DÁIL ÉIREANN

AN COMHCHOISTE UM DHLÍ AGUS CEART AGUS COMHIONANNAS

JOINT COMMITTEE ON JUSTICE AND EQUALITY

Dé Céadaoin, 13 Márta 2019

Wednesday, 13 March 2019

The Joint Committee met at 9 a.m.

MEMBERS PRESENT:

Deputy Colm Brophy,	Deputy Jim O'Callaghan,
Deputy Jack Chambers,	Deputy Mick Wallace.
Deputy Clare Daly,	

In attendance: Deputy Donnchadh Ó Laoghaire and Senator Colm Burke.

DEPUTY CAOIMHGHÍN Ó CAOLÁIN IN THE CHAIR.

Business of Joint Committee

Chairman: I thank Senator Colm Burke for his attendance to assist us. I remind members to, please, switch off their mobile phones as they interfere with the broadcasting and recording equipment, even when left in silent mode. Apologies have been received from Deputy Peter Fitzpatrick and Senator Frances Black.

We will go into private session to deal with some housekeeping matters.

The joint committee went into private session at 9.10 a.m. and resumed in public session at 9.35 a.m.

Reform of Family Law System: Discussion (Resumed)

Chairman: The purpose of this morning's meeting is to conclude our series of engagements on reform of the family law system. I welcome all of our guests. With us are: Mr. David Walsh, chairman, and Mr. Frank McGlynn of Men's Voices Ireland; Mr. David Drakeford, spokesperson with the Nemo Forum; Dr. Geoffrey Shannon, special rapporteur on child protection; Ms Eilis Barry, chief executive officer, CEO, and Ms Stephanie Lord, legal and policy officer, with Free Legal Advice Centres, FLAC; and finally - for no other reason than logistics of accommodation in the committee room - Dr. Kenneth Burns, senior lecturer in social work from University College Cork. I shall invite each of our guests to make opening statements and we shall proceed in the order of the introductions.

I draw our guests' attention to the fact that by virtue of section 17(2)(*l*) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect of the evidence they give to the joint committee. If, however, they are directed by it to cease giving evidence on a particular matter and continue to do so, 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 are asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against any person or an 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 members should not comment on, criticise or make charges against a person outside the Houses or an official either by name or in such a way as to make him or her identifiable. I ask all of our guests to ensure that their mobile phones have been placed in silent mode. Mobile phones can interfere with the recording of proceedings. I ask that those in the Gallery please accede to the same request.

I now invite Mr. McGlynn to make his opening statement on behalf of Men's Voices Ireland.

Mr. Frank McGlynn: We appreciate the invitation to Men's Voices Ireland and the Nemo Forum to address the committee on family law. The family law system has evolved over the past 40 years with very little regard for the rights, needs, interests or experiences of men. We find that the family courts are adversarial, exacerbate hostility, create ill will, and are bad for parents and children. The system is overloaded, delays are frequent and we understand that judges dislike family law cases. Instead of addressing the social issues, family law has evolved into a high-growth civil law industry that thrives on exploiting conflict. It benefits only lawyers, solicitors and other professionals. It plunders scarce family resources that are even more stretched following a separation. The system takes far too long to reach a settlement. Legal

fees are very expensive and place lay litigants at a disadvantage. Men are less likely to qualify for legal aid and very many are unable to afford legal representation. A point made repeatedly at the hearing in this committee on 6 March was that the threshold for legal aid was too low and disadvantages men.

Children suffer from costly and long drawn out conflicts. They may also be used as pawns in custody battles. Joint custody in a real 50-50 sense occurs in only about 1% of cases. We believe that breaches of access orders should be dealt with firmly with sanctions imposed. This does not happen at present.

Outcomes in the family courts are bad for men and this is well attested. Too often it is a winner-takes-all situation in which the man is removed from the home. He may still have to pay maintenance and a mortgage as well as provide for himself. Furthermore, he will often discover that access to his children is gravely diminished, in many cases because he can no longer provide suitable accommodation for himself and his children due to his removal from the family home under section 10 of the Family Law Act 1995. There is a need to reform the law and remove that section in order to prevent these disastrous outcomes. This is also essential to ensure that mediation is entered into meaningfully by both parties.

Alternative dispute resolution, ADR, produces far better and more conciliatory results in a shorter period and at a lower cost. There is evidence for this from Irish mediation services, as well as from Finland, New Zealand and elsewhere. It has much better outcomes for children and should, therefore, be regarded as the normal procedure. Application to the courts should only be made in the event of failure of mediation and should be regarded as the exception, not the rule.

Members will see from the supporting documentation supplied to the committee many of our proposals such as the introduction of families in transition programmes, the replacement of the family law civil Bill with proposals for the reorganisation of the family unit, and mandatory mediation are designed to reduce the hostility and expectations of victory that are inherent features of the current family law system.

We hope these proposals will be of interest to and given due consideration by the committee.

Mr. David Walsh: We strongly support the case made by Treoir for automatic guardianship rights for unmarried fathers and the need for a central register for these documents. In the tussle between competing parental rights the rights of the child are being lost. Instead we emphasise the principle of equal rights for both parents. Current practice puts the adult centre stage, whereas the child's welfare and fundamental right to know and spend time with both parents should be paramount.

At the hearing on 6 March reference was made to a case in which a father was alleged to be violent and denied access as a result. Apart from the fact that such an allegation does not need to be proved beyond a reasonable doubt in a civil court, a father still retains his right be a father to his child, as one judge affirmed recently in Dolphin House. However, this is not common practice. Once again, it underlines the need for clear parenting guidelines and compliance with them.

We also strongly support the case made for mediation where domestic violence is alleged, not only for the reason outlined. The term "domestic violence" covers a wide range of behaviour, from physical violence to abusive behaviour, including emotional and psychological

abuse. We know from a wealth of sources that approximately 50% of domestic violence is reciprocal. It is engaged in by both parties. In such instances there is not an identifiable mutually exclusive pair of victim and perpetrator. That crucial point is not recognised. There are many surprising findings about domestic violence which are relevant and not known but which are listed in the sources cited in our written submission, on which we would be happy to expand, if required.

Parental alienation is recognised as a serious problem by a number of commentators. In a Dáil debate on 25 February 2015 two Deputies referred in graphic terms to parental alienation. One stated:

> There is an enormous problem, where people are estranged, of the primary custodial parent, who most often is the mother, deliberately obstructing fathers from accessing children. They are using children as pawns, going to war with fathers, causing some fathers to have nervous breakdowns, and destroying relationships deliberately between children and fathers.

Hearing the voice of the child sounds attractive, but it needs to be approached with great caution. As one expert has said, it is a question of differentiating between the expressed wishes of the child and his or her ascertainable wishes and feelings. This requires expert professional advice. The issue is covered in much greater detail in the written submission made by Nemo Forum.

I refer to fatherlessness or father absence. It is a huge problem, the importance of which has not been sufficiently recognised. There is ample evidence that children, especially boys, suffer from a range of behavioural problems. The US academic Professor Sara McLanahan found negative effects of father absence on outcomes in educational attainment, mental health, relationship formation and stability, as well as later success in the labour force. Boys who grow up without a father are twice as likely to end up in jail as those from two-parent families. Professor McLanahan found strong evidence that father absence negatively affected children's social-emotional development and the effects were more pronounced in boys than girls. The US academic Dr. Warren Farrell gave the following warning in 2015: "Prisons are centres for dad-deprived boys." This shocking statement underlines the importance of fatherhood. We neglect it at our peril. The issue of father absence needs to be moved far higher up the agenda than where it lies.

We thank the joint committee for its attention and stand ready to take questions.

Chairman: I thank Mr. McGlynn and Mr. Walsh. I understand Mr. Walsh will join in the question and answer session. I invite Dr. Shannon to make his opening statement.

Dr. Geoffrey Shannon: I take the opportunity to thank the joint committee for the invitation to address it on the topic of reform of the family law system. In my opening statement I will focus on three of the issues suggested for discussion: the structure of the court system; alternative dispute resolution mechanisms; and ascertaining the views of the child during family law proceedings.

Ireland does not yet have a specialised family or children's court system. Such systems are commonplace across Europe and in common law jurisdictions. The establishment of a specialised family and children's court system is a recommendation made in Council of Europe guidelines. The intention to establish such a system has been announced, but the necessary detail, resources and implementation are needed in order to make the plans a reality.

In the 1980s the Probation Service sat in in every family law case, but that changed late in that decade as the service concentrated on criminal law cases. That left a significant gap which has never been filled.

It should be acknowledged that the President of the District Court, Judge Rosemary Horgan, has introduced innovations in the Dublin Metropolitan District Court. Admirably, in his first public address the Chief Justice focused on the issue of access to justice. That said, much broader structural reform is needed to ensure the family law system will meet the needs of citizens who access the system at a vulnerable time in their lives.

The proposal set out in 1996 by the Law Reform Commission family courts working group recommended the establishment of a two-tier court system: the District Court and a regional family court. Under this proposal, the lower tier would have some of the jurisdiction the District Court currently has, but the court would not make final orders. The second tier proposed was the establishment of regional family courts, with information centres attached. They were to be on the same tier of jurisdiction as the Circuit Court and use specifically trained members of the Judiciary. The second tier, to be known as the Regional Family Court, would have jurisdiction in dealing with all issues.

An analysis of the family law court system in England and Wales and Australia suggests it is a model which is not overly interwoven with the rest of the court system. Managing the type of case which goes before each tier also emerges as a key issue of importance. In England and Wales a strictly run gate-keeping system is operated to ensure cases are allocated to the most appropriate tier of the system. This mechanism to manage cases is best suited to the Irish context.

Cuts to legal aid budgets have led to proceedings which are more drawn out and more difficult to resolve and a situation where adequate support is lacking. The time constraints faced by professionals actually cost more money in the long run. That is something we sometimes forget; it is a case of penny wise and pound foolish. It is something of which we should not lose sight.

It has often been emphasised that the common law adversarial system is highly unsuited for family law cases, as parents are focused on winning and their disputes can be damaging psychologically both for them and their children. It is unclear whether inquisitorial systems are better for family law cases, in particular those which involve proceedings concerning children. Alternative dispute resolution, ADR, has been recommended for greater attention, having regard to international practice and what would be possible in Ireland. Mediation and other alternative dispute resolution approaches appear to result in more amicable and enduring arrangements, with the attention of parents more likely to be on children's needs. There are issues related to power dynamics in relationships and children are often excluded from alternative dispute resolution approaches. Therefore, it should be seen as a useful alternative mechanism to resolve family disputes, not as a cost-saving measure.

