

Legal Ease may 2023

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An Bord Um
Chúnamh Dílíthiúil
Legal Aid Board

Children's Rights Conference

Review: "Know Your Rights:
Remedies & How to Use
Them to Support Children"

Assisted Decision Making

The impact of the Act on
those individuals who are
currently Wards of Court

Reunification

A consideration of a central
tenet of the Child Care
process

The last edition of Legal Ease came out in November 2021. Since then, there has been a bit of a lacuna. Life is all about transitions.

In the Legal Sector there is a constantly changing landscape; the changes sculpted by new legislation, changes in personnel at ministerial and judicial levels, changes in procedures and policies both external and internal and changes among peers for a variety of reasons. Examples of these changes can be geological in nature, that is, the result of slow pressure over a long time, such as the recently approved change in the increment at which solicitors can be recruited to the Legal Aid Board or the yet to materialize Family Courts building. Others seem much quicker, such as the appearance of COVID, or changes in the senior management structure of an organisation.

I hope to bring some transition to Legal Ease and to do something a little different with it. Those aspirations will be covered later. This issue marks the change in CEO, with the departure of John McDaid and his replacement by Joan Crawford, the first female CEO of the organisation. A new appointment at the helm of an organisation will always be a harbinger for change and will often bring a period of uncertainty for staff, however, as Joan has been a key figure in the Board for such a long time there is a reassuring continuity that hopefully will make her transition into her new and challenging role easier for Joan and all staff of the Board.

Child Care remains a principal practice area for many solicitors in the Board and this issue of Legal Ease will focus primarily on Child Care but my hope is that subsequent issues will be more varied. The current content and format is purely legal and, some say, appeals only to the solicitors within the Board. That was no doubt the intention when the concept was first realised and that function has been well-provided for by the canon of issues of Legal Ease to date. I would like to see that purely legal function of Legal Ease retained and have it merged with other functions so that a part of the publication is dedicated to the dissemination of legal articles on subjects of contemporary interest to solicitors within the Board and other parts are dedicated to communication between staff of all grades and in all units throughout the organisation.

In making some or other aspects of the publication relevant to as many staff as possible, I would hope a new lease of life can be breathed into Legal Ease and it may serve an expanded purpose. I think the Board needs an In-house publication that is diverse and inclusive while remaining erudite and maintaining a professionalism that can be seen in other similar publications circulated in other organisations and public sector departments.

My aspiration for Legal Ease going forward then is for a more inclusive and diverse publication that will serve all of the staff in the Legal Aid Board and which, principally, will be comprised of contributions from those staff members of material that is of interest to those staff members while retaining as its spine, topical legal articles relevant to the practice areas in which the Board provides legal services. I hope as many of you as possible will take this opportunity to contribute to upcoming issues by submitting material for consideration to legalease@legalaidboard.ie.

Peadar Browne
Editor

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GO N-ÉIRÍ AN BÓTHAR LEAT, JOHN.

After what he diffidently describes as “a few years” in the Board in which he has held various roles concluding ultimately with CEO, John McDaid is moving on.

John began his career with the Board as a solicitor in 1993, having briefly worked as a lawyer in Australia and with Eugene F. Collins, Solicitors upon his return to Ireland. After a brief period working in Clondalkin Law Centre, he worked as a Managing Solicitor in Longford and Navan Law Centres and also in what is now the Board’s International Protection and Human Trafficking Unit in Dublin. In 2005 he took up a senior management role as the Professional Liaison Officer before becoming the Director of Civil Legal Aid, a position he held until his appointment as Chief Executive in December 2014.

To coin a legal phrase I always held in dubious regard, through the effluxion of time John has seen a great deal of transformation in the sector generally and the Board specifically, thankfully including an increased emphasis on plain English.

In slimmer days, I played football with John and if I lost a ball to an opponent in midfield, I always felt confident John, at center half, would stop him. He was strong, tough, fair and consistent. As CEO he has drawn upon some of those qualities in running the Board and dealing with stakeholders, internal and external, and in particular in dealing with the behemoths that are the Department of Justice (DOJ) and the Department of Public Expenditure and Reform (DPER).

As he explained to Keith Walsh in a recent interview published in the Parchment, John was a member of the Family Justice Oversight

Group and the Family Justice Strategy Implementation Group through which he made significant contributions to bringing meaningful reform to the family courts system. John was also instrumental in bringing mediation for clients to the Legal Aid Board.

John has lobbied the DOJ and DPER relentlessly for a considerable number of years on the ongoing issue of the starting salary levels the Board is forced to recruit at, which falls far short of the starting salaries for solicitors taking up roles with the Director of Public Prosecutions (DPP) or with the Chief State Solicitor’s Office (CSSO). This unjustifiable difference in starting salaries is, and will continue to be, a significant disadvantage to the Board in recruiting and retaining staff, notwithstanding the recent concession that the Board could recruit at up to point three on the solicitor grade III scale.

The discretion to offer starting salaries up to the third increment is tied to the PQE of the applicant. If the applicant has three or more years PQE the Board may offer a starting salary at point three of the scale, if only two years PQE then the Board may offer a starting salary at point two of the scale, and if the applicant has only one year of PQE...well, you can work that out yourself.

So under these unfair recruiting conditions, the recruitment and retention challenges faced by the Board will and do continue. As John stated in his interview with Keith Walsh, “We are compelled to offer potentially €12,600.00 less

than those other bodies. The consequence was that recruitment in Dublin became exceptionally challenging – well over and above the normal recruitment challenges experienced in the solicitor market in the last few years. Indeed solicitor recruitment in Dublin remains a very significant issue.”

John’s term as CEO finished on 31 March last and the reins now pass to Joan Crawford. I think it is fair to say that John leaves the Legal Aid Board in reasonably good fettle but with a significant number of challenges, which again, I think it is fair to say, is the lot of the CEO of any

organisation and in particular any public sector organisation.

Personally, and I’m sure on behalf of all who know and have worked with (and played football with) John, I would like to wish John the very, very best of good fortune in all his future endeavours and to thank him for his commitment and dedicated service to the Legal Aid Board over the “few” years he’s been here. I understand he is currently enjoying a well-earned break with his family in Spain where he will spend some of his time on the Camino. Go n-éirí an bóthar leat, John.



John’s term as CEO finished on 31 March last and the reins now pass to Joan Crawford.

THE ASSISTED DECISION MAKING (CAPACITY) ACT 2015 (AS AMENDED): DISCHARGE FROM WARDSHIP AND MINOR WARDS

Aisling Mulligan BL
& Emma Slattery BL

The Assisted Decision-Making (Capacity) Act 2015 as amended by the Assisted Decision-Making (Capacity) Amendment Act 2022 ('the Act') has been a long time in the making, having taken the scenic route to becoming the legislation it is today, from its genesis in the Law Reform Commission reports of 2003, 2005 and 2006.

In its earlier iterations, Adult Care Orders similar to those of the Child Care Act 1991 had been proposed¹. These Adult Care Orders would have allowed any relevant interested party to apply for orders with few limitations upon what could be sought in the "best interests" of the subject of the order. The Act represents a fundamental shift away from protective and paternalistic orders in favour of provisions that support and maximise the individual's participation in decisions relating to their personal welfare, property and affairs.

Due to the confines of this article, it is not possible to consider all of the support provisions of the Act², instead this article considers how the Act impacts those c. 2200 individuals who are currently Wards of Court. This article will review the provisions relating to the review of capacity of existing Wards of Court, along with minors, often children in care, who are Wards of Court. With the Act having commenced on the 26th of April 2023, these applications will be some of the first interactions practitioners will have with the Act.

