition, while teachers are included.

Ms Saoirse Brady: The list includes teachers, psychiatrists, psychologists, social care workers and social workers.

Deputy Donnchadh Ó Laoghaire: I have never been present at either public or private family law cases and I am not entirely sure that I understand the interplay of the guardian *ad litem* and legal representation, particularly in the context of a public case. Are there instances in which a child might have a child protection social worker from Tusla, a guardian *ad litem* and legal representation? How well does that work? Does it work seamlessly? Am I misunderstanding the process? Is it difficult for a child to have to deal with three professionals, all of whom have slightly different responsibilities and possibly a different perspective or philosophy or does it work seamlessly?

Chairman: We will take the point relating to Cork first.

Dr. Conor O'Mahony: I would echo Deputy Ó Laoghaire's comments in respect of the strong UCC representation.

To answer his question, the Child Care Act is very specific on this. It provides for the appointment of a guardian *ad litem* or a solicitor for the child. It is an either, or situation, so a child would not have both in a single case. The evidence is that the mechanism in the Child Care Act whereby a solicitor can be appointed for a child is used very infrequently. In recent years, it appears that there was only one judge in the country who was inclined to make use of that particular mechanism. The guardian *ad litem* is the primary vehicle in a set of proceedings through which the views of the child would be communicated to the court. There would always be a social worker involved on the Tusla side and there would be a solicitor representing Tusla in the proceedings. A social worker would invariably be involved in presenting the evidence to the court on behalf of Tusla as to why the child should be taken into care or why there should be a supervision order put in place. It is important to say that the social worker is not impartial. While social workers may characterise themselves as being in the court in order to represent the child's best interests and they may have spoken to the child and may communicate that to the court, they are in court seeking a particular outcome. It is almost equivalent to asking the mother or father in a private case what are the views of the child. That is why the guardian *ad litem* becomes so important because he or she provides independence in terms of an analysis of the child's best interests and communicating the views of the child. The social worker has a stake in the outcome, as it were, whereas the guardian *ad litem* is independent.

Ms Saoirse Brady: To add to that, the new Child Care (Amendment) Bill, the most recent version of which we should see quite soon, makes provision for a child to have both a guard-

ian ad litem and a solicitor if he or she is party to the proceedings, which is welcome. As Dr. O'Mahony said, under section 25 a child can be joined as a party to the proceedings but that has not really happened. That is something that we would call for because if we really want to ensure that a child is participating in proceedings, we have to assess whether he or she should be party to the proceedings. There has been a paternalistic view of this, which holds that we should protect a child by not letting him or her be a party but the child should be involved. Ultimately, the decision is about the child so that is something that must be addressed. The guardian *ad litem* Bill is in preparation and that is one area that could be looked at again.

Child abuse experts really need to have the space and time to represent the views of the child. The UN Convention on the Rights of the Child provides guidance in Article 12 on the views of the child. The representative is there to say what the child thinks and not to interpret what the child thinks. A guardian *ad litem* will talk about the best interests of the child but he or she is meant to actually relate the child's view and not to sugar coat it for the court.

Deputy Donnchadh Ó Laoghaire: On the question of the lack of clarity in implementing Article 42A of the Constitution, if I understand the witnesses correctly, there are three difficulties involved. The first arises where an expert is not appointed and there is not a lot of clarity around what should happen. Second, there is not a lot of clarity around determining whether the child has the capacity to have his or her voice heard. The third difficulty arises where an expert is to be appointed but the parties cannot pay for it. Would greater clarity on the first matter, in terms of what happens if an expert is not appointed, be the most crucial issue? Obviously, all of the difficulties have to be addressed but would the first be the most important? Would clarity in that aspect provide for greater consistency across the board? Does the Child Care (Amendment) Bill address any of the issues that they have identified in the context of to clarity?

Dr. Conor O'Mahony: It does on that last point because it requires the court, if it is not to appoint a guardian *ad litem*, which would be the public law equivalent of the expert in the private law cases, that is, the person acting on behalf of the child and representing his or her views, it must first explain why in open court. It must also stipulate what it is doing instead. That is crucial because if the court is obliged to state, in open court, how it is going to ascertain the views of the child, it becomes quite difficult for the court to simply not do it. The 2015 Act leaves the door open for that to fall by the wayside if the expert cannot be paid for. There is nothing in the Act about what happens next and it could simply not happen. If the court has to explain those reasons in open court, it becomes much more difficult for a court to let it slip in the manner I am describing. That is important.