A family law system must be equipped not only to have children present but also to facilitate them in having meaningful involvement in proceedings. Courts in Ireland have a duty to hear children and give due weight to their wishes. Article 42A of the Constitution provides for a more heavily entrenched right for children to be listened to in private family law cases. There is a distinct lack of provision in Ireland for children to be heard. Guardians *ad litem* are often the most effective mechanism whereby children can present their views to the courts, yet they may or may not be appointed in a given case.

I have made a number of recommendations in the submission to the committee and I will focus on three or four of those by way of conclusion. Any new family court structure must recognise and promote an interdisciplinary system to ensure effective communication among all disciplines involved in family law. In private family law matters, key services should be available to permit family law judges to refer couples or parties to skilled personnel to draw up parenting plans; carry out parenting capacity assessments; deal with anger management programmes in domestic violence cases; monitor custody and access orders when they break down and facilitate their restoration; engage in family therapy; and implement supervised access orders. The key ancillary services are an essential part of any new family law court system. The message I wish to communicate this morning is the importance of those key ancillary services. Without them any new system will be as flawed as the current one.

Other practical measures that are necessary to ensure child and family law matters proceed smoothly include having translators within easy reach to avoid lengthy delays or adjournments when there are language problems. Judges must set firm timetables for cases. Timetabling and case management decisions must be child-focused and made with explicit reference to the child's needs and timescales. This recommendation should be underpinned by primary legislation, as delay and drift have a profound impact on the welfare of children and families. The message from other jurisdictions is unequivocal that children and family services in the court are best managed by a dedicated and integrated family court structure that is properly resourced to meet the particular needs of people at a vulnerable time in their lives. Ireland must invest resources to ensure that its court system is fit for purpose. It should be not only meeting the requirements of the UN Convention on the Rights of the Child, the Council of Europe guidelines and other international standards but leading the global inclination in favour of specialised family law systems and of involving children in proceedings affecting them.

I thank the committee for taking the time to listen to me and I am happy to answer the members' questions.

Chairman: Ms Eilis Barry will make the opening statement on behalf of FLAC.

Ms Eilis Barry: We welcome the opportunity to make a submission to the committee and we welcome the committee's focus on this important issue. Family law is the largest area of queries on our information telephone line and in our legal advice clinics. The clinics, where volunteer lawyers provide legal advice, operate in 67 locations around the country. As part of our public interest law project, McCann FitzGerald Solicitors has partnered with Women's Aid and provides advocacy for women who are representing themselves in family law matters.

For 50 years we have been promoting access to justice, which obviously includes access to legal aid. Importantly, it also includes access to the courts and effective remedies. What happens in the court is vital to access to justice. Access to justice is about democracy, as provisions in legislation the Oireachtas has enacted, such as the important provisions in the new Domestic Violence Act that we welcomed, will only be effective if they can be enforced. Access to justice is also fundamental to the rule of law as it enables State bodies that are involved in family law, such as Tusla and the HSE, to be held to account. Fundamentally, however, it is about social inclusion. People who present at FLAC clinics or in our casework often have a number of legal issues ongoing at the same time so it is important not to view family law and the family courts in isolation. Family law problems are often accompanied by debt, unemployment and housing problems, and homelessness makes these issues far worse. Solving an issue such as housing or homelessness may have a positive impact on family law matters, such as enabling access or custody to take place. Addressing these issues together will increase social inclusion.

The Legal Aid Board and the Courts Service are public, statutory bodies. The positive duty which is set out in section 42 of the Irish Human Rights and Equality Commission Act 2014 imposes an obligation on both the Legal Aid Board and the Courts Service to promote equality and human rights. What we mean in this context is the human right of access to legal aid and complying with the provisions in the Equal Status Acts which require the Courts Service to be accessible and to ensure there is no discrimination on any of the grounds in that legislation. It also requires the reasonable accommodation of people with disabilities. The State's system of legal aid and advice is administered by the Legal Aid Board. We believe the Legal Aid Board and the Courts Service must be regarded and treated as fundamental to the administration of justice and the rule of law and must be resourced appropriately. The budget of the Courts Service was hit very badly during the recession and that must be addressed.

We welcome the committee's focus on this issue but we invite it to cast its forensic eye in particular on the issue of legal aid. Problems with the provision of legal aid include problems with delays, the means test, the contributions, the waiver, the issuing of certificates and the areas of law excluded. We also submit that there is a lack of transparency about the reasons for refusal of legal aid and the amount of financial contributions collected. I pay tribute to the work of the staff of the Legal Aid Board, who face huge demands for their services. Nothing we say here should be seen as a critique of their work. It is somewhat like the health services in that the service from the staff is excellent but the problems arise from the structures and resources.

With regard to delays in law centres, there is a waiting time of ten months and more for a first consultation in the Blanchardstown and Finglas law centre, 33 weeks in the Cork law centre and 32 weeks in Tralee. The means test has not been amended since 2008. We understand that the Department is open to reviewing the means test and that the Legal Aid Board has submitted recommendations for a review in this regard. To qualify for legal aid a person must have a disposable income of less than €18,000 per year, as well as disposable capital of less than €100,000. The family home is not considered as means when assessing capital. There are also allowances which have not been reviewed since 2008. One of the allowances includes €8,000 per year for accommodation costs. Given the current accommodation costs per month, that is far below what one would pay for private rented accommodation or a mortgage property. There is also an allowance for childcare expenses of up to €6,000 per annum whereas the average childcare costs amount to €1,000 per month. The means test must be poverty proofed and reviewed on an ongoing basis.

We also argue that the Legal Aid Board should have discretion to provide legal aid in certain circumstances where people have failed the means test. We have seen a case where a hospital was intending to make an application to the High Court in respect of the medical care of a terminally ill child. The parents failed to meet the means test. They had no money because they had been out of work for a number of months to take care of the child, but they failed to get legal aid in that instance. In cases of exceptional importance where people fail the means test the Legal Aid Board should have a residual discretion.

As regards financial contributions, one would think that somebody on an income of €18,000 or less would not have to make a financial contribution towards legal aid but, unlike the medical card, legal aid is not free. The minimum contribution for legal aid is €130. That might not appear to be much but it is very significant if one is in receipt of a social welfare payment. It exceeds the reduced rate of social welfare payments that are paid to a person under 26 years of age. We have heard of contributions of thousands of euro being made by people who are in receipt of legal aid if the aid relates to the sale of the family home. It is possible to get a waiver

if the contribution might cause hardship but that waiver provision is not well known and is not advertised. We campaigned to have the financial contribution removed for victims of domestic violence and we were successful in that campaign but a person still has to make a financial contribution when they go back to the courts in relation to access, custody or maintenance.

There appears to be an unofficial rule in operation that a person will only get the maximum of two legal certificates per year. This does not make sense on any level. Apart from the impact on the parties and the families having to make repeated trips to the court over extended periods, it would appear to be a far better use of court time and legal aid staff to have all applications dealt with from the outset.

There is a lack of clarity as to whether legal aid is available in housing cases, which is closely related to issues which arise in family law cases. FLAC submitted an amendment to the Department of Justice and Equality which, if enacted, would ensure that legal aid was available to anyone facing eviction from the family home. This would include people in long-term mortgage arrears or people facing evictions from local authority housing.

We need more transparency from the Legal Aid Board on the use of the waiver, the level of contributions that are collected, the number of refusals of applications for legal aid and the reasons that accompany those refusals.

Ms Lord will deal briefly with the issue of access to the courts.

Ms Stephanie Lord: I will be very brief in my comments. I reiterate our thanks to the committee for inviting FLAC before it to present on this important issue. As Ms Barry has already pointed out, access to justice is fundamental in that it allows people access their other rights but also enables people to hold other State agencies, such as Tusla and the HSE, to account. I want to focus on some of the more practical aspects of accessing the Irish courts which should be addressed if there is to be meaningful reform of the family law system.

Given the limited nature of legal aid and the restrictions on what someone can be granted civil legal aid for, many people end up representing themselves in the courts. This raises all sorts of difficulties for individuals because of the complexity of the processes. We have made a lengthy submission to the committee on which we have made a range of recommendations regarding accessible forms that could be made available to people that would assist in making it easier for people to represent themselves in the court process. We have also made a number of recommendations around examining the provision of unbundled legal services and further statistics that could be compiled so that we might eventually gain a better picture of the true needs of family court users.

We have also made a range of recommendations to address the difficulties that are faced by people with disabilities in the courts, such as inaccessible courts, inaccessible offices of legal practitioners, legal documentation being unavailable in accessible formats, and the procedural systems being too complex to navigate. Accessible formats and accessibility testing are necessary because people with disabilities are involved in family law proceedings in our courts. We have also made a number of recommendations regarding the availability of information for people who speak Irish Sign Language. We recognise that the Courts Service has made some improvements in accessibility, particularly for people who use hearing aids, but much more could be done.

There are clear problems with the physical infrastructure of the family courts in Ireland.

Hearings on domestic violence, guardianship, children, maintenance and matters pertaining to passport applications and blood tests are heard in Dolphin House in Dublin. Dolphin House deals the family court issues for the Dublin metropolitan district with the exception of Swords. Despite the large area that Dolphin House caters to, the court building is not equipped for the high volume of people who are using it.

The availability of speakers of foreign languages is an issue across all family courts. The lack of regulation in legal interpretation services is a major issue and FLAC has concerns about the quality and availability of interpretation that is being provided. Given that there can often be significant and important constitutional rights in the balance in these cases, this is an issue of major importance. People who do not have sufficient English language skills are just as entitled to access justice as anybody else in the court process. We absolutely recognise the work of Courts Service staff and legal practitioners within the court, but it is at full capacity at the moment.

I will talk further about Dolphin House in particular. My work is research-based and I do not generally visit the courts but I did visit Dolphin House recently. I found the entire experience rather shocking. It was filled with people, many of whom were in a vulnerable position and from marginalised communities. It is common practice for people to have to engage in consultations with their solicitors in the hallways and on the stairs because there are so few consultation rooms available and those that are available are already occupied. Women often have children with them because of childcare issues. It is unclear, when one enters the court building, where to go. There is a set of stairs and people carry buggies and prams upstairs before returning back down the stairs. Consultations with solicitors, which often contain intimate details of someone's mental or physical health, are taking place in full earshot of complete strangers. There are visibly distressed people and upset children in the courts who are crammed into a dirty and poorly laid out building.