Discharge From Wardship:

Part 6 of the Act provides for the review of the capacity for those who are currently Wards of Court and it confirms that all Wards who have reached the age of majority at the time of the commencement of the Act will have their capacity reviewed within three years of commencement³. In general, the Act provides that court applications (with limited exceptions) will be made to the Circuit Court, however reviews under Part 6 must be undertaken in the court in which the Wardship Order was made. In most circumstances this will mean reviews are undertaken in the High Court. While the Lunacy Regulation (Ireland) Act 1871 will be repealed, current Wardship Orders remain in being until such time as the reviews are completed.

The purpose of the review is to discharge the Ward from

1. O' Neill AM, Wards of Court Ireland, (2004, First Law), Page 187

2. For further reading on the broader provisions of the Act see: "The Days of Best Interests are Over" by Aisling Mulligan BL, Bar Review, July 2022

3. See Section 54 of the Assisted Decision Making (Capacity) Act 2015 (as amended).

wardship by making a declaration as to the Ward's capacity and, in the event that the Ward continues to lack capacity, make provision for them to enter into one of the arrangements under the Act. As capacity will be construed functionally⁴, a Ward may be declared to have capacity in some areas and not others, and therefore careful consideration should be given to the drafting of these applications. Given that capacity is issue-specific, consideration will have to be given to the areas the Ward lacks capacity in relation to. For example, a person may have been admitted to Wardship for the purposes of managing a large award of damages in circumstances where they lack the capacity to make decisions in relation to that award, a large portion of which will have been to provide for their future care. Wardship will have deprived them of all of their decision-making authority. However, it may be the case that the Ward lacks capacity in relation to the sale of property but not day-to-day management of a social welfare payment, the Ward may lack capacity in relation to their healthcare decisions, but not in relation to participation in social activities. Thus, the individual's needs, assets and circumstances should be considered in detail when obtaining expert evidence and drafting Part 6 applications, as these could vary significantly from Ward to Ward.

Section 55 of the Act sets out the declarations that the court can make upon review of the capacity of Wards. Firstly, the court may declare that a Ward does not lack capacity (i.e. the Ward has capacity). If the court declares that the Ward does not lack capacity, the court shall immediately discharge the Ward from wardship, and order that their property be returned to them. Thereafter, the court may give "such directions as it thinks appropriate" having regard to the circumstances of the former Ward. Given the complex set of arrangements and directions that may be in place with regard to a person

in wardship, the discretion of the court will be useful in disentangling those arrangements and facilitating a smooth discharge from Wardship.

Secondly, the court may declare that the Ward lacks capacity, unless they have the assistance of a Co-Decision-Maker ('CDM'). In such instances, the court must be satisfied that if the Ward had a CDM to make decisions jointly with them, the Ward would have capacity in relation to the decisions in question. In those circumstances, the court shall provide time for the creation and registration of a Co-Decision-Making Agreement ('CDMA') and then discharge the Ward from Wardship.

Lastly, the court may declare that a Ward lacks capacity even where a CDM is available to them, and thus requires a Decision-Making Representative ('DMR'). If the court declares that the Ward lacks capacity even if they had a CDM, or if a CDM has not been registered within the time provided for by the court, the court may use the provisions of Part 5 of the Act to appoint a DMR and discharge the Ward from Wardship.

Review of Wards who are minors

As mentioned above, the Act generally applies only to those who have reached majority. Thus, the Act will not affect Wards who are minors until they reach majority.

However, section 54(2) provides that minor Wards, who turn eighteen within two and a half years of the date of commencement of the Act, the court must review their capacity by no later than the third anniversary of the date of commencement. Therefore, with the commencement of the legislation on the 26th of April 2023, if a minor Ward turns eighteen any time between the 26th of April 2023 and the 25th of October 2025, the review of their capacity must take place by no later than the 25th of April 2026.

Thereafter, a minor Ward who turns eighteen on or after 26th of October 2025 must have their capacity reviewed within six months of their eighteenth birthday.

4. See Section 3 of the Assisted Decision-Making (Capacity) Act 2015 (as amended)

Co-decision-Making Agreements⁵

If a Ward can be deemed to have capacity with a CDM to make relevant decisions jointly with them, then they are entitled to the benefit of the provisions of the Act that allow for the creation of a CDMA. A Ward who is the subject of such a declaration may enter into a CDMA as provided for in Part 4 of the Act. Part 4 provides detailed requirements in order to enter into and register a CDMA, which are to be supplemented by Regulations set down by the Minister and Specifications made by the Director.

Decisions provided for under a CDMA are made jointly by the Appointer and the CDM, and reasonable efforts must be made to ensure that the decision is implemented. In acting as a CDM, one must ascertain the will and preferences of the Appointer on matters which are the subject of the CDMA, advise the Appointer, assist the Appointer in obtaining

to act as a CDM, or the Ward has not registered a CDMA within the period allowed by the court, then the court may make a Decision-Making Representation Order ('DMRO') appointing a Decision-Making Representative. A DMR may be appointed to make decisions pertaining to the Ward's personal welfare and/or property and affairs. The DMR must have regard to the terms of any Advanced Healthcare Directive ('AHD') and/or Enduring Power of Attorney ('EPA')

and ensure that no actions are taken that are inconsistent with either an AHD or an EPA. In appointing a DMR, the court should have regard to the known will and preferences of the person;

- The desirability of preserving existing relationships within the family⁷;
- The relationships between the proposed representative and the person;
- Any conflict of interest; and

The CDMA has significantly greater formality than a Decision-Making Assistance Agreement, which is reflective of the more active role and responsibility that a CDM will have.

information and discuss with the Appointer the known alternatives/likely outcomes of a relevant decision. The CDMA has significantly greater formality than a Decision-Making Assistance Agreement, which is reflective of the more active role and responsibility that a CDM will have. It is anticipated that members of a Ward's current committee might seek to be a CDM with the Ward, subject to the eligibility criteria.

Decision-Making Representatives⁶

Where the Ward lacks capacity even with the benefit of a CDM and there is no suitable person

- The complexity of the task.

The same provisions in term of eligibility, disqualification, performance of DMR functions, remuneration and expenses, scope of DMRO in relation to property and affairs, and restrictions on DMRs apply to DMRs appointed following a review and discharge of a former Ward.

If no suitable person can be identified, then a person may be appointed from the panel maintained by the Decision Support Service. The court has the power to set the parameters of the appointment, such as limiting the period for which the order has effect. Similarly, it is

5. See Part 4 of the Act and Sections 16- 34 of the Assisted Decision-Making (Capacity) Act 2015 (as amended)

6. See Part 5 (Sections 37 to 51) of the Assisted Decision Making (Capacity) Act 2015 (as amended)

7. Practitioners may wish to review the recent Judgement of Hyland J. who considered the appointment of committee's in wardship in *Re Mr M* [2022] IEHC 21

anticipated that the DMR may come from the Ward's current Committee.

Further Review

If following a review under Section 55, the Wardship court declares that the Ward lacks capacity, the court shall make an order that the Circuit Court reviews that declaration either within 12 months or within 3 years, if it is unlikely that the former Ward will recover their capacity. This brings the former Ward into substantially the same review process⁸ as apply to those who are declared to lack capacity pursuant to a Section 37 application.

It is also worth noting that, while all adult Wards of Court must have their capacity reviewed within three years of commencement, an application to review the capacity of a Ward of Court may be made at any time by the Ward themselves, by the committee for the Ward or, with the consent of the Wardship Court, by a relative or friend who has a relationship of trust and confidence with the Ward. The court may give leave to such person who has a sufficient interest or expertise in the welfare of the Ward to bring the application to review the Ward's

capacity.

Conclusion

The review and discharge provisions in the Act represent a significant opportunity for many Wards. In particular, it should allow many to manage many aspects of their lives and to obtain a level of support appropriate to their needs. The purpose of the discharge application is to maximise these abilities and ensure that any incursion on the decision-making autonomy of the person is limited to what is necessary in the circumstances. The Legal Aid Board have almost-unparalleled expertise and experience in assisting those with additional needs and are well placed to support this process. Practitioners should keep the guiding principles set down in Section 8 to the fore of their mind during this process and ensure that the court has the necessary information before it on hearing applications under Part 6 to fully consider and apply these principles. Where possible, decisions should be categorised as much as possible to give the Ward the greatest opportunity for self-determination as this is, in reality, what the end of Wardship is all about.