The question of how the court assesses whether the child is capable of forming the views is extremely important because that is the gateway to the obligation to hear the child kicking in. All children who are capable of forming views must be heard. Children who are not capable of forming views do not have to be heard. How do we distinguish between those two groups and who distinguishes between them? One judge might take the view that he will bring in the expert to make that assessment in the first instance. Another judge might attempt to make that judgment himself or herself and may or may not have the skills to properly make that assessment. Another judge might simply decide to speak to every child over a certain age and not to speak to children under that age. That is a recipe for inconsistency. It would be good to have some clarity on that assessment. We have this crucial gateway concept of children being capable of forming their own views without clarity as to how we establish which children meet that criteria and which do not.

Dr. Keith Walsh: It is, in practice, exactly as Dr. O'Mahony has said. The voice of the child

is falling by the wayside and it is difficult for cases to be dealt with because of the pressure on District Court judges and on court listings.

To take up what Dr. O'Mahony said, this could be dealt with in a real way if private law proceedings mirror what is happening in public law proceedings. The court should state how it proposes to facilitate or hear the voice of the child in court at the beginning. The court should also state why it is not going to appoint an expert to hear the child's views. Legislative change to the 2015 Act or the 1964 Act is all that is required. Judges obviously have to follow the law. It is not a hugely difficult for this committee to make a recommendation for change in its report. That could be done and would result in the kind of situation where rights that are slipping by the wayside would be put front and centre.

The difficulty and opposition that might be encountered from the Government is that there is no doubt that change would impose real resource obligations on District Court judges which the Government may not wish to resource. Without that type of provision in the 2015 Act, it is only really paying lip service to the voice of the child.

Ms Julie Ahern: I wish to echo what Dr. O'Mahony and Dr. Walsh stated. Something like guidelines for judges on how to carry out this function could be introduced. All the other professionals involved, including lawyers, should be trained how to communicate and work with children. It is something we are already doing within the court system. It is worth pointing out that the children's court talks and listens to children all day, every day. Children go in and give evidence within that specially designed system. We could learn a lot from how the professionals and the judges in that system engage with children. Talking to a child is not an alien concept we have never encountered before within the legal system. We do not need to work on something brand new. We need to look at what is already in place here and in other jurisdictions, as Dr. O'Mahony set out earlier. There is a lot out there and it could be done quite easily with a legislative amendment and some other supporting pieces of work such as training and guidance.

Dr. Clíona Saidléar: There are a series of cracks through which child sexual violence cases can fall. We have talked about the failures of the criminal justice system. Tusla and HIQA made some urgent recommendations around specialisation last summer. HIQA was clear that the specialisation was not there for the people doing the assessments and talking to these children and HIQA needed to work on that urgently. It was training specialist interviewers, the most recent tranche of whom came out in January. If Tusla does not catch that, these cases are not going to turn up in public family law. The next net for them to fall into is private family law. There is then a situation whereby experts are publicly funded when we have not got the regulation right yet as to specialisation and provision and the cost will be €2,000 to €4,000. There is not another safety net if one does not have that money. That is the last safety net and that child falls through another crack.

Deputy Donnchadh Ó Laoghaire: I want to move on to another issue. People can respond if they wish. I want to make an observation on the issue of access and that kind of stuff. Ms Brady picked up this, and it is a point I have previously raised about contact centres. For a time, I was on the board of management of a family centre in Togher in Cork that had a top-class, excellent contact facility. An issue was raised locally by Judge Con O'Leary. At one stage, it was in a position to facilitate contact from Tusla referrals and referrals from Judge Con O'Leary and, more generally, from family cases. The only contact it currently provides is where there is a child protection issue and that reduces the scope and the options available to family law judges. It has really excellent facilities and huge potential and I would very much advocate and support greater investment in it.

On access and maintaining relationships, as far as I can see, an awful lot of local authorities do not properly take into account where an applicant to the housing list has access rights. They are very often treated as single applicants and that is an issue that needs to be addressed. I frequently come across that issue.

Mr. Walsh touched on another issue I frequently come across. Maintenance is a significant issue for an awful lot of parents. In the overwhelming number of cases, mothers have difficulty getting maintenance to which they are entitled. They often do not want to go down the formal route and accessing maintenance can be difficult. There is a child maintenance service in Britain, although I am not very familiar with the mechanism involved. I do not know if any of our guests are familiar with it or if they have any views on whether it is good, bad or something we should consider.