The lack of space in the family law courts means applicants and respondents generally have to wait in the same area, and this can be especially distressing for victims of domestic violence. It makes it especially difficult for women who have to consult their solicitors when the respondent is in the same area.

A further issue is that when a person's legal aid certificate has run out, they are dependent on the Courts Service staff to explain the basic information to them about the different orders and processes involved and the requirements needed to apply for them. The Courts Service staff do their best but it is not a replacement for proper legal representation and access to civil legal aid. While I am speaking particularly about Dolphin House, the lack of consultation space is something that comes up in courts across the State.

Were the courts and legal aid to be resourced appropriately, it is our view that it would massively reduce legal costs in the long term because cases would proceed appropriately. Civil legal aid is consistently viewed as the poor relation of the welfare state and we would very much like to see this examined and changed. FLAC would be happy to attend this committee again and meet any of the committee members who wish to discuss this issue further.

Dr. Kenneth Burns: I thank the committee for the invitation to address it today. I plan to focus on the impact of the *in camera* rule on hearing from children and families, the need for consistency between courts, and articulating a clear model for childcare proceedings. My knowledge of these issues is based on being a principal investigator of two research projects, one on childcare proceedings in the District Court and the other on voluntary care arrange-

ments, as co-editor of a book examining child welfare removals in eight countries, and as an educator and a former front-line practitioner in child protection and welfare.

I endorse previous comments made to the committee by Dr. Conor O'Mahony from UCC and Dr. Carol Coulter and Dr. Maria Corbett from the Child Care Law Reporting Project. I am therefore intentionally not addressing themes I feel are important but were previously addressed by them.

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

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

I refer to the lack of consistency between courts. A key finding of our study of childcare proceedings in the District Court, in the feedback from front-line practitioners during children's rights and child protection training in a five-country EU project that we ran and the current data collection in our study of voluntary care in Ireland is that there is professional frustration and concern about a lack of consistency between courts on how childcare proceedings should be conducted. This lack of consistency and the significant differences between court culture and practice are problematic for several reasons. First, all participants should expect a degree of predictability in court proceedings. Second, citizens participating in court proceedings which involve State intervention in family life should not experience significantly different models of practice, depending on their address. Third, there is some concern that in courts where an adversarial approach is dominant a focus on the welfare of the child can be lost. There is also concern that this model is not conducive to facilitating children's participation and can lead to significant delays in decision-making and significant extra court time for professionals. Clearly, this issue is inextricably linked with other reform items, including a lack of specialist family courts and judges; limited judicial and interdisciplinary professional training; the absence of a judicial council; the need for investment to address judges' high caseloads; and suitable child-friendly and family-friendly court facilities.

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

Whatever model is proposed should attend to several questions. Is the new model child-friendly and parent-friendly, maximising participation and amplifying the proceedings' focus on the welfare of the child? Are decision-makers sufficiently trained and resourced to make timely and evidence-informed decisions in the best interests of children? What principles should underpin the revised model and what practical changes are required to implement them? What type of implementation strategy is required to ensure there will be no significant deviations in the model across the country?

Reform discussions will need to examine whether decision-makers with specialist knowledge who are not solely judges should be included; the merits of pre-proceeding processes; what child-friendly and parent-friendly non-court-like buildings and rooms would look like; whether time limits on proceedings are necessary to ensure timely decisions; consistency in the implementation of thresholds for care orders; protocols for referrals to meditation or similar alternative dispute resolution processes to address an impasse; articulate in detail the principles underpinning the model and codify them in law; adopting child-friendly justice principles and practices; exploring how the testing of evidence could be undertaken in lieu of adversarial cross-examination; consideration of a wide range of methods to facilitate the direct and indirect participation of children; and the establishment of specialist courts.

Based on our research, there is consensus that reform is required in Ireland, but there is less consensus on the of reforms that should be implemented. An independent, focused consultation process such as this hearing and others, with stakeholders from civil society groups, experts by experience and representatives of social work, legal practice, professional associations, the Courts Service and relevant State agencies, could go some way to informing decisions on these reforms. It is clear that children and parents cannot wait for another decade before meaningful reforms are decided on and implemented.

Chairman: Before I turn to members for questions and other contributions, I flag that at the conclusion of our session today we would like to invite our guests to join us for a group picture for inclusion in our report. I forgot to flag this last week and members scattered to the four winds. Only a couple of us were left. If the delegates are happy to do this at the end of the event, we would be grateful to them.

Without further ado, the first to indicate was Deputy Jack Chambers. He will be followed by Deputies O'Callaghan and Clare Daly.

Deputy Jack Chambers: I thank all of our guests for their comprehensive submissions. I signalled first because questions to the Minster for Health are be to taken at 10.30 a.m. and I will have to excuse myself early, for which I apologise. I will not be present for the group photo.

I would like to explore the *in camera* rule mentioned by Dr. Burns. I raised this issue with some of our other guests. I am trying to ascertain their ideas about how we can reform and update the rule. In his submission Dr. Burns mentioned the problems presented by contempt of court rules. Would he like to suggest any specific reform proposal to the committee? Is there a model he would like to see updated?

Dr. Kenneth Burns: The two reforms of the *in camera* rule that have happened so far have been somewhat successful. The committee has heard from Dr. Carol Coulter about her work and the transparency brought to the court process. Having very controlled experienced professionals reporting on the process can be beneficial for us in making decisions. It is unfair to make decisions without hearing directly from the people whom they will affect most directly. The time when we did not trust children and young people to speak for themselves, or believed they needed others to speak on their behalf, has long passed. In particular, I am sure parents have many things to say, as we heard from a men's group today. A number of methods are appropriate, including researchers and others being directly permitted outside proceedings, as well as various bona fide organisations, as mentioned in other amendments. They should be permitted to speak to children, young people and parents in a responsible manner. Fora such as this and others can hear directly from those involved, which can inform wider decisions. We have some good evidence which shows how childcare proceedings work, but it is not deep enough. We should really be encouraged by the success of the amendments.

Deputy Jack Chambers: I thank Dr. Burns. Dr. Shannon mentioned the issue of children not being heard. He said it was not clear that the Children and Family Relationships Act 2015 had been properly or fully implemented. Can Dr. Shannon provide a picture of how there is a mismatch across the system? Does the discretion each judge has lead to inconsistency? What is the impact on children in that scenario? Perhaps FLAC and others will want to come in on that also. What legal remedy is there for the system failing to match the current legislative provisions?

Dr. Geoffrey Shannon: The Deputy's question is a fundamental one. The Irish people voted for a system in which children would be heard. The expectation is that the Oireachtas would move to legislate in a coherent fashion for hearing the voice of the child. I have had quite a lot of experience internationally on this issue and I have been asked regularly by the Anglophone and Germanophone judicial network to speak at conferences on how systems operate internationally. We now have a constitutional principle that children should be heard but we do not have the infrastructure. I argue that we have world-class legislation but third-world infrastructure when it comes to implementing a lot of the reform. Where that is lacking is in the detail. We need a system in which proceedings are tailored to the needs of the child. That is something we sometimes lose sight of. We need to be clear that there are various methods by which to hear the voice of the child. We need to look at where the child is at. Guardian *ad litem* provision is inconsistently implemented. When it comes to the Judiciary hearing children, we need a structure around that. We have a decision of Mr. Justice Abbott, which I cited in my opening statement, which provides some guidelines. However, we need a clear framework for hearing the voice of the child so that there is consistency and so that, no matter where a child lives, he or she has the opportunity to have his or her views heard fully. That can be achieved by enacting legislation which maps out the various methods by which the voice of the child is

heard, whether it is the guardian *ad litem* system, hearing directly from children, a judge hearing a child or that the child is heard through an expert. That should revolve around the needs of the child rather than those of the system.

Chairman: Would FLAC like to add to that?

Ms Eilis Barry: I agree with Dr. Shannon. As he said, we have world-class legislation, but it can only be enforced if it is resourced and resources are a fundamental issue, as is structure.

Mr. David Drakeford: I would like to spend some time looking at the weaknesses in the current system, but I do not have the time. However, it is clear the legislation as it currently is, with the four-year minimum period, has a huge impact on children. Not only is the four years a minimum separation period, it tends to include extensive litigation between both parties. It can be very vitriolic. Parents then look at who their children are siding with and the outcome for children is very bad. We must look at some of the other models. I used to work formerly with the European Commission and I have close friends who are involved, but I am not an expert on the legal side. However, I have seen what they do in some of the Nordic countries. They have no fault divorce systems and mediation is enforced. Parents can separate after six months and divorce after six months if both consent. That has a huge benefit for children. Can one imagine the outcome where differing divorcing parents actually co-operate with each other? I am not saying they are going to be the best of friends afterwards, but they actually co-operate together in the upbringing of their children. They work out the finances and maintenance through a mediation process. If that is motivated, a number of people here would not have to go through the four to five years minimum of litigation, which is vitriolic. I have to say straight out that the only winners are the barristers and solicitors. None of the children benefits from this. The models they use in the Nordic country should be looked at. If there is going to be reform, moneys have to be ring-fenced. Lots of these families lose huge amounts of money. They are torn apart and their assets are stripped. The whole issue is the custody and asset stripping battle. What is worse, as has already been mentioned, is that there is inconsistency in a lot of the judgments. I cannot understand this. If there are legal requirements to deliver for the welfare of the children, why do people and barristers play to judges? They know they might get a better result with one judge than another. They all know these games internally. I have witnessed it myself. I recommend strongly the models used in some of the Scandinavian countries where mediation can lead to non-vitriolic and non-advarsarial results and protect children. Children's rights are never looked at in these cases. I will not go into any more detail, but I have witnessed it.

Dr. Kenneth Burns: While enabling legislation to indicate clearly the direct and indirect methods to hear from children is essential, we also need to look at the courts infrastructure. FLAC's contribution outlined the situation in Dolphin House. Members might also like to go and look at the old Bridewell on Chancery Street. These are the most sensitive possible proceedings in the courts but one has them in very dated buildings which are surrounded by razor wire. It is not conducive to hearing from children. One can enact legislation, but we must also invest in the physical infrastructure.

Deputy Jim O'Callaghan: I thank everyone for coming in this morning. It has been very useful for us. We are preparing a report and are hearing from a wide variety of people. We will consider all submissions made and come up with recommendations at the end. I will start with Mr. Drakeford and Men's Voices. Speaking of men's voices, mine is vanishing so I apologise for that. Mr. Drakeford is correct that family law cases are very adversarial and acrimonious. People opt to go to court, however. Either a woman or a man makes the decision to go to court. It is not as if it is mandatorily imposed on them. How would the mandatory mediation Mr.