8. See Section 49 of the Assisted Decision Making (Capacity) Act 2015 (as amended)



Aisling Mulligan BL



Emma Slattery BL

NEW FAMILY AND CHILD LAW LIBRARY SERVICES AT LAW SOCIETY



Currently, the Law Society is promoting its Library's Family and Child Law resources. These resources will prove particularly useful to Legal Aid Board solicitors working in these practice areas. Just this month, the library has produced a Family and Child Law Resources Pack which provides information and an extensive bibliography on Irish and European textbooks (including with precedents) in those general areas of law but also specifically in Adoption; ADR; Child Law; Divorce and Pensions. There is also information and an extensive list of journal articles on a wide range of specific topics in these practice areas, including Capacity; Child Abuse; Cohabitation, Mediation and Succession. The resources pack also provides useful weblinks both to internal Law Society material, including committee pages and access to useful precedents as well as to other relevant websites.

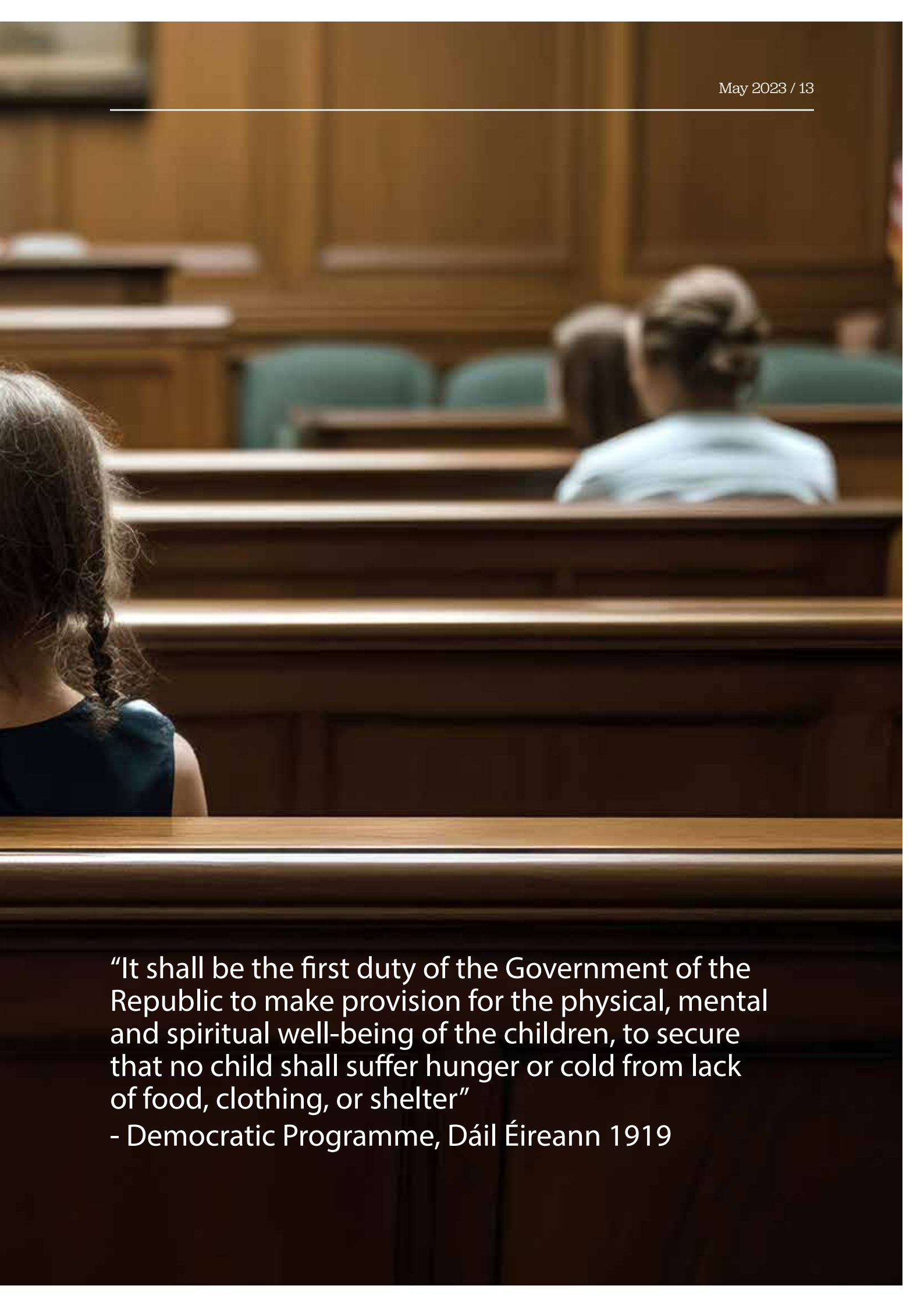
MAKING CHILDREN'S RIGHTS A REALITY

Mairéad Nic Gabhann provides an overview of the agencies facilitating the realisation of Child Rights

The Children's Rights Alliance (CRA) recently hosted a conference on the theme 'Know Your Rights: Remedies & How to Use Them to Support Children' aimed at advice-givers and people who work to support children, young people, and their families. Given the difficulties facing children in accessing legal remedies through the court system, the conference employed an effective 'seven-minute each' introductory approach to highlight agencies of relevance which proved to be informative, effective, and efficient. Can similar language be applied to fulfilment of children's rights in the State?

Ireland's newly appointed Special Rapporteur for Child Protection, Caoilfhionn Gallagher KC, delivered the keynote address. Ms. Gallagher, a Dublin native based in the UK, is a prominent human rights lawyer and the first woman and non-academic to hold the role. Panel discussion followed, which was chaired by Tanya Ward, Chief Executive of the Children's Rights Alliance. Speakers included Nuala Ward, Director of Investigations at the Ombudsman for Children's Office, Emer Butler, Investigator at the Office of the Information Commissioner, Stephen Bourke, Consumer Protection Executive at the Competition and Consumer Protection Commission, and Andrew Carroll, Assistant Commissioner at Data Protection Commission. Judy Walsh, Head of Subject for Social Justice, at the UCD School of Social Policy, Social Work and Social Justice provided closing remarks at the event.

Caoilfhionn Gallagher began by examining the experience of children's rights in Ireland, and then compared theory and practice, employing a famous Albert Einstein quote to make her point: "In theory, theory and practice are the same. In practice, they are not." Gallagher made clear the importance of seeing children as rights-holders, and a theme of making children's rights a reality was immersed in the first input of the day.



“It shall be the first duty of the Government of the Republic to make provision for the physical, mental and spiritual well-being of the children, to secure that no child shall suffer hunger or cold from lack of food, clothing, or shelter”

- Democratic Programme, Dáil Éireann 1919

Recounting the programme outlined at the first sitting of Dáil Éireann 105 years ago that 'It shall be the first duty of the Government of the Republic to make provision for the physical, mental and spiritual well-being of the children, to secure that no child shall suffer hunger or cold from lack of food, clothing, or shelter'¹, Ms. Gallagher noted this principle was not reflected in the 1937 Constitution, or in practice throughout the State's history. Ms. Gallagher also acknowledged Ireland's high standing reputation in both the human rights and children's rights international arena and commended the Irish government for having the role of Special Rapporteur for Child Protection in place. Ms. Gallagher has committed to a critical analysis and evaluation of children's rights in Ireland and will set out criteria to measure the State's performance going forward. Particular areas requiring

1. Democratic Programme, Dáil Éireann debate Tuesday, 21 January 1919, available at: <https://www.oireachtas.ie/en/debates/debate/dail/1919-01-21/15/>.

improvement include access to mental health services, the youth criminal justice system, and discrimination against children of Traveller and Roma heritage.