Ms Saoirse Brady: Some members of the Children's Rights Allowance have brought this to our attention. For example, one family advocated, and continues to advocate, for a child maintenance agency like the one in Britain because there are difficulties in getting the maintenance. The issue of money can exacerbate an already tense situation and the fallout usually lands on the children in the withholding of access visits. There is something in looking at that idea.

Maintenance is also sometimes used in terms of social welfare access and social welfare payments and there were measures in the 2019 budget to address that. We will hopefully start to see a streamlining of that. An agency that could be put in place to address the real issues in family issues should be explored.

Dr. Keith Walsh: I agree with the agency concept. A simplification of maintenance or more transparency so people have a better idea of what they are entitled to would be welcome. Maintenance is something that helps people out of poverty, particularly if they are trying to cope with children on their own. We should have a more streamlined system for maintenance. It is really a kind of means tested exercise, to a great degree, involving children. There must be a more efficient way than the way we are currently dealing with it. There would certainly be an argument for maintenance to be dealt with in a more streamlined way and any reform of the court structure should look at that. We should look at the enforcement of payment, but also how do we get there and is there a way to do it quicker.

Deputy Donnchadh Ó Laoghaire: I have two more general issues.

Chairman: Can we take them together?

Deputy Donnchadh Ó Laoghaire: I would rather not. They are slightly different. The first is really an observation.

On the evidence from RCNI, I was generally aware of the low charge and conviction rates for sexual crimes but I had no idea it was as low for sexual violence against children. I am just shocked at that low level. I echo the witnesses' call for greater research and information on this because the rate is appallingly low.

I will make two final points. I am interested in the point about facilities. It seems to me that there may potentially be a need for significant capital investment to bring our courts of State up to scratch. I do not necessarily expect this to be outlined on the floor of the committee, but if anyone is aware of any detailed document outlining the level of capital expenditure that would be required, I am sure it be useful to provide it to the committee. I am also interested in the point made by Dr. O'Mahony and a few others, I think, that there may be scope for more flex-

ible approaches in respect of other buildings. That is very interesting.

I will ask a final question. We may consider this at a later date, but it would be remiss of me not to pose the question. The Minister for Justice and Equality is bringing forward a referendum on divorce which would remove the matter from the Constitution. We have not seen the detail of the proposition, but the indication is that legislation would accompany it providing for a reduction in the period of separation required, I think, from four in five years in the Constitution to two out of three years in legislation. Will the witnesses outline even a brief initial view on the legislative end of this, whether it is the right approach, whether it is too restrictive or whether it is not restrictive enough?

Chairman: Ms Coughlan was first to indicate.

Ms Helen Coughlan: Regarding the divorce referendum, my view is that the current system is leading to delays. We have a two-tier system at present whereby one can apply for judicial separation and then one applies for divorce. This is doing the same thing twice, so there are delays and also cost involved. I would certainly welcome the referendum. I think it will bring about huge improvements in family law if it is remitted to legislation in order that the period is reduced to one or two years. It will be hugely beneficial.

Chairman: Is Deputy Ó Laoghaire happy with that? I call Deputy Jack Chambers.

Deputy Donnchadh Ó Laoghaire: I think Dr. Saidléar is indicating.

Chairman: Sorry. I had not spotted that.

Dr. Clíona Saidléar: I will keep it brief. Regarding the rate of conviction, by and large this committee is used to Rape Crisis Network Ireland coming before it on criminal matters. We do not necessarily come here very often to discuss civil matters. We are here because of the failure rate in respect of criminal matters. It is very important we get that part right. We are also very conscious that there is a whole set of other things that happen before a case ever gets into civil law matters. This is why we are abdicating on the national strategy on child sexual violence. While this part can be fixed, attention also needs to be paid to all the others across the whole of Government and the entire system.

Deputy Jack Chambers: I thank all of our guests for their very comprehensive submissions and detail in response to the questions. I have just a couple of comments and questions I do not think have been discussed. There is mention of creation of a specialist courts structure, and it is mentioned that a constitutional amendment would not be required in this regard. Could this be performed by the president of the District Court in any event, without necessarily having to engage with the Oireachtas? Could it involve Government regarding funding in the Courts Service? Do we need to have it mandated or structured by the Oireachtas? What I would like to know is how many more judges we would require. Would existing District Court judges be siloed into a specific family law structure? How many more do they reckon we would need? The practical requirements for structuring are kind of a separate place. Would it be a regional system or would it mirror our existing District Court model? Those are just some of my questions. I will try to bank them together.

Regarding the regulations that were introduced and how the capping of the fees has made things worse, how can this be changed? Just so I can understand, is the €250 the whole fee? What is the fee structure? Perhaps our guests could provide more detail on that. Is it capped at €250 per specialist or is the fee for each general consultation? Would a number of people be

involved? Will our guests answer those questions first.