Drakeford suggests operate? Would people have their right to go to court removed or would there be some process whereby once family law proceedings were initiated, the parties would have to get involved in the mediation process? What would happen if that mediation did not proceed?

Mr. Frank McGlynn: Access to court should be the last resort. Currently, it is far too easy and too many people just want their day in court. They get in there a little to easily. We think there should be some hurdle and that mediation should be mandatory before going to court.

Deputy Jim O'Callaghan: We introduced the Mediation Act 2017 which requires lawyers to advise clients about the option of mediation before they institute proceedings. Certain family law proceedings are excluded from that. However, the Act still does not oblige people to go to mediation. They just have to be advised about it. What happens if one is a husband or wife who does not want to go to mediation but wants to go to court?

Mr. Frank McGlynn: If someone refuses to go to mediation, he or she should be denied legal aid. That is one way to deal with it, certainly. It could be made a mandatory condition of access to court. We have suggested that before someone gets into court, he or she could be required to have a document signed by both parties and a mediator stating they entered into meaningful negotiations at mediation. This model works in labour disputes. One cannot get into the Labour Court unless one has gone through what used to be called the conciliation service. One must be seen to have first gone through that service, otherwise one will not have access. We think we need to restrict access to the courts.

Chairman: Dr. Shannon indicated he would like to respond, as did Ms Barry. I call Dr. Shannon.

Dr. Geoffrey Shannon: The alternative approach may be to look at mandatory information sessions. There is a key issue of access to the system. There would be profound constitutional difficulties with attempting to introduce mandatory mediation. I understand the purpose and I passionately support what is being suggested. Once two parties are involved in litigation, however, and the reality is brought home to them of court proceedings and that the real victim in those proceedings may very well be the child, I think that will have a very sobering effect on the family.

What we would be attempting to do would be to ensure that objective was blended in with what is constitutionally possible. I have advanced models in that context. I prepared a lengthy report last year in my capacity as special rapporteur on child protection where I considered the issue of mandatory information sessions. I also referenced that in my opening statement. It is an issue that is perhaps worth looking at. Regarding mandatory mediation, it would be interesting to look at the approach adopted in Florida where this has been introduced. Perhaps the success of that system might be worth considering, if the committee is minded to look at this issue.

Chairman: I call Ms Barry.

Ms Eilis Barry: We advocate that mediation be heavily resourced and that people be encouraged to make use of it. The essence of mediation, however, is people coming together, genuinely making an attempt to resolve an issue, and that there is an agreement to try to resolve that issue. The reality, however, is that some cases simply are not suitable for mediation. There may be an unequal level of power between the parties and there may also be allegations of assault or abuse. People may need speedy access to the courts for protection. The notion of

mandatory mediation is just anathema to the concept of people's right to access the courts to protect themselves and their children.

Deputy Jim O'Callaghan: That is fine.

Chairman: I call Ms Lord, followed by Mr. Walsh.

Ms Stephanie Lord: I will briefly add to the comments of Ms Barry. Mediation is considered best when it is voluntary. Mediation is not suitable for every particular case that might present. There is an implicit acknowledgement of that within the Mediation Act 2017 because it excludes some specific proceedings. Doing something such as removing civil legal aid as a penalty for not engaging in mediation would be a disproportionate response in that case. It might be better to examine making mediation more accessible. There is some research on the provision of mediation services in Canada where it is available on site in the courts. In that situation, while people might be waiting to enter a court hearing, they are encouraged to engage in mediation processes because they have nothing to lose. They are there already and the mediation service exists. That is something worth looking at if the objective is to encourage more people into mediation, as opposed to presenting penalties for not doing it.

Chairman: Before I bring in Mr. David Walsh, I remind witnesses that they are responding to questions from Deputies. While there may be differences in respective visions and outlooks on these matters, responses are between the witnesses and the questioning Deputy and not between witnesses. I call Mr. Walsh.

Mr. David Walsh: In answer to the Deputy's question, the way the Family Law Act 1995 is structured does not encourage mediation. It creates, instead, the expectation that the woman will get the house and the children. That does not encourage mediation and that is why we make a plea for the Family Law Act 1995 to be changed. I refer to section 10 in particular. That needs to be changed to create a more level playing field in which mediation would be more likely to occur. On the other statements made regarding mediation, I understand that in New Zealand mediation is expected to take place. A poor view is taken of people who ignore that and prefer to go to law straight away. Finally, another innovation we have put forward is the introduction of a families in transition programme as operates in some US states. The families in transition programme helps couples to develop skills needed to navigate the issues of divorce and separation. We think that could play a very positive role in preparing the ground for the mediation process and accelerating its success.

Deputy Jim O'Callaghan: I would like to ask Dr. Shannon about the recommendation that the family law courts should be changed so we have more specialist judges. Many people who have come before us have said that. Does he think we need constitutional change for that to happen, as was suggested by the former Minister for Justice and Equality and former Deputy, Alan Shatter, or does he think we just need instead to have more specialist judges who would be part of the Judiciary as they are at present? Dr. Shannon himself suggested that.

Dr. Geoffrey Shannon: Deputy O'Callaghan has raised a fundamental question. Are we going to be ambitious in respect of the new system we create? If we are, it may be prudent that we look at any constitutional difficulties that might arise. I have read the evidence provided by other witnesses before the committee. I am conscious we have a Children's Court that deals with issues where children are in conflict with the law. This needs to be considered very carefully. It is dependent on the model of the family court structure we introduce and if that is likely to be significantly different from the current system. I was looking overnight at what had been

proposed in 2013. It was intended that there would have been a referendum in either 2014 or 2015.

The initial proposal was that it would be presided over exclusively by a dedicated Judiciary that was specialised and expert in family law. Much depends on the type of system we are going to consider. Is it going to be a system separate to other areas of the law? We have a specialised Commercial Court, for example. We have a Rolls-Royce system for that. When it comes to the family law system, however, which affects every citizen in this State, we have an impoverished system where we have the most vulnerable members of our society trying to access a system which does not have the capacity to meet those needs. I urge ambitious and fundamental reform in respect of this issue so that people most in need of accessing the legal system have the best system possible available to them.

Deputy Jim O'Callaghan: Regarding the Commercial Court, changes in that context occurred without any constitutional or legislative change. There was just a change in the rules of court. Does Dr. Shannon think it appropriate, as in the case of the Commercial Court, that the family law courts should play some type of filtering role in deciding what court a case should be heard in? I say that because at present litigation, particularly family law litigation, is determined by the lawyers who bring the case. They decide where it goes and the pace of it, to a certain extent. Does Dr. Shannon think the courts should have more of a supervisory and monitoring role regarding what happens with cases?

Dr. Geoffrey Shannon: A good example of how this operates is in England and Wales. That is a gatekeeping system. I will cite an example. If there is a difficult childcare case that has the potential to run for 15 to 20 days, my view is that it should be dealt with at Circuit Court level. We have seen cases of that type and Dr. Burns and Dr. Coulter will have sat in on a number of them. If we consider the vision for the District Court, it is a court of limited and local jurisdiction. We want to make sure that as many cases as possible can be processed as quickly as possible. What happens in other systems is that the more complicated and intractable cases are dealt with by the equivalent of the Circuit Court. I would, therefore, favour a gatekeeping system so that all cases would come into the system and then be filtered on the basis of their complexity. I think we would have a much more coherent and efficient system then than we currently have.

Deputy Jim O'Callaghan: Just to confirm with Dr. Shannon, in respect of identifying the voice of the child, does he think we need further legislation specifically setting out the type of medium through which the voice of the child can be heard?

Dr. Geoffrey Shannon: We have a number of different statutes dealing with the voice of the child at the moment. We have the Children and Family Relationships Act 2015. The Children and Family Relationships Act introduced section 32 of that Act to provide for hearing the voice of the child. In the Child Care Act, there are sections 25 and 26, while in adoption proceedings, there is section 19 of the Adoption Act 2010. If we consolidated all those provisions into one statute, it would make how the voice of the child is heard much more accessible. It is down to how that is achieved. It is not just a question of providing for the voice of the child, but how it is achieved. The detail of how that is achieved needs to be provided for by statute.

Deputy Jim O'Callaghan: I also thank Ms Barry and Ms Lord for their attendance. I was not surprised but it is worth noting that the highest level of queries which FLAC receives is in family law. I was also disturbed to hear that people in Blanchardstown and Finglas have a waiting time of up to ten months. What happens if a woman contacts FLAC and is looking for

advice on an urgent family law issue? Can FLAC provide it?

Ms Eilis Barry: We do not provide legal representation in family law cases. In fairness to the Legal Aid Board, it will prioritise urgent cases and will prioritise cases involving domestic violence. The waiting lists are there, notwithstanding that.

Deputy Jim O'Callaghan: The greatest theme in FLAC's submission is that legal representation needs to be much better resourced by the State.

Ms Eilis Barry: Absolutely, it is about legal representation and resourcing how the voice of the child is heard, but also resourcing the courts system. Professor Shannon referred to the Rolls-Royce system for Commercial Court cases. We believe the issues at stake in family law matters are the most important issues that are addressed in the administration of justice and there needs to be an equivalent Rolls-Royce system for those issues. We invite the committee to look at the whole issue of legal aid, perhaps as part of this report, but perhaps as a separate inquiry into the subject. Anecdotally, we have been told by family law practitioners that up to 80% of people in the District Court are not represented. That is a scandal. It is not desirable for the parties involved, for the children or for the early resolution of matters. It causes huge delays as judges try to grapple with the unrepresented litigant appearing before them. There is a real need for the family law court system to be resourced and for the courts system itself to be resourced. The courts system is predicated on the basis that someone will be represented. The whole forms and procedures are drafted by lawyers with the view that lawyers will be reading them and applying them. There is a real need for the lay litigant to be at the centre of court forms and procedures as well.

Deputy Jim O'Callaghan: Presumably a person coming to FLAC for advice on family law issues will know virtually nothing about the processes and procedures involved, and the options available to the courts, and consequently will be at a complete loose end when they come to FLAC.

Ms Eilis Barry: Absolutely, yes. We argue that there is a real need within the court structure for better information to be available to people. The website in the courts service in the UK has guides for lay litigants or for people on how to behave when they go into court. It is not only in relation to family law, but people who are desperately trying to navigate the court system by themselves call our telephone line on a daily basis. There is a real need for a co-ordinated attempt to deal with the lay litigant in order that people will have access to where they should go and what they should do. Ms Lord referred to visiting Dolphin House and her experience of not knowing what office to attend and not even knowing that the Legal Aid Board has an office in the building, where to go, what forms must be filled in, or what to ask for.