The Agencies:

Ombudsman for Children (OCO)

Nuala Ward is the Director of Investigations Ombudsman for Children (OCO) in Ireland. The OCO is a human rights institution that promotes the rights and welfare of young people under 18 years of age living in Ireland. The OCO highlights issues that concern children and monitors and reviews legislation, Government policies and how they affect children. The OCO advises Government, and other organisations delivering services on behalf of the Government, to help ensure laws and policies respect children's rights.

The OCO investigates complaints about services provided to children by public organisations such as schools, local authorities,



The above seven principles describe the quality of care and provision that each child should experience when using services that are grounded in children's rights.¹

1. Infographic and further detail available at: <https://www.unicef.org/uk/child-friendly-cities/crba/>.



the HSE, or Tusla. The service is free and independent.

Website: <https://www.oco.ie/>

Garda Síochána Ombudsman Commission (GSOC)

Jon Leeman, Garda Síochána Ombudsman Commission (GSOC) discussed their policing oversight work, and reminded the audience that GSOC's function is to deal with matters involving possible misconduct by members of An Garda Síochána (AGS), in an efficient, effective and fair manner, and it is not AGS investigating AGS.

"Our aim is to provide a better policing service for the people of Ireland. Each agency has different functions which contribute to achieving this overall objective. With regard to children's rights, 'make it our problem' we can't help if we don't know." Children may make complaints themselves, or an authorised person such as parent or guardian may make a complaint on their behalf.

Website: <https://www.gardaombudsman.ie/>

Office of the Information Commissioner (OIC)

Emer Butler, Investigator at the Office of the Information Commissioner (OIC) walked us through making a Freedom of Information (FOI) request for records, illustrating the point that you may need to make an FOI request to pursue a complaint against one of the other rights realisation bodies. The OIC is the appeals body for Freedom of Information in Ireland. Their job is to review decisions which

public bodies make on Freedom of Information requests. Tips: Don't ask questions, ask for records and be really specific. Be as detailed and focussed as possible as broad requests are likely to be refused. Engage with the FOI body to help it identify where records might be held, i.e. what hospitals, doctors, multi-disciplinary teams were involved in care.

Website: <https://www.oic.ie/>

Data Protection Commissioner (DPC)

Andrew Carroll, Assistant Commissioner, Data Protection Commissioner (DPC) gave examples of how children fit into the work of the DPC and directed the audience to guidelines on the processing of children's personal data which are of particular assistance to organisations working with children and young people. The DPC have formulated 14 standards² for protecting children's data protection rights, and guidelines for parents on keeping their data safe.³

Website: <https://www.dataprotection.ie/>

Irish Human Rights and Equality Commission

Rosa Eivers, Senior Solicitor gave an overview of the work of IHREC in realising rights and equality cases. Examples include work with unaccompanied minors, and IHREC's role as

2. Data Protection Commissioner, Children Front and Centre: Fundamentals for a Child-Oriented Approach to Data Processing available at: https://www.dataprotection.ie/sites/default/files/uploads/2021-12/Fundamentals%20for%20a%20Child-Oriented%20Approach%20to%20Data%20Processing_FINAL_EN.pdf.

3. Data Protection Commissioner, My Child's Data Protection Rights available at: <https://dataprotection.ie/en/dpc-guidance/my-childs-data-protection-rights>.

Special Rapporteur on trafficking in persons.

Website: <https://www.ihrec.ie/>

Competition and Consumer Protection Commission (CCPC)

Steven Burke, Consumer Protection Executive, highlighted their office does not take cases as per other bodies, and instead work to realise rights through providing information to the public or individuals, providing education,

and investigating, e.g. child and baby related products, and if necessary banning and alerting. A recent example is the banning of baby self-feeding pillows due to the “risk of death or serious harm” to infants.⁴

Website: <https://www.ccpc.ie/>

4. Irish Times, Sale of ‘dangerous’ baby self-feeding pillows banned by consumer watchdog, Thu Dec 22 2022 available at: <https://www.irishtimes.com/health/2022/12/22/sale-of-dangerous-baby-self-feeding-pillows-banned-by-consumer-watchdog/>.

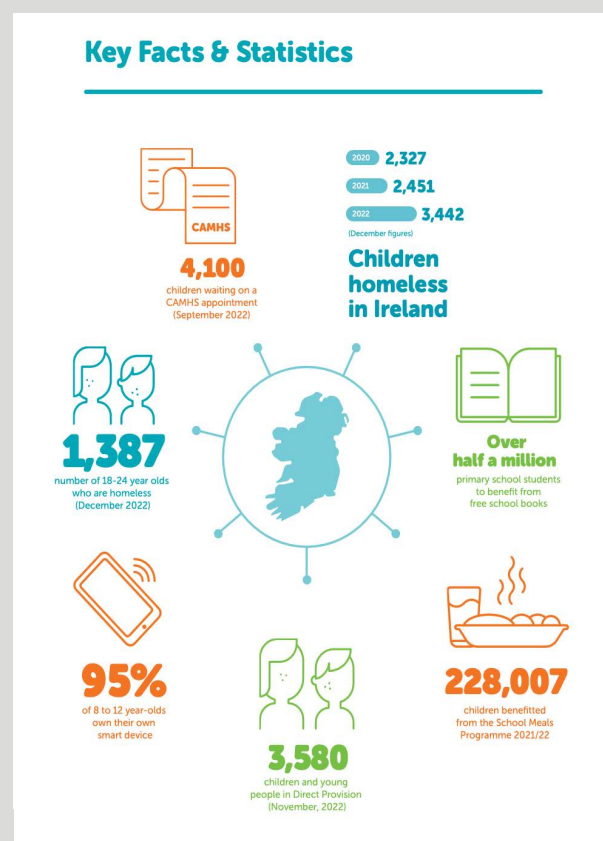
Wider Context: Review of Child Rights in Ireland

The following two items are taken from the Children’s Rights Alliance Report Card 2023¹, an analysis of Programme for Government: Our Shared Future and how it performed for children in 2022. An independent panel of experts graded the government’s performance as follows:

Grades Table		
Government Commitment, June 2020	2022	2023
Reform the childcare system	B-	B+
Establish a central agency, Childcare Ireland	D	C
Commence a free school books pilot	D-	B
Introduce national monitoring of reduced school days	B-	B-
Ensure each child with a special educational need has an appropriate school place	C-	C
Undertake an independent assessment of the education inclusion pilot for Traveller and Roma children	D	D+
End the admission of children to adult psychiatric units	E	E
Address food poverty in children	C+	C+
Introduce a Public Health Obesity Act	D	D
Reduce the number of homeless families	E	D-
Develop a National Youth Homelessness Strategy	D	B
End the Direct Provision system and replace it with a not-for-profit accommodation model	B-	D
Create new pathways for long-term undocumented people and their children	B	B+
Enact the Harassment and Harmful Communications Bill	A	A
Enact the Online Safety and Media Regulation Bill and establish an Online Safety Commissioner	C-	A
Enact a Family Court Bill and build a new Family Court Building	C-	C+

Explanation of Grades:

- A:** Excellent, making a real difference to children’s lives
- B:** Good effort, positive results for children
- C:** Satisfactory attempt, but children still left wanting
- D:** Barely acceptable performance, little or no positive impact on children
- E:** Unacceptable, taking steps in the wrong direction, no positive impact on children
- F:** Fail, taking steps that undermine children’s wellbeing
- N/A:** Not applicable, due to vague nature of Government commitment



1. Full report available at: <https://www.childrensrighs.ie>

Progress

The Online Safety and Media Regulation Bill was signed into law in December 2022, a welcome advancement in Child Safety Online. Provisions for the appointment of an Online Safety Commissioner and the creation of an individual complaints process heralds a new age of oversight and responsibility for tech firms and online services. Pathways for Undocumented Children was alleviated by the scheme to regularise the status of undocumented people living in Ireland which saw 6,548 applications, encompassing 8,311 persons, made over a six-month period. As of April 2023,⁵ almost 8,000

any other human rights treaty in history. Ireland adopted the UNCRC in 1989 and ratified it in 1992. 196 countries have become State Parties to the Convention as of December 2021.