Ms Saoirse Brady: There are two rates and they are for slightly different purposes. There are different reports. One is €250 and one is €325, I think. That is the payment, so the Deputy is asking-----

Deputy Jack Chambers: Is that per specialist?

Ms Saoirse Brady: Per expert.

Deputy Jack Chambers: Is it-----

Ms Saoirse Brady: Sorry for interrupting. We have spoken to members about how long it would take. It takes about 30 hours. In the legislation, however, it is nearly seen as a once-off. One meets the child once, gets his or her views and goes in. That is not how it would happen in practice.

Deputy Jack Chambers: If publicly mandated - say, under Tusla or with a relevant State agency caring for the child - are public professionals paid separately for specialist reports in the courts system or is it a private payment they receive?

Ms Saoirse Brady: Is the Deputy talking about guardians *ad litem*, GALs, or-----

Deputy Jack Chambers: No. I mean, say, a social worker or-----

Chairman: Perhaps we could come back to the first question about the number of judges, etc.

Mr. Keith Walsh: The people who do this do so in their private capacity, so they are not funded. If one qualifies for legal aid, the Legal Aid Board will pay for the assessor in one's case, so that is slightly different. The difficulty with the regulation is that it caps the total amount payable on a particular section 32-type report, which means that if one charges more than that, one is in breach of the law. This is the real difficulty, that one will be doing something unlawful if one charges for a section 32-type report specified in the regulations. This has a fairly chilling effect on experts.

Regarding the courts structure, the difficulty at present in the courts is that the president of the District Court has no great coercive power over other judges. If one were to get into this, one would probably be straying into constitutional territory as well, but my understanding is that the Department of Justice and Equality has examined this. It is at quite an advanced stage in that there may be potentially a draft Bill on specialist courts. I am sure this committee could liaise with the Department on where it is with this. The Law Society would see it as perhaps between ten and 14 hubs, if you like, where there would be a Circuit Court and a District Court sitting. We are looking at a family law division, whereby a president of the family law division or a judge would be assigned as - the title probably would not have to be "president", but something else. That person would be in charge of the division in the Circuit Court and the District Court.

Deputy Jack Chambers: Would there be 14 new judges in those positions?

Mr. Keith Walsh: There may not be. The Law Society held a number of conferences and seminars on this about five or six years ago and four years ago at which we discussed the advisability of limiting judges to family law. There was a concern among practitioners that if judges

were to remain in family law for the entirety of their careers and were not switched around, it generally would not be a good thing, that it is advisable to get a mix of practice such that one comes into family law and stays there for a number of years and then may do it. We want a general judge. There are a number of judges who were appointed as specialist judges in the Circuit Court for insolvency arrangements and cases having regard to the capacity Act, which only recently came in. Some of those judges are not sitting at all because they are specialist judges in the Circuit Court and there are no cases for them and because if one is appointed as a specialist judge, one cannot do other, more general work. Those judges could be released immediately if they could be changed from specialists. We are therefore not generally in favour of the appointment of specialist judges. We are in favour of judges being properly trained and getting specialist experience. We want a wide breadth of talent. There are particular skills one picks up in other areas, particularly in criminal law, such that one is familiar with a variety of disciplines before one sits on the bench and when one is on the bench. That is the Law Society's viewpoint. We think one should be appointed as a general judge but one is assigned to this division. Again, that can be done administratively and legislatively.

Deputy Jack Chambers: It is interesting that Mr. Walsh says he feels that the Department of Justice and Equality needs to set the legislative framework in place. There have been judicial reforms by the presidents of certain courts which have allowed for better case progression. Has there been a reluctance within the Judiciary to deal with this matter?

Dr. Keith Walsh: To be fair, I do not see it as a reluctance. If legislation is passed to deal with an issue, resources may be allocated to that as a consequence. The court rules are amended by statutory instruments, which have a different function. To make this work would require a specific and detailed family law courts Act. The publication of such a Bill would get all the stakeholders involved and substantially progress the issue. The fact that the committee is looking at this area has substantially progressed things. A significant number of new facts that have come to everybody's attention in the context of this hearing, which is very useful.