Deputy Jim O'Callaghan: Is there anywhere where such a person can find information such as that at the end of the process, the likely court order will be that one parent will be given custody and another perhaps given access or the options by which the matter can be resolved? Is that available?

Ms Eilis Barry: Family law mediation is available but there is no information service available in the area of family law. It should be the Legal Aid Board which does this. There should be a more holistic version of legal aid. Ms Lord spoke of the unbundling of legal aid services. In other jurisdictions, there are places where litigants can go. They may be representing themselves but they can receive advice on how they fill in the form or what will actually happen in the court. Phrases such as call-overs or putting it to second call are very obvious to the people

who appear in the courts but they mean nothing to the person coming in trying to negotiate the system.

Deputy Jim O'Callaghan: That is a good point.

Ms Eilis Barry: Much can be done without enormous resources. Things such as the courts website need to be dramatically updated and modernised with guides and visual aids in order that people will have access to information about what will happen, what will be involved and how long it is likely to take before they go near the door of a court. The programme for Government made a commitment to carrying out an annual review of indicators of access to justice. We feel there is a real need for solid information to be available to the likes of this committee as to what are the delays in the courts system and that people will have an idea whether it us going to take three or four years for a person's family law case to be dealt with? The courts services should easily have access to this information. They should easily have access as to whether someone is legally aided or not. We need to develop indicators that we can look at, such as whether mediation is available, how long will the courts process take and what is the minimum number of judges required to process these cases in a timely and efficient manner. One issue is we do not think that there is a sufficient number of judges dealing with family law cases. There needs to be at least 80 judges.

Chairman: Does Ms Lord wish to add anything?

Ms Stephanie Lord: Ms Barry has covered it.

Dr. Kenneth Burns: I fully agree with this. I am suggesting that in terms of reform, we may have to cover many areas. Mediation is important. It will not suit everybody but if there can be an increase in the numbers going through mediation instead of through litigation, that would reduce pressure on the courts. It may then help the children because a separation could be agreed and a divorce could be granted much more quickly. The timeline under the divorce legislation will have to be reduced. Cutting out the minimum of four years will be hugely beneficial to children because the acrimony in the family is dreadful. In other areas, where matters must go to litigation, it should be fair. If one considers someone who can afford very expensive barristers as opposed to someone who cannot afford any, there must be the same legal process. Lay litigants do not have much of a chance. They enter into an area where they have no experience at all, they have no information, they do not know the procedures and they just get annihilated. In some cases, judges do not even give them time for a hearing. I agree with what has been stated to date and there must be better information, but it is complicated. There are so many weaknesses. Improvements would be brought about through a combination of all those factors and trying to reduce the numbers going to litigation in the first place.

Deputy Jim O'Callaghan: The ideal solution would be if people could resolve their disputes amicably but that does not happen in most situations, which is why people feel compelled to go to court.

I wish to ask Dr. Burns about the *in camera* rule. I was interested to hear him say it has a chilling effect on research. In practical terms, does he think that it is preventing academic research and publication on what is happening in the family courts?

Dr. Kenneth Burns: Yes, it is doing so very clearly. For our childcare proceedings research from 2012 to 2018, we canvassed the views of judges and solicitors. The risk was too high. It may have been possible - the *in camera* rule does not explicitly prohibit it but nor does it

specifically allow. In that type of scenario we would have needed to make submissions to every single judge who dealt with every single case. That meant it was unfeasible and high risk. Whatever about it being high risk to academics who have some degree of protection in legislation in terms of freedom of speech, it was too high a risk to place children and young people in that position. It was very clear that we could not proceed.

Deputy Jim O'Callaghan: Do we need legislation clarifying the extent of the *in camera* rule?

Dr. Kenneth Burns: That would be very helpful to everyone. The *in camera* rule is there for a good reason. We need to protect parents and children. It is important that everyone knows the limits of the rule. We are arguing that the limits are opaque. Professor Shannon referred earlier to the exact methods that are allowed for direct participation for children and young people in proceedings. We are asking for it to be explicitly laid out with a multiplicity of methods, including qualitative research outside the proceedings. When the amendments were considered, it was about bringing people into the court. Having been thought out, there are reasons one needs to meet people outside courts and facilitate them in a safe way to speak outside the court process.

Deputy Jim O'Callaghan: Dr. Burns's submission also referred to the lack of consistency between courts. Does the *in camera* rule contribute to the lack of consistency between courts?

Dr. Kenneth Burns: Partly. Judges we interviewed said they were unclear what their colleagues were doing. More reporting from the media and more research would help that. When we talked to participants in our proceedings and we told them how proceedings were running in other parts of the country, they were disbelieving. However, it was very clear that was just down to the fact that the people who were doing this are very busy. There is not a significant amount of reporting on this. The more transparency we can bring to the area, the more we can help decision makers, the more we can help participants in the proceedings and the more we can have a degree of consistency.

Deputy Jim O'Callaghan: In trying to achieve consistency, beside the *in camera* rule would it benefit if court presidents issued guidelines? How can we achieve greater consistency? Certain judges assess the voice of the child or attain the voice of the child differently from other judges.

Dr. Kenneth Burns: Dr. Shannon made it clear that we needed the new legislation to pull together. Under the Child Care Act judges have discretion over whether they hear from children. At that basic level it is inconsistent with the amendments via Article 42A. It is clear where we need greater consistencies in terms of the model. We have the contribution of Dr. Coulter's research. Our research is to clarify that we do not have one childcare proceeding model. We have a continuum of proceedings some of which are highly adversarial, some are a bit of a hybrid model and some tend more towards the inquisitorial model. We just need to make a decision.

There is a great opportunity in the ongoing review of the Child Care Act 1991 in the Department of Children and Youth Affairs. A Supreme Court judgment found that childcare proceedings should be an inquiry into the circumstances of the child. That is not really what happens in highly adversarial cases. I can understand why certain proceedings need to be highly adversarial when facts are contested. However, for the majority of cases we need to have some form of process that has alternative dispute resolutions where communication is clear.

The solicitors and social workers we interviewed were concerned about the damaged relationships between Tusla, social workers and parents when the process becomes highly adversarial. Social workers are working to support families over a long period, building those relationships. If a child needs to be removed or there is a question over a child needing to be removed and if that ends in a very adversarial process, those relationships are damaged very quickly because an adversarial process is about testing the evidence. The evidence from the people we have interviewed so far is that that may not be the best way to go. The children get lost in that and it becomes a matter of who wins, which cannot be good. We need to pause. At a minimum we cannot have many different systems; we must have one system. In whatever we decide, it must be child and parent friendly. We must find a way in which we can have conversations that keep the child's interests at the centre.

Deputy Clare Daly: I thank the witnesses for coming in. It has been very useful for us. As I do not want to repeat points previously made, my questions might be a bit eclectic, but I ask people to bear with me. Following what Deputy O'Callaghan said, I wish to ask Dr. Burns about the *in camera* rule. His account of the chilling effect would be akin to mine and he said it impacted on his research. I have found that with people who come to us. We are restricted in what we can say about some horrible experiences people have had for fear of risking that person being found in contempt of court, which sounds utterly bizarre.

Dr. Burns said that legislation to clarify would help, which I understand. However, do we need more? The media have neither the interest nor the resources to keep an eye on the family courts. It is not attractive enough in selling newspapers for them to have journalists covering them. Is there not an obligation on the State to provide, not just voluntary research projects with people going in *ad hoc*, but a bit like the childcare reporting system in public law, some formalised State-sponsored scrutiny? I believe Dr. Coulter suggested something like that. Is that what we need to get the openness? Does Dr. Burns have any information on a pilot scheme she mentioned about some sort of reporting that was done in the family courts? Would it be a case of amending the Judicial Council Bill? How can we put structure on the change, more than just legislation?

Dr. Kenneth Burns: I am not familiar with the initiative Dr. Coulter mentioned. I think she mentioned an initiative in the UK. This related to media organisations rationalising their front of house journalists and therefore not covering as many proceedings as they would have done heretofore. If we are interested in transparency and accountability, then an investment of resources is required. The Department of Children and Youth Affairs has ongoing support for Dr. Coulter's research.

I agree. I do not have a magic bullet. I cannot point to places in Europe where that is the case. We would stand out as a country. We are more secretive than other countries with which I am familiar. For example, other countries have access to court documents. Through the CAFCAS system in the UK, for example, researchers would have clear access to that. Accessing court records and accessing individuals, resourcing projects such as Dr. Coulter's over time is one thing. However, the Oireachtas needs to set the principle that we are seeking greater transparency and accountability in the family court system and that would enable, for example, civil society groups and politicians to gather evidence and collectively represent it in a safer way. Therefore parents and children, for example, would be more empowered to speak through these civil society organisations. It is about us continuing to support those civil society and grassroots organisations to have a representative role in this regard.

Deputy Clare Daly: We would need a combination of those measures to meaningfully

reform the *in camera* situation.

Dr. Kenneth Burns: I think so, but we need to change our culture. The culture in some of the Scandinavian countries is much more open. We are heading in the right direction, but we just need to keep going. We need all the things the Deputy mentioned. No significant harm has happened so far. One of the concerns over the early part of Dr. Coulter's research related to identifying individuals. The benefits that have accrued have been very significant and we need to continue with that.

Deputy Clare Daly: Obviously resources form part of that. I am still stressed and depressed after listening to Dr. Lord's account of a visit to the courts. It resonated with all of us; we felt what somebody would go through in being there. Further to a point FLAC made, even though it is important to address the issues relating to the physical structures and the immediate changes we can make, Dr. Burns said that unless we resource people's access to the courts and obviously all the other points, the situation is meaningless. Does anybody have a ballpark figure for the types of resources that would be necessary? It may be an unfair question. I am struck by Dr. Lord's point that if we get this right, in the longer term the State could end up saving money by doing this properly. Obviously in the shorter term, it will require resources.

Dr. Burns has described the deficiencies in the legal aid situation very well. It covers this subject but is not restricted to it. Have our guests experienced specific cuts or has the process not kept up with an evolving society and changed? What is the biggest impediment in that regard?