UN Committee on the Rights of the Child

The UN Committee on the Rights of the Child (Committee) is the body of independent experts that monitors implementation of the Convention. All States who are Parties to the Convention are obliged to submit regular reports to the Committee on how it is being implemented. Ireland's Fifth and Sixth State Report to the Committee were submitted on 15 February 2022, following a hearing on 24 and

Youth Mental Health continues to be an area of acute need and scored the lowest grade of CRA's Report Card 2023.

applicants have been granted status under the scheme, with approximately 3,000 people awaiting their decision.

Meanwhile, investment of €1 billion in Budget 2023, five years ahead of schedule, resulted in a boost in the area of Reform of Early Childhood Education and Care.

Room for Improvement

Youth Mental Health continues to be an area of acute need and scored the lowest grade of CRA's Report Card 2023. The commitment to end direct provision and its impact on children, family homelessness, Traveller and Roma education, and the Health and Obesity Act are among the weaker performances.

UN Convention on the Rights of the Child

The United Nations Convention on the Rights of the Child (UNCRC) is the most rapidly ratified human rights treaty in history with more countries having ratified the Convention than

25 January 2023 where the Committee made observations and recommendations⁶ to Ireland on its implementation of the Convention. The report also includes guidance on how the Irish State can better uphold rights of children and young people across a number of areas including education, non-discrimination, poverty, mental health, and youth justice.

The Committee welcomed advancements such as commencement of the Children First Act, Children and Family Relationships Act, and the Irish Sign Language Act. Recognition was also given to adoption of progressive legislation and strategies including the National Traveller and Roma Inclusion Strategy 2017–2021, LGBTI+ National Youth Strategy 2018–2020, National Disability Inclusion Strategy 2017–2021, and Youth Justice Strategy 2021–2027. Six areas necessitating urgent State action are highlighted:

5. Documentary On Newstalk, Undocumented, aired on Sunday, 23 April 2023.

6. Concluding Observations on the combined fifth and sixth periodic reports of Ireland is available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FIRL%2FCO%2F5-6&Lang=en.

1. Non-discrimination.
2. Violence.
3. Mental Health.
4. Standard of Living.
5. Education.
6. Child Justice.

Speak Volumes: Amplify Voice-of-Child in Family Law

The Committee recommends that the best interests of the child principle is consistently applied in all programmes and legislative, administrative, and judicial proceedings involving children. Children should have the right to speak up before judicial judgments are made, and guidance should be provided to all relevant persons in authority for determining the best interests of the child, and for giving those interests due weight as a primary consideration.

This direction echoes a 2022 report⁷ commissioned by One Family which asserts that the voices of very young children are 'starkly absent' from Ireland's family law system. The report is the first to present qualitative evidence of what is currently happening in

7. Mc Caughren, S., Holt, S. Gregory, S., and Parkes, A. Research Report on Guidance on Contact Time for Infants and Young Children in Separated Families. Trinity College Dublin. Available at: <http://www.tara.tcd.ie/handle/2262/101861>.

practice in relation to this issue in Irish family law cases. Dr Aisling Parkes, Senior Lecturer, UCC School of Law commented: "Whilst our legal system has gone some way towards acknowledging the importance of children's rights by the introduction of Article 42A into our Constitution, unfortunately our research shows that the translation of those rights in any real and meaningful way in family law cases leaves a lot to be desired, particularly for very small children".⁸


Family Environment

Noting publication of the Family Courts Bill and the Family Justice Strategy, the Committee proposes prioritisation of reform of the family law system based on the Family Courts Bill, with a view to ensuring that proceedings on custody and other family matters are promptly resolved in a child-friendly manner by professionally trained staff and ensuring children's views and best interests are taken into consideration in childcare proceedings, including by allocating sufficient resources for the implementation of the Child Care (Amendment) Act 2022.

Voting and Residency

The Committee urges Ireland to bring to

8. UCC School of Law, 'Voices of very young children 'muted' within Irish family law proceedings', available at: <https://www.ucc.ie/en/law/news/voices-of-very-young-children-muted-within-irish-family-law-proceedings.html>.



"Whilst our legal system has gone some way towards acknowledging the importance of Article 42A into our Constitution, unfortunately our research shows that the translation of those rights in any real and meaningful way in family law cases leaves a lot to be desired, particularly for very small children"
- Dr Aisling Parkes, UCC School of Law

completion earlier promises of a referendum on lowering the voting age to 16, and ensure it is supplemented by “active citizenship and human rights education and measures to prevent undue influence.” The Committee expressed deep concern at Irish nationality restrictions, and difficulties in accessing birth records. It recommends that every child is registered at birth, including by easing the documentation requirements for minorities’ children, children seeking international protection, children of migrants, and those without ordinary place of residence. Legal obstacles should be removed by simplifying the Courts and Civil Law (Miscellaneous Provisions) Bill and reducing residency requirements for obtaining nationality. A specialised mental health support service for children of minority ethnic groups, particularly those who have experienced racial discrimination is also recommended.

Response


Minister for Justice, Simon Harris has noted⁹ that children must be central to the process which will impact the rest of their lives. The Family Justice Strategy seeks to make the family justice system less adversarial, and

9. Minister Simon Harris keynote speech Civil Legal Aid Review: An Opportunity to develop a model system in Ireland available at: <https://www.gov.ie/en/speech/27b3b-minister-simon-harris-keynote-speech-to-the-conference-civil-legal-aid-review-an-opportunity-to-develop-a-model-system-in-ireland/>.

promote greater use of alternatives to litigation. The Strategy emphasises the importance of promoting more co-operative means for people to resolve disputes. Separately, Minister for Children, Equality, Disability, Integration and Youth, Roderic O’Gorman welcomed the UN Committee’s Observations, and has committed¹⁰ to examining all recommendations in detail with a view to addressing them in the forthcoming National Policy Framework for Children and Young People 2023-2028.

It is clear that all adults share responsibility to ensure children’s rights are realised. Ireland’s Special Rapporteur for Child Protection, Caoilfhionn Gallagher KC, will submit the next special rapporteur annual report to government in June 2023, and we await its publication. Moody’s Investors Service recently upgraded Ireland’s long-term sovereign credit rating to AA3, signalling a return to AA category for the first time since 2010. While the State’s fiscal metrics have been hailed as resilient and robust, it remains to be seen if our realisation of child rights reaches a similar level.

10. United Nations Committee on the Rights of the Child publishes its Concluding Observations on the combined fifth and sixth periodic reports of Ireland: <https://www.gov.ie/en/press-release/9df69-united-nations-committee-on-the-rights-of-the-child-publish-its-concluding-observations-on-the-combined-fifth-and-sixth-periodic-reports-of-ireland/>.



“...valuing the importance of children’s rights by the introduction of a new system shows that the translation of those rights in any real and meaningful way, particularly for very small children”

New Judicial Appointments

A number of new judicial appointments have been made in the last month or so. In total, it is intended twenty-four Judges will be appointed across all courts this year, with a further twenty intended to be appointed next year.

Ireland's former Special Rapporteur on Child Protection, Dr Geoffrey Shannon, has been appointed a judge of the Circuit Court. He is one of a number of judicial appointments made by the Government in March this year. Rory Mulcahy SC and Micháel P. O'Higgins SC were also appointed to the High Court, while barristers Sinead Behan and Dermot Sheehan were also made ordinary judges of the Circuit Court.