Dr. Conor O'Mahony: The President of the District Court has taken certain steps, certainly in the context of public law child protection proceedings, such as a practice direction on case management. However, that has only had application in the Dublin metropolitan district and, to an extent, to travelling judges. As alluded to by Dr. Walsh, the President of the District Court is limited in what he or she can do in respect of a District Court hearing in Letterkenny, Cork or elsewhere. A relatively limited amount can be achieved using that approach. If one wants this dealt with on a more consistent and unified basis across the system, one must go down the legislative route to bring in rules that will apply in the same way in each venue. We have a system with a very strong concept of judicial independence. To a certain extent, judges operate in independent kingdoms and that, broadly speaking, is one of the reasons for the level of inconsistency in family law. It is also evident in the inconsistency in judicial training: some judges are very keen to take up judicial training, but others are not. Under the current structure, it is very difficult to insist that judges undergo such training. However, if the issue were tackled on a legislative basis, one could set out the characteristics of a family court in a more structured way, which may address some of those issues.

Deputy Jack Chambers: On consistency, the *in camera* rule was mentioned. I studied family law. From an academic perspective it is very difficult to access case law, particularly given the anonymisation of parties. How can that issue be dealt with even from an academic point of view? Dr. Walsh mentioned the media perspective and the difficulties involved in getting an allocation and reporting family law cases. From an academic perspective, what could

the State do to facilitate more collaboration on an ongoing basis in order to drive consistency from the academic pillar and allow a higher degree of case reporting? That would promote consistency across the Judiciary.

Dr. Conor O'Mahony: I am very glad the Deputy asked that question. I participated in a study in involving a qualitative study of District Court childcare proceedings and looking at child protection in particular. We ran into many difficulties with the in camera rule in the study. At the time, we wrote to the Minister for Justice and Equality expressing our view that the in camera rule was having a chilling effect on that kind of research. To put it simply, we were able to speak to professionals such as judges, solicitors, barristers, social workers and guardians *ad litem*, but could not speak to parents or children involved in the proceedings. Obviously, that is a very significant gap in the research we were able to produce. However, if we had gone down the road of trying to speak to parties, we would have immediately risked being in violation of the in camera rule. An exception to the rule in regard to courtroom observation has enabled Dr. Carol Coulter to engage in the childcare reporting project whereby she may sit at the back of the court and observe and report on proceedings. There is a similar exception for journalists but it is not being utilised to any great degree, as was mentioned. However, research comes in many shapes and sizes. Research involving he qualitative process of speaking to people who have been involved in proceedings or reviewing case files, for example, is currently very difficult to conduct because of the nature of the in camera rule. It would be fantastic if there were some flexibility in that regard to accommodate a broader variety of research that would help to inform some of the decisions we need to make in the future. I would love to see a recommendation in that respect in the report of the committee.

Chairman: Dr. Coulter will form part of the panel for our next hearing on this issue.

Deputy Peter Fitzpatrick: I welcome our guests. I have been impressed by their answers. There are no winners in the family courts. Whether it is the mother, the father or the children, somebody loses out. I am no expert on family law. The facilities in family law courts are ridiculous. A child could walk in the door of the court with one parent and, a couple of hours later, leave with the other parent. To me, there are no winners. My main concerns are the heavy caseload of judges and whether judges make the right decisions. Not a week passes without a mother or a father coming to my constituency office and stating that a certain judge usually sides with women or men or does not have sufficient expertise to hear the case. What is our guests' impression of family law judges? Certain judges may know more about particular topics. In general, are judges making the right decisions?

Ms Helen Coughlan: The Deputy has raised a very important point. For example, in Kildare there are family law sittings on the first and third Mondays of each month, with 80 to 100 cases listed on those days. It is impossible for a judge to hear the voice of the child in each of those cases. A judge will do his or her best to deal with the cases in the best possible way but that inevitably means that cases will be adjourned and put back to the next list. Every list is full. Judges are in a very difficult position. There probably is a need for more judges. There are certainly more cases in the system. Judges should have enough time to deal with the issues properly.

Dr. Clíona Saidléar: As the Deputy stated, people in his constituency are making assumptions about or trying to understand what happens in the family law courts, but no one is able to see into them. In the absence of data and research, one gets myths, some of which are very mistaken. However, we cannot show that until we have data. We very much endorse Dr. O'Mahony's proposal regarding the capacity to carry out qualitative research and speak to the

service users, namely, parents and children, to ask them their experience is crucially important. Quantitative data is also critically important because in its absence there are myths that we cannot prove right or wrong. Much time and energy is spent trying to understand whether what is happening in the courts is right but we simply do not have the data to make that judgment.