Ms Eilis Barry: Specific changes were made, such as the budget for court IT services, which was cut dramatically during the recession and which needs substantial investment. That should not be a major investment but it should be relatively easy to get a proper court website together. That would be very important. The budget for the Legal Aid Board needs to be set at a certain limit and more resources required. We do not say that if a person pays a certain amount, he or she will have access to a Rolls-Royce legal aid service. We are looking for multiple solutions, some of which will cost money and some of which will not, such as having someone in court who will be available to lay litigants. I would not think that would be a significant financial resource but it would be meaningful for people trying to access the courts by themselves.

Ms Stephanie Lord: The figure that the Legal Aid Board is given is in the public domain. It receives approximately €40 million per annum. Even though there have been increases in recent years, they have not really matched the requirements, given the number of people who engage the board's services. We have figures for the number of people who are waiting for legal aid services but we do not have access to information about the types of cases in respect of which they are waiting for assistance. Reforming the area of family law is connected to this broader issue of a need for large-scale reform in the entirety of the civil legal aid system. We could not really suggest a ballpark figure that we would recommend to provide for the Legal Aid Board to deliver the Rolls-Royce service that is needed. A holistic needs analysis of the entire system is required. We are reluctant to provide a specific figure lest it become part of the narrative that this magic figure will solve everything.

Deputy Clare Daly: A key aspect of this is that if we put the voice of the child centre stage, that can be a key plank in reforming the family law situation. I am intrigued by some points that Dr. Shannon made. He indicated that the binary nature of family processes is problematic for complex family situations and that children often want flexibility in arrangements that the system does not allow them to access. I would like to hear more about how that issue might

be addressed practically. Dr. Shannon stated that we need some legislative change to give the voice of the child more focus, but it is presumably not just guardians *ad litem*. Some judges talk to the children and some do not. In practical terms, how could we do that? Dr. Shannon referred to experts in the area of child attachment, development, abuse and so on and indicated that advice could be provided to the judges appointed to deal with these cases. Will he expand on how that might work? Would it involve experts sitting down with families in order to put together reports or talking with judges? How would that be developed more practically?

Dr. Geoffrey Shannon: That is a fundamental question and I am very supportive of the Deputy's vision. I support the comments on the Scandinavian system because it builds its infrastructure around children. In this jurisdiction, we build our structures around adults and available services. That is a fundamental shift. I urge this committee to focus on that structural reform. We have been very progressive in introducing new legislation but that new legislation will be of very little benefit unless we have the proper structures. We are missing those structures. In 1996, this issue was reviewed and led by former Chief Justice, Ms Susan Denham. It goes back further than that, to 1975. How many generations of children have grown up since we first started debating this issue? Deputy O'Callaghan asked if we need constitutional change. For a modest change, we do not. For ambitious change, however, prudence makes me suggest that we need constitutional change.

On the question about hearing the voice of the child, it is a cultural issue too, and a question of how we can ensure that everybody agrees that it is important that those most affected by our decisions are consulted on those decisions. That is my starting point. The next question is how we do it. I recall, in 2007, being asked about that by an international judge at the Anglophone-Germanophone conference which was held in Dublin at the time. I stated that it would be difficult. My vision would be to have stand-alone legislation on what one should do when a child appears in front of a court. I have had some direct experience in hearing directly from children and it is very challenging. A number of disciplines need to be involved to support judges to hear the voice of the child. Neither judges nor lawyers have specific training in this regard. When I referred to interdisciplinary work, I meant that no one discipline should have an exclusive preserve on this area, and if we are really committed to hearing the voice of the child, we need a set of protocols for how we achieve this. It will depend on the situation. It will be different in a private family law context but is nonetheless very important because divorce comes as a significant shock for children and usually causes an emotional crisis akin to a bereavement. How do we ensure that children are heard? It will be different in the child abuse context, where there is a power imbalance. It is a complicated project and requires a lot of skill in drafting legislation.

We should have overarching legislation where a number of disciplines sit down and look at how we ensure that the voice, welfare and best interests of the child are front and centre in our decision-making, introduce that legislation and have training for the Judiciary. In fairness, the District Court is now undertaking regular training. I have been asked to speak on some of these issues at its full-day conference on Saturday week. I will look at how the new domestic violence legislation will be implemented. Historically, our approach has been that we introduce legislation and it is left there. I suggest that a range of disciplines should come together. We should have this new, overarching legislation. Guidelines should be drafted for hearing the voice of the child. There will be multiple methods. We need to equip decision makers to be able to select the best method appropriate to the child. I hope that has been helpful.

Deputy Clare Daly: It is. For our report, we would look to suggest something radical because the problem here has been that, exactly as Dr. Shannon says, this has been debated for

decades. Many good recommendations have been made but there has been no implementation of them. People either did not bother with them, could not care less or it is part of a deeper cultural problem, which is the direction in which I am heading now. If we stood everything on its head and looked at things from a child's perspective, it would simplify many other matters. It feeds into the discussions we have had about custody arrangements and how a 50-50 divide is available only in 1% of cases. How much of that is linked to cultural issues?

I think Mr. Drakeford said that women expect to get the house and the kids. I do not think it is that at all but that we need to address the structural barriers that exist before couples break up, not just after they break up. The reality is that many women have lower wages and are the primary caregiver, or perhaps judges perceive them as being the primary caregivers. It is much more normal for women to work fewer hours and so on. Unless we address all of those issues, we cannot really talk about shared parenting. At our meeting last week, Mr. Damien Peelo referred to shared parenting and stated that it is not equal parenting. He indicated that we need to move away from guardianship and custody to parental responsibility, day-to-day contact, etc. Much of the culture or the practical issues must, presumably, feed into judges' decision-making. If the woman is already the primary caregiver, the judge will try not to discommode the children. We need to think outside that box also.

Dr. Geoffrey Shannon: The Deputy has raised a fundamental question. At the time of the debate on the Child and Family Relationships Bill, I made that very suggestion. I stated that we must move away from these historic terms, namely, "guardianship", "custody" and "access". At the time, the reason proffered for not progressing along those lines was that it might require more ambitious constitutional change. When it comes to our family court structures, we have been talking about this since 1975. The time is right now for fundamental structural change in order to ensure that we have a system which meets the needs of every citizen in this jurisdiction. Rather than trying to create a system that will not require constitutional change, I would much prefer to see being put to the people a constitutional proposal that would allow us to be very ambitious in any new family court structure we might establish rather than having a system that we are required to create, having regard to constitutional constraints.

Chairman: I will bring Mr. Drakeford in but I suspect that Deputy Clare Daly was moving along the line of witnesses and has some questions for him in any event. I understand that he would like to add to what has been said.

Mr. David Drakeford: I make the point that this is almost analogous to the insurance industry, where sometimes one can have outrageous claims that must be addressed by the courts in order to be stopped. In places like Sweden and Finland, there is not the same pressure to go to litigation because everything is calculated. The first is support for children. That money is ring-fenced and everything else is split. If outrageous claims are not available through the courts, then people might not have the incentive to go to the courts in the first instance and may be prepared to try mediation. It may encourage and motivate people to move in that direction rather than down the litigation route. I personally know people from both of those countries who have reached satisfactory outcomes within six to nine months. It is a model that needs to be the subject of serious consideration. If we are going to reform the system, we must encourage mediation. It will not work for every case but if there is nothing to be gained by going through the courts then people will not necessarily engage expensive barristers and solicitors in order to try to seize assets or demand custody, when they do not necessarily deserve them, from the other partner.

Deputy Clare Daly: I have a couple of concluding points. I seem to be picking on Mr.

Shannon but his contribution has been really useful and feeds into everything we are considering here. I am not sure if Dr. Shannon and Mr. Burns are contradicting each other but Dr. Shannon stated that judges have to set firm timetables for cases and so on. He also stated that the process should be child-focused and that the child's needs should be explicitly referenced. He further stated that this should be underpinned by primary legislation. Mr. Burns indicated that we should be cautious in the context of what happened in England and Wales and be conscious of the unintended consequences of time-tabling. What happened in England and Wales that we should try to avoid? What kind of legislative mechanisms should we put in place regarding time-tabling and case management? Everyone will agree that the delays are hugely problematic for children. Is there a difference of opinion between Dr. Shannon and Mr. Burns?

Dr. Geoffrey Shannon: Mr. Burns was referencing the fact that within the UK there was a system whereby a child was placed for adoption within a period of six weeks. I do not think anybody at this table would be in disagreement that the child's situation cannot be put on hold while the system deals with his or her circumstances. What we need is a robust case management system so that every case that comes into the system is dealt with within a reasonable period. I very much support Mr. Burns' view that a process as important as adoption cannot be dealt with in such a tight timescale. However, more generally, we need to ensure that children do not get lost in the system and that when cases involving families come before the courts, there is a requirement that they are dealt with as expeditiously as possible.

Deputy Clare Daly: What is the best way of doing that? Are we talking about an amendment to our family law legislation or a provision added to the Judicial Council Bill? How would we do that?

Dr. Kenneth Burns: The message that is coming from some of the contributors is that we need to look at this in the round. What happened in England and Wales is that the authorities wanted to reduce the average wait from 52 weeks to a maximum of 26 but it was also part of the introduction of a pre-proceedings process. The aim of that process was to take some of the discussions out of the court setting. What they found was that they managed to reduce the wait in about 60% of cases and to reach decisions in a timely fashion, which is what Dr. Shannon was talking about. However, the unintended consequence was that some of the orders that were given were different from what was expected. The point is that when we consider changes, we can learn from other jurisdictions in terms of what they have done. Other jurisdictions have made fairly fundamental changes from which we can learn. Furthermore, evidence is starting to emerge that unintended and unexpected consequences can arise from those changes. In England and Wales, they did something that had unexpected and unintended results. There was a reduction in the number of care orders and some of the cases ended up in special guardianship orders, for example, but that was not what was intended. One of the key messages in terms of timelines, which should be up for discussion, is the number of judges available. As FLAC pointed out, the number of available judges needs to be higher. There is no point setting deadlines without dealing with the availability of judges.

The broader question about guidelines is that if they provide that a decision must be made within X amount of time, they cannot be so rigid that exceptional cases, particularly adoption cases and other contested cases, are squeezed into an artificial deadline. It is nice to have benchmark and it is good to aim for that benchmark but it should not be an absolute. That is the main lesson from England and Wales.

Deputy Clare Daly: Mr. Burns mentioned decision makers with specialist knowledge who are not judges being involved in this area. How would that work?