Dr Geoffrey Shannon

The Circuit Court positions were made because of the Assisted Decision-Making (Capacity) (Amendment) Act, 2022, which provides for the number of judges prescribed by statute to increase from thirty-seven to forty. The High Court vacancy arose following the retirement of Ms Justice Deirdre Murphy.

The appointment of Dr Geoffrey Shannon SC is particularly welcome as he is a figure whose influence and input is widespread in the arenas of child, family and related law. Dr Shannon, from Salthill, Co. Galway, qualified as a solicitor in 1996 having been educated at NUI, Galway and University College Dublin. From 2006-2019, Dr Shannon was successive Irish Government's Special Rapporteur on Child Protection and he chaired the Adoption Authority of Ireland from 2007-20. In 2010, he was appointed by the government to chair and co-write the Independent Child Death Review. The Independent Child Death Review Group (ICDRG) examined the deaths of 196 children who died in state care between 2000 and 2010. He has also been involved in judicial training on all aspects of international family and child law and was a senior lecturer in Child and Family Law at the Law Society of Ireland. Dr Shannon



Minister for Justice Simon Harris

has written or co-written 30 books, over 35 journal articles, and more than 40 articles in professional magazines in the area of child law and family law. He was awarded the LLD by UCD on the basis of his published work. He was named a senior counsel in 2020.

In total, it is intended twenty-four Judges will be appointed across all courts this year, with a further twenty intended to be appointed next year. This will mean that by the end of 2024, the overall number of Judges in the country will increase to 217 from the current level of 173.

President of the Law Society, Maura Derivan, said the appointments would be “nothing short of transformative for the justice system in the public interest” and “a dedicated family courts system [is] a priority reform in the Family Courts Bill. The interests of families and children must be at the centre of the new family justice system from the outset.” Of the increase in the number of Judges, Minister for Justice, Simon Harris said:

“The courts exist to protect our rights and uphold the rule of law... [i]t is a priority for me, as Minister for Justice, to ensure that the courts are resourced to administer justice efficiently and effectively — this is central to providing access to justice.”

The Minister also remarked: “An independent, impartial, and efficient judiciary and courts system is critical to our democracy and I am confident this injection of new judges... will, when implemented, help to improve the operation of one of the State’s most important institutions.”

Certainly, the addition of such a large number of judges (when complete it will mean over a twenty-five per cent increase in numbers on the bench) is most welcome and it will be interesting to see if and how it improves the day-to-day efficacy of the Courts and more to the point, the daily routines of solicitors advocating before the Courts.

WHERE DOES REUNIFICATION FIT INTO CHILD CARE MATTERS AND PROCEEDINGS?

Peadar Browne examines the many reasons why reunification is uncommon and reflects on the role practitioners can play in providing the supports and interventions to assist parents in meeting the standards required by the CFA to consider reunification.

Articles 41.1 and 41.2 of the Constitution of Ireland recognises the Family as the natural and fundamental unit group of Society and guarantees to protect the Family in its constitution and authority, or in other words to protect the composition of the Family and its right to self-determination.¹

Article 42A.1 recognises the rights of children, which the Constitution describes as “imprescriptible”², that is, they cannot be taken away, lost or revoked³. Article 42A.2 however, provides for exceptional cases where parents “fail in their duty towards their children”⁴ to an extent that is likely to prejudicially affect the welfare of those children and allows the State “as guardian of the common good” to supply the place of the parents but always with due regard to the natural and imprescriptible rights of the child.

As with all matters constitutional, the common good qualifies what are inalienable and imprescriptible rights and the question of proportionality enters the equation.

Section 4(3)(b) of the Child Care Act, 1991 (the 1991 Act) provides that when a Health Board has taken a child into care it should

have “regard to the wishes of a parent...in the provision of such care”⁵ and Section 4(4) provides that where a child is taken into care because he or she appears lost or his or her parents are missing the health board “shall endeavour to reunite him with that parent”⁶. That is the only reference in the 1991 Act to reuniting a child with his or her parents. The Child Care Act 1991 does not define reunification or make any provision for it.

Remarkably, a search of Tusla’s website reveals no sign of the word reunification. One needs to access documents on Tusla’s website such as one on Separated Children Seeking International Protection or its 2013 document Investing in Families: Supporting Parents to Improve Outcomes for Children where it states “Some parents will need to be supported to address the existing concerns in order to facilitate the process of reunification. Where reunification is not considered in the best interests of the child, but contact is being facilitated, then parents will still need to be supported”⁷. There is no other reference to reunification in the document.

The only document on Tusla’s website that

1. Bunreacht Na hÉireann Article 41.1 and 41.2

2. Bunreacht Na hÉireann Article 42A.1

3. Collins English Dictionary 2023 online collinsdictionary.com

4. Bunreacht Na hÉireann Article 42A.2.1°

5. Section 4(3)(b) of the Child Care Act, 1991

6. Section 4(4) of the Child Care Act, 1991

7. https://www.tusla.ie/uploads/content/Family_Support_CFA_Parenting_Support_Strategy.pdf



meaningfully deals with reunifications is Tusla's Permanency Planning Booklet which dedicates Chapter Six to Reunification.

proceedings? Tigala held a conference last summer on the subject of Reunification, chaired by District Court Judge Dermot Simms at which

The Child Care Act 1991 does not define reunification or make any provision for it.

Chapter Six opens with a quote from Eileen Munro: "Reunification should be planned with a view to permanence – approached with caution and with concern to ensure the qualities of "the best possible care".⁸

Eileen Munro is Professor Emeritus in Social Policy at the London School of Economics and Political Science, who in May 2011 published a report, *The Munro Review of Child Protection: Final Report – A Child-Centred System*, which was presented to UK Parliament by the Secretary of State for Education at the Command of Her Majesty according to the frontispiece of the report, which does not contain one single use of the word reunification.

So where does reunification fit into the scheme of things in Child Care matters and

the speakers giving their perspectives had such diverse roles within Child Care in Ireland as psychologist, guardian, lawyer, child, parent, care worker, foster carer and statutory agency.

In his introduction, Judge Simms quoted from a report of the Childcare Project which stated, "there is no uniform approach to family reunification in the District Court. Some Judges grant a short care order or list a review of the order with a view to possible reunification while other judges grant orders up the child's 18th birthday and indicate to the parents that they can make an application under Section 22 to have the order discharged. Parents seek a discharge of a care order extremely rarely and success is even rarer. From our observations there is no structured approach to communicating to parents the conditions that would need to exist to enable reunification." Judge Simms then noted, "the imperative of seeking reunification of children with parents"

8. Munro, E. (2011) 'Empowering looked-after children', *Child and Family Social Work*, 6, 129–137.

was at the centre of Tigala's multidisciplinary seminar."

Each speaker had his or her own view on what reunification is and why it was or was not working. Dr Simon Lewis, a Clinical Psychologist stated "The key objective both morally and legally of child protection and welfare systems is to return children safely to their birth parents and families as quickly as possible". Dr Lewis views the re-classification of risk as one of the keys to successful reunification. He states risk should be reclassified, a multi-agency reunification plan should be agreed, a decision made to reunite children with their parents and children and parents should be prepared for return home of the child or children.

Fiona Murray from Empowering People in Care (EPIC) believes more parents would benefit from having an advocate.

Donal O'Muircheartaigh BL noted the two main pathways to reunification in Ireland are (a) the natural expiry of a Court Order and (b) a Section 22 Discharge of a Care Order. He noted the latter are like hen's teeth. He recommended there be more specific documentary and itemised plans for reunification from the CFA's social work department prior to a full care order and such plans should be performed as early as possible in the Child Care process.

Tusla Social Workers, Sinéad Moran and Jonathan O'Reilly spoke about their experiences. Sinéad Moran described "the reality of reunification" and stated, "reunification is what we do – you just don't always see it" and then added "success stories are limited" thereby explaining why we don't always see it. Jonathan O'Reilly gave a case study of reunification describing it as not a perfect example, but it is one of his few examples collected in 15 years working as a social worker.