Chairman: Before reverting to Deputy Fitzpatrick, for the information of members, we propose to have a group picture taken with our guests if they are happy to join us. When the committee compiles a report for public publication we usually demonstrate the extent of our witness panel. Members may wish to text colleagues who have left the meeting to inform them that they are welcome to partake.

Deputy Jim O'Callaghan: We will pose for a picture with the Chair.

Chairman: That is how it works. Dr. O'Mahony indicated that he wished to contribute.

Dr. Conor O'Mahony: On the issue of variation between judges, the evidence base is limited for some of the reasons I expressed. However, we have evidence that judicial personality and preferences play a significant role. For example, the project in which I was involved identified that some judges almost always appoint guardians *ad litem*, others do so in certain circumstances and others who are very slow to do so. Judges seem to have set preferences that come through very strongly. One of the most interesting things a judge stated during the compilation of the study was "I don't know what my colleagues are doing". In other words, judges are operating in silos and not necessarily looking at other examples of practice in order to try to gain consistency but, rather, doing their own thing in their own areas.

Deputy Jim O'Callaghan: Are there practice directions similar to those issued by the High Court-----

Dr. Conor O'Mahony: There is a Dublin metropolitan district practice direction on child protection but it specifically focuses on case management and the exchange of documents in advance of proceedings. Beyond that it is fairly limited as far as I am aware but Dr. Walsh might know more.

Chairman: Did Deputy Fitzpatrick want to come in?

Deputy Peter Fitzpatrick: In order to have an honest and open discussion about the reform of family law, all stakeholders should be afforded an opportunity to participate and should be afforded parity of esteem within this process. I want to go back to my busy constituency office in Dundalk. Three fathers came into me this week alone and the reason they came in this week is because they realised that this was coming up in the Committee on Justice and Equality and that all of the witnesses would be here today. They are saying to me that their voices are being muted, they feel as though they are being undervalued and they feel that as society is changing, fathers should play a bigger role in this. One of the fathers said to me that fathers feel as though they are being under-represented and being actively excluded from the decision-making process and all matters pertaining to family law. Do the witnesses feel as though these stakeholders have been omitted from the process?

Dr. Keith Walsh: We have flagged anecdotally that there is a problem with fathers because of the change in society. I have been doing this work for about 20 years and there is a much greater involvement from fathers now than at the start of that period and there is also a great change in the role of both parents in terms of how involved they are with their children. One of the real difficulties for fathers in Dublin, where I practise, is accommodation. The result of a

judicial separation or the end of a relationship is that one of the two people is not living with the other one and it is usually the father who is living in different accommodation. The challenge is to get accommodation that is child friendly or even capable of having an overnight with the child. At the minute in Dublin, unless one is on a significant salary, that challenge is huge. If one is not living near one's children, the reality is that one does not see them as much and does not have as much contact with them.

The judges are trying to work with that and to some degree, our system of justice is an adversarial one. It is up to the lawyers to put it up to the judges as well. It is not inquisitorial justice where the judge intervenes. An awful lot of family law cases are resolved by settlement, particularly judicial separation and divorce, which is where marital couples deal with custody and access issues. Non-marital couples deal with it in the District Court, which is a lot more summary justice. There is an unfair distinction between marital cases and non-marital cases because of the venue for the proceedings, how they are dealt with and the amount of time given to them. Cases in the High Court will get the most time, the Circuit Court would get a bit less time and cases in the District Court get an awful lot less time. That is reflected in the costs of the cases as well.

The *in camera* rule is unhelpful as well. The difficulty is that there is a perception that fathers should perhaps be happy with every second weekend and one overnight during the week and some fathers will be happy with that but for fathers who are not happy with that kind of traditional model of access, it means that they probably have to go and get an expert report which will support their contention that they should have more access. They can do that and they can dig their heels in but they have to dig their heels in a bit and it is not automatic. One gets the report and one advocates for access but it can be done. Most solicitors would push that for their clients but it does require a push and if one is fighting on a number of fronts in a case to do with finances, maintenance, a house and negotiating a mortgage, the children, who may be the most important part of it, sometimes get a bit lost in the mix. The father is trying to juggle a full-time job, deal with his life, deal with access and deal with the breakdown of a relationship so it is understandable why people might not push it. Ms Coughlan mentioned that we require some fairly serious quantitative research on the type of access orders that are being made and to lift the *in camera* rule and allow people who have been through the process to speak to someone such as Dr. Carol Coulter or other independent academics about their experience. The family law courts need to reflect this and there is probably a need for training in this area as well to move it on. As practitioners, without any objective evidence, based on our own cases and meetings, we believe that there are problems for fathers and that it is harder for fathers to get the access they want than it should be. If it was a fair system that it the way it would work.