Dr. Kenneth Burns: In a number of Scandinavian countries, including Switzerland, Finland and Norway, there is a panel of decision makers. The judge is usually the chair and the panel could include someone with social work or child protection expertise, a psychologist or what is described as a lay person. These could be local councillors or politicians. I am not sure how that would work here or whether it would be permissible because I am not a constitutional lawyer. The Scandinavian model broadens the responsibility for decisions because in fairness to judges, these are very difficult and serious decisions to make, often in isolation from one's peers. The question arises as to whether better decisions would be made if we had a broader panel of decision makers. At a minimum, even if the decision needs to be made by the judge, then at least he or she has immediate access to independent experts.

Deputy Clare Daly: That is a very interesting idea. My final question is on the breach of care orders, an issue that came up earlier and which was also referred to at last week's meeting by Dr. Róisín O'Shea. It is quite shocking that care orders on access are being ignored and no sanctions are being applied. What sanctions do our guests think should apply? We discussed the issue last week in the context of the example of a victim parent who had been denied access being granted more access. What sanctions would be appropriate? An issue was also raised regarding the forms in the courts. Dr. O'Shea had analysed 400 cases of breaches of access orders and found that no penalty or sanction had been imposed because the application forms had not been used.

Mr. David Walsh: The non-imposition of sanctions for breaches of access orders does not just happen in Ireland but is also very common in England. Mr. Justice Sir Paul Coleridge produced a report on it which found that imposing no sanctions had a very bad effect. The sanction suggested by Dr. Róisín O'Shea seems like a useful one. She has suggested compensatory time be made available for the parent who has been dispossessed, as it were, and that the compensatory period be greater than the period of loss. I think Mr. Justice Coleridge in England went further. He suggested that in extreme cases the offending parent simply be denied custody altogether or lose it.

Deputy Clare Daly: My understanding last week was that Dr. Róisín O'Shea had said that there was already a sanction but that it was not imposed because people did not know, if orders were breached, that they could apply to have a sanction imposed. Perhaps I got it wrong.

Mr. David Walsh: I am not aware of the intricacies of the law in that respect.

Dr. Geoffrey Shannon: That provision is in place. I have written a book on the new Children and Family Relationships Act. If it would be of assistance to the committee, I can make that material available. I deal extensively with the issue of dispute resolution and enforcement orders. Chapter 6 of the book deals with the new section 18D which includes a number of innovative methods for sanctioning breaches of access orders, including the granting of compensatory time. That is provided for in the amendment to the Guardianship of Infants Act introduced in the Children and Family Relationships Act 2015. As the facility is provided, it would be useful to monitor how the sanctions are being imposed. It is one of the most innovative provisions in the Children and Family Relationships Act which introduced new provisions into the Guardianship of Infants Act.

Ms Eilis Barry: Taking off my FLAC hat, I used to practise family law and represented people who said their child simply would not go on access visits. The concept of penalising the parent when the child is refusing to go on access visits does not necessarily seem to be in the best interests of the child, on which any sanction has to be based. If the voice of the child was

heard properly and comprehensively, breaches of orders might not happen in the first place. If we are to turn a family court into a place where penal sanctions are imposed or greater access is provided because of breaches of access orders, we might need a more comprehensive response than imposing a sanction.

Deputy Clare Daly: I certainly was not taking the point in isolation. It was very much in the context of everything else, but it was an issue that had been raised previously. It is an existing provision that is being ignored. It is also damaging to the children involved if their voices are not being heard, but it could equally be the other way around. The kid could be saying he or she wants to go but is being told that he or she is not going. Again, the issue is not having the child centre stage.

All of the delegates have been really helpful in helping us to stand this debate on its head. We have progressed matters today and I have certainly clarified my line of thought, for which I thank everybody.

Chairman: Dr Burns mentioned that in England and Wales something was done that had not been expected. That sounded familiar to me. I have just been watching it all night and there has been consternation for months on end.

Deputy Donnchadh Ó Laoghaire: Many questions have been asked, but there are still significant areas to explore. The last two sessions have been very interesting. These have been very valuable hearings which I hope will lead to a constructive report.

I will start by asking Men's Voices Ireland to clarify something. There is a statement from the Nemo Forum which was mentioned at the start. Are the delegates in a position to answer questions on it? Are the two organisations connected? If I am reading it correctly, there is a section in the submission that states the default position should be 50:50. Does it refer to custody?

Mr. David Drakeford: It is absolutely in respect of custody. In terms of an asset split, a ratio of 50:50 is important but that is after the costs have been taken away. It is only a reference to the model in Sweden, Finland and the other Nordic countries. Obviously, we have to take issues of domestic violence out of the equation. They are separate. If there is a clean split where there are no other issues other than marital breakdown, there is no reason equality should not apply.

Deputy Donnchadh Ó Laoghaire: I understand the point. I am not approaching it from a legal point of view but very much from a layman's point of view. It seems that it is difficult for a child not to have a primary residence. I am sure there are circumstances in which it can work and it should always be considered. However, it seems potentially to be a difficult existence for a child to spend half the time in one place and other half in the other. Does Mr. Drakeford disagree?

Mr. David Drakeford: We are in the 21st century and everything is becoming equal. As there are personal circumstances, it is very hard to generalise, but there is no gender-based reason one parent should be the primary or secondary parent. The facts of the particular case determine who will be the best parent. I am not a legal person either; I am a lay litigant. It is part of the Constitution that every citizen is equal. I see no reason parents cannot be equal also. There are plenty of cases in which it might more appropriate for the mother to be the primary carer. However, there are just as many in which the father might the appropriate primary carer.

Deputy Donnchadh Ó Laoghaire: I see the value of alternative dispute resolution approaches and mediation and believe they could play an enhanced role. Last week we had a discussion about whether they were appropriate in instances where there was domestic violence of any form. Is Mr. Drakeford of the view that they are not appropriate in such circumstances? I know that he has a very strong view that generally they should be mandatory. Would he make an exception in such circumstances?

Mr. David Drakeford: Yes because engaging in domestic violence is a criminal act. If one of the parents is behaving in a criminal manner, he or she does not have the same rights as someone who is a responsible parent for the kids, irrespective of his or her gender. I again refer to the models of mediation in the Nordic countries, although I am not an expert on them. If everything is taken out to ring-fence and finance the upbringing and welfare of the children, everything is split 50:50. However, if there is an issue such as alcohol or drug abuse or domestic violence, that parent will not have the same rights as someone who is a responsible parent, irrespective of his or her gender.

Mr. Frank McGlynn: To go back to the question about the 50:50 split, obviously, cases and circumstances vary. We believe a 50:50 split should be the starting point. Dr. Róisín O'Shea has mentioned that there seems to be a standard formula trotted out without taking various circumstances into account. It runs along the lines of an overnight stay every weekend and one midweek. This seems to be a formula judges use without taking icircumstances into account. Our view is that a 50:50 split should be the starting point and that if anybody wants to deviate from it, he or she should make a case for doing so, taking into account such factors as working requirements, availability to look after the children, etc.

Dr. Shannon made a point about the language used in the case of children. He referred, in particular, to the use of the word "custody". I am not aware whether there is a constitutional impediment to getting rid of this language but to me it is inflammatory. It implies a superior parent and an inferior parent and we should get rid of the word "custody". The only other time we use the word "custody" is when we speak about criminals being brought to prison. We really should change the language.

Mr. David Walsh: The Deputy raised the question of domestic violence. There are many cases where domestic violence is clear cut and where one party is clearly committing the violence and the other party is clearly the victim but, as we pointed out in our submission, in approximately 50% of cases it is not clear cut and it is not clear who is the victim and who is the perpetrator. Both may be both at the same time. This is a complex area that needs to be looked at. People must be satisfied they are distinguishing which is which and whether both parents are engaged in it at the same time. There is something called a victim-perpetrator matrix, as I understand it, which is used by the Garda. I am afraid that in all cases it assigns one role to one individual and the other role to the other. We take issue with this for the reasons we have set out. Research shows it is much more complex than this and it needs to be looked at much more closely.

Deputy Donnchadh Ó Laoghaire: Before I move on to the next question, I would say our understanding of domestic violence is that it is complex but the legislation and the response are becoming more sophisticated. On a criminal basis, domestic violence requires proof beyond reasonable doubt. Where it is not proved but people are subject to domestic violence, forcing them into mediation would be seriously re-traumatising and, ultimately, they might be successful in proving it. Even if they are not, the question still arises. My sense is that it is not appropriate.

The other witnesses can correct me if I am wrong but I believe they have offered a view on the specific topic of automatic guardianship. It was also spoken about by Treoir last week. I ask Dr. Shannon, FLAC and Dr. Burns whether they have a view on it. When the Law Society spoke about this it hedged its bets. Perhaps that is not fair but it stated it is too soon and it wants to see what effect the most recent legislative changes on the presumption have had. What are the views of the witnesses on a presumption of automatic guardianship?

Dr. Geoffrey Shannon: When the Children and Family Relationships Act 2015 was introduced a commitment was made to a review within a period of time of the issue of guardianship. This issue was front and centre of the debate when the legislation was being discussed. A commitment was given at the time on having a register of guardians. It would be a hugely important document because guardianship is the gateway to so many other rights. This was to be reviewed. There needs to be an examination of how we can ensure parents who have direct involvement in children's lives get the legal rights commensurate with their involvement. Rights should equal responsibilities. It needs to be scoped out and I am reluctant to make a definitive statement today. It is worthy of exploration. It should be viewed in two stages.

I support Treoir's recommendation on having a register of guardians. What happens if people agree to be guardians but lose the hugely important form? If we had a register of guardians they could access it. It is a very substantial right that is the gateway to custody and access. I suggest if the committee were disposed to making a recommendation on guardianship perhaps the starting point might be on the register of guardians, which was hotly debated at the time of the Children and Family Relationships Act, and then scope out the options available for enhanced guardianship rights. There is some legitimacy in the arguments being advanced that we need to look at this issue and the different roles we all play in raising children. If we had a system built around children we would not be getting exercised about guardianship issues, we would be getting exercised about ensuring that the parents looking after the child have the legal rights to ensure it happens.

Ms Eilis Barry: We do not have a definitive view on this. It is not something we researched before coming here today. It is a complex issue. The overriding criteria must be the best interests of the child and the welfare of the child.

Dr. Kenneth Burns: This is a really interesting question. My contribution on this will be of a personal nature as somebody who had to apply for a form to get guardianship of my own child. It was a source of curiosity that the lawyer had never dealt with the form before and did not know what to do with it. There was no register, which meant I was worried about losing the document. I see the merits of a register and why it would be very important. I grew up in a generation when it was socially possible and not culturally reprehensible to have children outside of marriage and we now have a plurality of family forms. We have been very successful as a nation in trying to recognise them.