Bernadette Neville of the Irish Foster Care Association spoke about reunification from the perspective of a foster care family and contended a successful return home is linked to, among other things, "parent's motivation to change",

she added "reunification is another transition" but one more necessary than the one that took the children from their parents. Reunification is a big worry for foster carers and can be a big loss.

Seona Ní Mhurchú, a solicitor who represents all parties at various times, spoke about reunification from parents' perspectives and wondered why reunification is so rare. She noted "parents sometimes do not know what the word means" and an absence of family therapy at the beginning of the Child Care process, which she believes should be available and tied into parent supports at the beginning, not the end.

She gave an example of parents undergoing a parental capacity assessment (PCA) in the name of one parent (the one with the profile more acceptable to Tusla), having indicated to Tusla the parents were no longer together but who were all along planning to parent together if the children were reunified with one.

Seona made reference to voluntary care, which should only be for 6 months, but which never sees reunification after that six-month period. She remarked on how voluntary care arrangements are often entered into even though there is an absence of Independent Legal Advice for parents and an absence of advocates.

She set out four reasons why reunification breaks down?

1. Lack of assessment or poor-quality assessment. Voluntary care or private arrangements.
2. Passive case management. Reunification rushed. Plans have not been made clear to parents.
3. Lack of appropriate services and supports for children and parents. Recruitment crisis for CFA. Social Workers are stretched and often the Social Work Team Leader is doing the job.
4. Inadequate planning and preparation for returning home and lack of monitoring

post-returning home.

In these scenarios, as a sticking plaster, supervision orders are used to supervise transition home, which means parents accept the threshold for an ICO is in being. It causes uncertainty and parents fear to ask for help lest they be punished. Threshold criteria for supervision orders should be looked at and they should be used as a supportive measure, not a punitive one.

It is clear from the contributions of several of the speakers, including those employed by Tusla that reunification is not a common occurrence and there are many reasons for that, as set out above. Other reasons can be found in Tusla's own publications.

Chapter Six of Tusla's Permanency Planning Booklet provides clarity on the approach that should be taken by practitioners and professionals in working in child protection. It outlines "research and practice evidence in relation to reunification to support and inform the professional judgement of practitioners in child protection and welfare and alternative care when considering the appropriateness of reunification for children they are working with"⁹.

One piece of research referred to notes: "The initial six months of a child being in care has emerged as a crucial period for reunification, and the importance of decisions about reunification being prioritised during this period has been highlighted. It is important to note, however, that while children are more likely to return home to their families within the first six months, research shows that when reunification happens without enough time to support parents to change, the child is more likely to re-experience abuse and neglect, and to come back into care or accommodation (Wilkins and Farmer, 2015)."

While another states: "Where reunification is identified as the best option for the child and in their best interests, the parent or guardian must

demonstrate significant progress during the first 12 months that a child is in care. If, at the end of 12 months, there is no substantial evidence of parental capacity to change in time to meet the child's needs, reunification should be ruled out and the alternative permanency option implemented. An application must be made to court at this stage under Section 18 of the 1991 Child Care Act."

Tusla is advising its practitioners there is a six-month period (that shouldn't be rushed) that is crucial to reunification and there is a 12-month cut off after which reunification should be ruled out. These seem like conflicting advices which place practitioners representing parents in difficult situations, particularly when parents often receive trajectories for reunification that have timelines up to 150 weeks or more.

In its submissions for the Review of Child Care Act, 1991 carried out in 2018, Barnardos noted: "Family reunification should be the aim in the vast majority of cases. In applying for care orders the Child and Family Agency must clearly outline the conditions which must be met for family reunification to take place. Contact between parents and children during the duration of the care order is key to successful family reunification. In all but exceptional cases courts should set minimum access levels which are sufficient for the child or children to maintain a meaningful relationship with their parent and extended family when making care orders" and "Under the current system social workers and other service providers, who may have been working with a family for a number of years, find they must prove the failings of the parent in order to get an order made which is necessary for the welfare of the child. This process is extremely detrimental to ongoing relationships and in many cases works against the possibility of safe reunification."¹⁰

Is Tusla doing enough to promote and bring about reunification? In the context of an adoption case in the High Court in 2020,

9. https://www.tusla.ie/uploads/content/Permanency_Planning_Handbook.pdf (tusla.ie)

10. Barnardos. (2018). Submission on the Review of the Child Care Act 1991. <https://knowledge.barnardos.ie/handle/20.500.13085/121>



There needs to be a re-focussing on reunification, if it really is a central tenet of the Child Care process.

Jordan J. described Tusla as having done “virtually nothing” to nurture a relationship between a child placed in foster care and her estranged birth mother and stated, “The possibility of family reunification seems to have been completely written off notwithstanding the improvement in the birth mother’s mental state with treatment”.¹¹

In his judgment, Jordan J. alluded to the decision of the European Court of Human Rights in *K. & T. v. Finland*:

“There is a positive duty to take measures to facilitate family reunification as soon as is reasonably feasible. This positive duty became more pressing the longer the period of care lasted, subject always to its being balanced against the duty to consider the best interests of the child. The Court stated at p. 40:- ‘178. The Grand Chamber, like the Chamber, would first recall the guiding principle whereby a care order should be regarded as a temporary measure, to be discontinued as soon as circumstances permit, and that any measures implementing temporary care should be consistent with the ultimate aim of reuniting the natural parents and the child (see, in particular, *Olsson* (no. 1), cited above, pp. 36-37, ¶ 81). The positive duty to take measures to facilitate family reunification as soon as reasonably feasible will begin to weigh on the competent authorities with progressively increasing force as from the commencement of the period

of care, subject always to its being balanced against the duty to consider the best interests of the child.’¹²

And

...For the purpose of the present analysis, the Court reiterates that regard to family unity and for family reunification in the event of separation are inherent considerations in the right to respect for family life under Article 8 of the Convention. Accordingly, in the case of imposition of public care restricting family life, a positive duty lies on the authorities to take measures to facilitate family reunification as soon as reasonably feasible”.¹³

Conclusion

What can be gleaned from the above is that there are two primary conflicts facing parents and practitioners in the Child Care process. One is the conflict that is contained in the Constitution between the principles of (a) the State protecting the family in its constitution and authority and protecting the imprescriptible rights of children and (b) the State as guardian of the common good, supplying the place of the parents. The other is the conflict in Child Care proceedings between the urgency surrounding getting the factors in place for parents to achieve reunification and the slowness of the process itself, and the lack

11. Judgment of Jordan J. in *CFA v GK and CK* - High Court [2020] IEHC 419

12. European Court of Human Rights in *K. & T. v. Finland* (2001) 31 E.H.R.R. 18.

13. Judgment of Jordan J. in *CFA v GK and CK* - High Court [2020] IEHC 419

of front-loaded supports for parents to help achieve reunification.

With regard to the first conflict, the emphasis in the Child Care process is very clearly on supplying the place of parents. There are no statistics in Tusla's annual report or in its quarterly Service, Performance and Activity Reports for 2020, relating to reunification. How many children are reunited with their parents?

Solicitors in the Legal Aid Board who have worked in Child Care will have had cases that had lurched from month to month on ICOs for years, while waiting for trajectories, PCAs and other interventions. Yet, Judge Simms spoke of the imperative of reunification. Where is the imperative when there are trajectories with three-year reunification timelines? Such timelines are crazy when there are young children involved, particularly when, with access at the discretion of the CFA, the parent(s) may have a minimal relationship with his or her child or children during those three years.