Dr. Clíona Saidléar: I agree that we have changing family practices and parental practices but we do have data that clearly looks at and measures the level of engagement of mothers and fathers in their children's lives in terms of care and labour. I would expect that the decisions in courts would somewhat reflect that. They would not necessarily absolutely mirror that because we can see that once a family breaks up there might be a change in that pattern in terms of who is doing the primary caring. To echo what Dr. O'Mahony said, is it the case that there are voices being muted? What we are hearing is that all parties are being muted here. We are not hearing from all parties. To build a case and an argument on anecdotes may not be very helpful. What we really need is the quantitative data that will allow us to actually say what we are looking at and have a conversation because we probably need a conversation about this but until we have the data in front of us, we cannot have that conversation.

Deputy Peter Fitzpatrick: Does one need a solicitor for a family court? What I mean by that is that I believe that one can represent oneself if one makes an application but one cannot take anyone else in unless they are either a solicitor or a barrister. I spoke to a young lad from Dundalk recently who went to the family court and wanted to take in a friend of his to represent him but he was not allowed to take his friend in. Is it true that one has to be either a solicitor or a barrister to represent a client?

Ms Helen Coughlan: With family law, the proceedings are heard in private and that is why the Deputy's constituent was not able to bring his friend in with him. Those are the current rules. I said earlier that a person is quite entitled to represent themselves in court and they often do so because of the delays in getting legal aid. There are many reasons people represent themselves in court but the *in camera* rule is to preserve the sanctity and the importance of family law proceedings. The alternative might very well be that everybody would be walking in and sitting in on family law proceedings and that would not be optimum either.

Dr. Keith Walsh: There is also something called a McKenzie friend which is somebody who may be able to assist a person. There is a provision for that and a potential for that but the difficulty is around what the effect on the other person is if one is bringing in friends or relations. There is a balance that a judge would have to strike in those types of proceedings as to how they can deal with the *in camera* rule and how they will enforce it.

Deputy Peter Fitzpatrick: It is just for when the person, a mum or a dad, just cannot afford to get a solicitor. It is the right thing to do because many people would go in and could be very nervous with a solicitor or barrister and they would feel a wee bit safer if they had someone beside them who they actually know. The other half would not have a problem with that because it normally would not be a family member, it would be someone who might have similar experience who is trying to help the person to get the issue sorted out. As I said earlier on, the most important thing is for the child to be sorted out. I know it is in a closed room but I just cannot understand how someone cannot take someone else in with them to help them along the way because there are a lot of nervous individuals who like to have someone accompanying them to help them along. To me, it does not seem fair.

Dr. Conor O'Mahony: It comes back to the strict application of the *in camera* rule because that concept of a McKenzie friend, the person who is not representing someone in court but is supporting them, is something that can happen in a normal civil proceeding. However, if the *in camera* rule is interpreted strictly, which we tend to do in family law cases in this country, then that person is not a party to the proceedings, nor are they a legal representative and therefore the *in camera* rule essentially kicks in. I have encountered the situation described, where somebody had a person to accompany him or her who was asked to leave by the judge. That is the way the *in camera* rule is applied.

Deputy Peter Fitzpatrick: The witnesses mentioned that legal aid is means-tested. I cannot understand why it is means-tested. A Deputy was recently able to get legal aid and, in fairness, Deputies are pretty well paid. I cannot understand how a mum or dad who cannot afford to get a solicitor or barrister cannot go in and get legal aid. There seem to be two different approaches to family courts and other courts. Can the witnesses explain that?

Mr. Keith Walsh: I can explain the legal aid system very briefly. It is based on one's income but it is also weighted such that a person might get some credit if he or she has a mortgage, if he or she is the primary carer of the children. It does not just depend on how much a person earns but also on the outgoings and what they are for. Most legal aid is means-tested

but it depends on the urgency of it. It is a very bureaucratic system, with hoops to get through of submitting one's financial documentation and being put on a waiting list. I do not think anybody could disagree that more people should be eligible for free legal aid from the Legal Aid Board. It is rigorous because it has been judicially reviewed a number of times about how it conducts its mean-testing. In my dealing with it on behalf of clients, I witnessed it in practice and I worked for the Legal Aid Board for a while. Inside the system, it seems very difficult to get through the hoops of getting legal aid.

Deputy Peter Fitzpatrick: Mr. Walsh said-----

Chairman: Another witness wished to answer the previous question.