The fathers I know who are not married do not know the minutiae of what they are entitled to and, in particular, they do not know about guardianship. Most of them did not know they were not automatically guardians of their children and were somewhat worried about the process of how to go about it. The 2015 Act made some progress but I understand there is a lot of confusion among men about how to go about receiving full guardianship if they are actively involved in the day to day care of their child, whether they live with the child or not. Progress on this is required.

Deputy Donnchadh Ó Laoghaire: My next question is for Dr. Shannon. It relates to

properly implementing Article 42A of the Constitution and giving effect to the provision on the voice of the child. In the discussion we had with Dr. Conor O'Mahony a number of weeks ago he identified three difficulties and I hope I do them justice. The first is where an expert is not appointed and the lack of clarity as to what should happen in these circumstances. The second is there is not a lot of clarity around determining whether a child has the capacity to have his or her voice heard. The third is where an expert is to be appointed but the parties cannot pay for it. Does this concur with Dr. Shannon's analysis? That being the case, is the first of the three the primary difficulty? Is it the most substantial problem? Are all three of equal weight? Are there other issues?

Dr. Geoffrey Shannon: I would say all three are of equal weight. It is important that some person has the standing to ensure the child's voice and welfare are front and centre when a court comes to make a decision. This touches on the second issue, which is capacity. It is my view that if a child is capable of articulating his or her views the best person to articulate those views is the child. Sometimes we have a tendency to overly professionalise the system. My experience of hearing children directly has been that children want to be heard by the decision maker. They feel empowered by being heard. What we then need to do is provide them with the supports to ensure this occurs. I read Dr. O'Mahony's evidence and I support the view there is a problem with the funding. My solution to this is to have a national system for funding all representatives of children, be they in public or private law proceedings. If one considers the Children and Family Relationships Act and if one considers sections 31 and 32 of that Act, the funding can fall on the shoulders of the applicants. If the constitutional aspiration is to ensure the voice of the child is heard, there is nothing in the constitutional aspiration that refers to having regard to the resources of the parent. It is an access to justice issue because if we are committed to hearing the voice of a child, we should have a national system for ensuring that children are heard in all proceedings affecting them. The overarching requirement is set out in Article 12 of the Convention on the Rights of the Child, which states that the child should to be heard, having regard to the age and maturity of the child in all judicial and administrative proceedings. That is why I believe we should have a national body such as the guardian *ad litem* service in the North.

I welcome the developments by the Department of Children and Youth Affairs, and this is being scoped out currently in terms of the childcare (amendment) Bill, but I suggest it is equally important in divorce cases. Sometimes we see children as bystanders in the divorce process. Children are hugely affected by divorce and they need to be supported through that process. Whether it is public or private law proceedings, my view is that it is a question not just of having the expert but ensuring that the vulnerable parents are not burdened with the cost of that expert at a very traumatic time in their lives.

Deputy Donnchadh Ó Laoghaire: I have a question on a related issue which I might address to the panel as a whole if anyone wants to speak about it. Some issues have arisen relating to section 47 reports arising from the 1995 Act. The point was made previously at these hearings that there is a lack of regulation of the people who can be considered experts under those provisions and a lack of scope for a party to the proceedings to challenge those reports. Do any of the witnesses have a view on whether there is a need for further regulation or on the scope to challenge those reports?

Chairman: Would Dr. Burns like to respond?

Dr. Kenneth Burns: Not at the moment, Chairman.

Mr. David Drakeford: I may come across as controversial but I believe in many cases this is just spin-off, easy funding for people who are not necessarily qualified as child psychologists. My understanding is that many of them do not address the key points. They do not have the necessary qualifications and do not look into the family. I am not saying that is in all cases but it is my experience that it is part of a spin-off industry which is taking more money from already poverty-stricken families. If it necessary to spend €3,000, €5,000 or €7,000 on getting in these specialists, it needs to be subsidised. It is money out of the pockets of the families who are already in dire circumstances.

Chairman: Did Dr. Shannon indicate?

Dr. Geoffrey Shannon: This issue has been addressed in the Children and Family Relationships Act, and we saw recently regulations issued around the child view expert. I believe we need a similar prescription relating to section 47 reports. We need to ensure that those who prepare the reports are properly qualified. We need to set out the terms of reference for engagement. We need to set out a fee scale because the cost of these reports can be prohibitive. I am a passionate believer in access to justice and if someone is being charged between €2,000 and €3,000 to prepare a report, that automatically excludes a large cohort of the population.

That brings me back to my big-picture recommendation, which is to have a national home for all of these reports, whether it is in the public or the private sphere. That would ensure consistency and a rationale for the appointment of an expert, having regard to the case that is before the court or administrative body.

Deputy Donnchadh Ó Laoghaire: Do the FLAC representatives have a view on that?

Ms Eilis Barry: We agree with what Dr. Shannon said. It is an access to justice issue. We have constitutional provisions on the voice of the child but if it is not resourced, the voice of the child will not be heard.

Deputy Donnchadh Ó Laoghaire: Specifically in regard to FLAC, I echo the points made on civil legal aid, which has not got much ventilation in some of the previous hearings. While it is self-evident, there is not enough money available and that is creating a huge barrier not only in this area but generally in many areas of civil law. I wholeheartedly agree with that and I suggest that one of our recommendations should be that civil legal aid, particularly as it pertains to this area, be much better funded.

I am not very familiar with the point about the unbundling of legal services. If I understand it correctly, and I may not, it means that an applicant can do what might be regarded as the more simple administrative work and where a complex argument has been made in the proceedings, a lawyer might make that case. It is something like that. Perhaps that point might be elaborated upon.

There is a good deal of information in the proposals, some of which is very straightforward and sensible and well worth taking on board. I want to get FLAC's perspective on that. Is this a case of FLAC being pragmatic in saying that in advance of a much-improved civil legal aid budget, we could do these quick fixes as well or are they complementary? Is this an interim measure that is absolutely needed or would FLAC rather see proper legal representation that is well funded to ensure that some of this might not be necessary?

Ms Stephanie Lord: There was an initiative in Canada on the unbundling of legal services and a good deal of research done by Professor Julie Macfarlane. If it would be helpful, I can

forward it to Deputy Ó Laoghaire and the other members after the meeting. Unbundling of the legal services involves providing funding for people who will access legal aid but who, through that, might have representation, advice only, assistance with completing forms or guidance on how to navigate the courts process or a combination of any or all of those.

In terms of FLAC's perspective, we would like to see a proper, comprehensively funded civil legal aid set-up where people can access advice and representation according to need. In the interim, on the way to achieving that larger goal, we recognise that there is a major budgetary issue in that regard and that much analysis needs to be done in terms of deciding the scope of what is actually needed to provide the level of funding required. We would like to see those additional mechanisms put in place. We do not see them necessarily as a replacement for providing people with both advice and representation but it is something that could be examined on the way to getting to that point. There are many initiatives that could be introduced for lay litigants that do not cost much money. That would make the process much easier to navigate. Does that answer the Deputy's question?

Deputy Donnchadh Ó Laoghaire: I think so, yes.

Ms Eilis Barry: I might add to that.

Chairman: Please do.

Ms Eilis Barry: We have been in existence for 50 years and we have been advocating for comprehensive civil legal aid. It is a pragmatic solution but it is not an alternative. We are still advocating for comprehensive legal aid and, again, I invite this committee to separately examine the issue of legal aid and not just in terms of the family courts. It is something that needs the forensic scrutiny of this committee.

Chairman: I might point out that access to justice is a separate issue that is on our programme of work. That does not mean we could not stray into it here.

Deputy Donnchadh Ó Laoghaire: On the issue of *in camera* proceedings, which was touched on previously, it seems there is a difficulty in that the area would benefit from greater publicity in the media. Realistically, however, it is not something the media will do in the foreseeable future because of cost, the level of labour involved and so on. Could there be incentives? How can we have these cases better reported in the mainstream media, as opposed to specified projects, within the restrictions that apply?

Dr. Kenneth Burns: It is not that the mainstream media are not reporting these cases. Perhaps there needs to be more reporting of them; I am not sure. I do not have a journalistic background. I am not sure how journalists could be encouraged to cover them. In the absence of journalists covering the cases, court reporting and research make up the other part of the solution. While Dr. Coulter's research is funded, very little other research is. Some research receives small to moderate funding. It is largely independent. Money could be provided through the Irish Research Council, which could put out a call for applications. There may be other ways in which one could go about it. Dr. Coulter has been very effective in her use of the media to tell the story of the proceedings. On that level, it might be duplication to pursue this area. It may be the case that we need to find ways to help the story be told in different ways. If Dr. Coulter runs the reporting project and people like us do research, the civil society sector may feel more able to comment on the proceedings without risk of being held in contempt. That might help ensure a greater understanding of the area.

The Deputy would have to ask journalists about what would incentivise them. When these cases are reported, they are reported fairly prominently. There is a public interest in understanding how these proceedings happen and what it is like for participants to take part in them. As we have learned today, the development of specialist family law courts is only one part of a broader suite of changes that need to occur in society. Deputy Daly referred earlier to structural issues in terms of poverty, family support, prevention, adequate funding for Tusla, and support for legal aid, including developing the legal aid budget. Liberalising the *in camera* rule will also help to tell more of that story. It is not just about what happens in the room but also about what has happened to families to lead them to end up in that court in the first place. That is very significant. There are issues of housing, poverty and so on that we need to deal with comprehensively.

Chairman: This has been a very informative engagement. I sincerely thank each of the witnesses not only for their contributions in the course of the questions and answers with our members, but also for the written submissions we received in advance, some of which were quite substantive. This is our third engagement on this subject and it is intended to be our final one. On behalf of the Joint Committee on Justice and Equality, I thank Mr. Walsh, Mr. McGlynn and Mr. Drakeford of Men's Voices Ireland. I am not quite sure of the relationship between the Nemo Forum and Men's Voices Ireland but they have come together in any event. All the witnesses were very welcome. I thank Dr. Shannon, who has been with us on many occasions. It is great to have him back. Ms Barry and Ms Lord from the Free Legal Advice Centres are not strangers to this institution either. It was great to have somebody from UCC who is not in some way partly responsible for Deputy Ó Laoghaire being here, because that has happened before. Dr. Burns's hands are absolutely clean in that regard. I offer again our thanks to all of the witnesses. I was teasing members earlier when I suggested we would sit next week. We will not sit next week as it is the week of St. Patrick's Day.

The joint committee adjourned at 11.55 a.m. until 9 a.m. on Wednesday, 27 March 2019.