Ms Caroline Counihan: I was going to row in behind something Mr. Walsh said earlier, to the effect that if a judge is faced with a request to allow a McKenzie friend in a family law case, he or she has to think very carefully about the rights of the other person. I can easily envisage a situation where the other person might be unrepresented or might be particularly vulnerable and might find this quite intimidating, especially if the McKenzie friend seems to be dominating the proceedings by taking an inordinately long time to whisper instructions, advice or such in the other person's ear. One wonders about equality of arms and such. A McKenzie friend in a family law setting is a tricky situation. I would be happier with everybody being represented by a competent lawyer who, after all, has professional responsibilities not just to the client but to the court and his or her own professional body. If a lawyer misbehaves, there are sanctions. With great respect to McKenzie friends, since I am sure many are very responsible, good people, I would rather know that anybody there who is representing or assisting somebody in court has some training and some professional structure.

Mr. Keith Walsh: Dr. O'Mahony is correct that the reality is that, while McKenzie friends are notionally possible in family law cases, I know of very few Circuit Court judges who would permit a McKenzie friend to go to court because of the *in camera* rule. The severity of the *in camera* rule in Ireland means that Deputy Fitzpatrick is right that one will not be able to get somebody into court unless that person is a lawyer or a party to the case.

Deputy Peter Fitzpatrick: I am told that when one gets a solicitor for family law, it could cost hundreds, thousands or tens of thousands. I believe that solicitors are obliged, at the time, to provide their clients with the cost of the procedure in writing. My question for the Law Society is whether that is actually happening. When solicitors meet their clients, are they sending them information on the breakdown of the cost?

The Law Society states that fees must be reasonable for the work undertaken and if a person is not happy, he or she can complain to the Law Society of Ireland. Are there many complaints to the Law Society of Ireland about the costs for solicitors or barristers?

Mr. Keith Walsh: Section 68 of the Solicitors (Amendment) Act 1994 states that after taking instructions, solicitors must, as soon as practical, set out the basis for their costs. That does not state exactly what they are but sets out the rough basis for their costs. It could be an hourly charge. The solicitor could say that he or she normally charges a certain amount but that it may be something else if a certain thing happens. It is not a precise estimate, simply the basis for the cost. This will change radically in the coming months when section 150 of the Legal Services Regulation Act 2015 comes into effect because a much more detailed estimate of solicitors' and barristers' costs will be required at the beginning of the case. The system is currently more general but will get much more precise when the Legal Services Regulatory Authority brings in

its complaint aspect. The Legal Services Regulatory Authority is an independent body separate from the Law Society and solicitors, which was set up by the Government to deal with this. There is currently a reasonably broad range of ways to satisfy the cost requirement and estimate. It will get much more precise for solicitors and much better for consumers when section 150 comes in.

The Deputy's second question related to complaints. The level of complaints to the Law Society is at an all-time low. There are some complaints about costs but they are at one of the lowest historical levels with regard to both costs and other issues. Costs are just one of the issues that people may complain about with regard to solicitors.

Ms Helen Coughlan: I will add one thing to what Mr. Walsh said there, especially in the context of what we have discussed today. If a solicitor has to go to court on one day, that will cost a certain amount, but if there are constant adjournments, that will inevitably add to the cost. If the system could be improved, I firmly believe that the cost will come down. If a solicitor is in for just one day instead of four days, that would make a significant difference.

Deputy Peter Fitzpatrick: We need more judges.

Chairman: We have done a mighty job this morning. It is the first of three special hearings that the committee will undertake on this matter. I referred earlier to Dr. Coulter coming to our next sitting. It will not be next week because we will have to deal with the Brexit legislation with the Minister for Justice and Equality next week. It will be in the following week, on 6 March. Another hearing on the matter will be held on 13 March. We hope to see the witnesses all back because we will have a public launch of our report which will, fingers crossed and touch wood, maybe be before the summer recess. We might get there, pushing a little bit. It will be good to have it done within that timeframe. We will invite the witnesses to come back for that occasion and if they are not in a position to, we will certainly send them all a copy.

We thank the witnesses very much for their input, as I said earlier with regard to their written submissions, and for the quality of their responses to the questions posed by my colleagues on the committee. It has been very helpful and informative. I thank Ms Saoirse Brady, Ms Julie Ahern, Mr. Keith Walsh, Ms Helen Coughlan, Dr. Clíona Saidléar, Ms Caroline Counihan and Dr. Conor O'Mahony. I invite them to join us for a group photograph outside.

The joint committee adjourned at 12.50 p.m. until 9 a.m. on Wednesday, 27 February 2019.