I would contend, there needs to be a re-focussing on reunification, if it really is a central tenet of the Child Care process. The Legal Aid Board could lead in this regard through devising a training programme identifying what training would help Board solicitors, in pressing and challenging the CFA in relation to reunification and providing to parents the supports and interventions necessary to assist them in meeting the standards required by the CFA to consider reunification. The Legal Aid Board could have a unified policy, a shared operating procedure, one put together with the benefit of the combined experience of Board solicitors from across the country that could be used in appropriate circumstances, to challenge the status quo on reunification. Of course, not all cases are suitable for reunification and not all trajectories will lead to reunification, but the number could be increased.

Currently, reunification is planned through the lenses of disparate professionals, psychologists, Social Workers, Guardians Ad Litem, Foster Carers, others support professional, lawyers,

and Judges. It is an understatement to say it must be daunting for a parent whose chances of reunification depend on those professionals and on understanding their place in a complex process where policy recommends if at the end of 12 months, there is no substantial evidence of parental capacity to change in time to meet the child's needs, reunification should be ruled out.

“It is the village that raises a child. But in Child Care cases it is a village of strangers.”

As solicitors representing parents, we should advocate for more supports to be given to parents in the home the moment children are taken into care. There are many supports provided later in the process for children and foster carers and parents, but is the support for parents the weakest of the three? If there were stronger, targeted supports earlier in the Child Care process then fewer children would end up separated from their parents.

One psychologist speaking at the Tigala event stated it is “the village that raises a child”. But in Child Care cases it is a village of strangers. Yes, they are well-intentioned, and the child(ren) may get used to them but who wants to be raised by a village of professional strangers?

Reunification must be brought back into focus as a primary aim of the Child Care process and Legal Aid Board solicitors should advocate on behalf of their clients to have appropriate supports provided to parents to give them a fighting chance of meeting the standards required by Tusla to achieve reunification within the harsh timelines laid down in Tusla policy documents. And we need to remember and remind Tusla and the Courts, that the ideal is not the perfect parent but the good enough parent.

Good News! Reunification does happen

Elsewhere on these pages, the infrequency with which reunification is the outcome of a child care case is lamented as a failure of the system.

It is from the shadow of that failure the contrast of a successful reunification shines. Yes, they do happen and when they do it is usually due to a monumental effort on the part of parent(s), although sometimes it can be the result of the Child and Family Agency erring on the side of caution at the outset and quickly realising and remedying that error. But when reunification is down to the engagement and work of the parent(s), the sense of achievement is manifest and there is a commensurate sense of satisfaction for the practitioner.

I have had only two cases in which reunification occurred and have had quite a few where the potential for it was strong but reunification wasn't achieved because the parent(s) could not meet all the milestones set for them by the CFA in the trajectory for reunification. Is the bar set too high in trajectories for reunification? When a parent reads a document that lists a broad and varied catalogue of hurdles for them to jump,

over the course of say, three years, it must seem like an impossible task, like Sisyphus rolling the boulder up the hill.

Fortunately, there are achievable trajectories and parents are re-united with their children. I had a client, a father, for the purpose of this piece named Tim, who had two young daughters, aged 14 and 15 names Daisy and Lily. The children's mother was a victim of substance abuse and her relationships with both

“Is the bar set too high in trajectories for reunification?”

the father of her children and with her children themselves, diminished over the course of the child care proceedings as she continued to struggle with her substance abuse and correlated mental health issues.

Dad started the proceedings in a bad place, dismayed by the fact his children had been taken into care and overwhelmed by the sheer depth of professionals arrayed against him on the CFA side of proceedings and by the demands of the trajectory from weeks one to eight which involved creating a danger statement and a safety goal, through the

“I often had conversations with him in which he expressed his exhaustion with the requirements of the social workers, and he told me how he sometimes wrestled with the desire to give up.”

network meetings during weeks 21 to 38 dealing with a number of ‘critical issues’ to week 78 and the return home of my client’s two girls.

“All the daily acts and interactions within a family become subject to academic, psychological and legal interpretation.”

I say arrayed against him because that is how it seems to most parents when the state steps in and all the daily acts and interactions within a family become subject to academic, psychological and legal interpretation. When reading reports in child care cases, I’ll often reflect on how my actions in my own family on a grumpy school-night when trying to convince my children to do what I say would be interpreted by the author of those reports. In the instant case though, it was mum who was the negative force in the equation and over the course of months between extensions of ICOs mum and dad began to live separately. Dad engaged fully with the CFA, meeting all the milestones set for him. Sometimes it was not easy, and I often had conversations with him in which he expressed his exhaustion with the

requirements of the social workers, and he told me how he sometimes wrestled with the desire to give up.

However, dad persevered and then began to thrive. He found a new job that he enjoyed, and he found a new property in which to live, putting all his spare energy into doing it up to make it a comfortable home for him and his daughters and ensuring it was done up to a standard acceptable to Tusla. The quality of access between dad and his girls improved week after week and finally the day came when I appeared in the District Court to hear the solicitor for the CFA say the only application before the court was to discharge the guardian ad litem and that the existing ICO had run out.

I had spoken to my client the day before to congratulate him on the reunification of him and his girls and to wish him well. His joy and pride were palpable and rightly felt. I would hope to have more conversations of that nature with clients in the years to come and I hope the CFA and practitioners and professionals will place more emphasis on seeking reunification as an outcome in future.

PARENTAL ALIENATION SYNDROME:

A phantom injury or permanent fracture in the parent-child relationship?



Without a clear definition in Ireland and contested as a concept in other jurisdictions, parental alienation is an issue that the Department of Justice recently addressed by seeking to establish a knowledge and evidence base to inform policy and law in the area. **Mairéad Nic Gabhann** reviews the history and development of a controversial issue in family law.

Parental Alienation was first recognised by Wallerstein and Kelly in 1976¹ in the context of divorcing families and the effects upon children. It can be broadly described as a child's experience of being manipulated or coached by one parent to turn against their other. Throughout the 1980s child psychiatrist Dr Richard Gardner² further developed the concept of Parental Alienation Syndrome, which he defined as "a disorder that arises primarily in the context of child custody disputes. Its primary manifestation is the child's campaign of denigration against a parent, a campaign that has no justification. It results from the combination of a programming parent's indoctrinations and the child's own contributions to the vilification of the target parent."³

Gardner listed eight symptoms that distinguish a child affected by parental alienation⁴ from one who is experiencing an adverse reaction to an estranged parent during separation or divorce:

1. Relentless denigration of the targeted parent (targeted parent can do nothing right from tying their shoes to how they hold a glass of water);
2. A frivolous, weak, or absurd rationale for the denigration;
3. Lack of guilt or embarrassment about the

denigration (The child shows no remorse or shame and acts with complete justification for the denigration);

4. Lack of ambivalence such that the child considers one parent to be entirely 'good' and the other entirely 'bad';
5. Automatic support for the alienating parent in any conflict;
6. Hostility toward and refusal of contact with the extended family of the targeted parent;
7. Presence of 'borrowed scenarios,' in which the child uses the same language as the alienating parent when describing their aversion to the targeted parent; and
8. Child's insists they are expressing their own opinions in denigrating the targeted parent.

Gardner produced a series of books on the topic, and testified in hundreds of custody cases where he discredited allegations of domestic abuse and child sex abuse.⁵ One highly publicised custody dispute was that of Mia Farrow and Woody Allen, in which Farrow accused Allen of abusing their adopted child. Allen claimed their children were suffering from parental alienation syndrome at the hands of their mother, and that Farrow had brainwashed their daughter into making an accusation of sexual abuse. Ultimately, the Court found Woody Allen was not credible in his claims of parental alienation syndrome.⁶

Alienation Eliminates Abuse

Due to lack of sufficient clinical evidence,

1. Wallerstein, J.S., Kelly, J.B., 'The Effects of Parental Divorce: Experiences of The Child in Later Latency American journal of orthopsychiatry' 1976, Vol.46 (2), p.256-269.

2. Richard A. Gardner (1931–2003), child psychiatrist and professor at Columbia University's College of Physicians and Surgeons.

3. Article based on keynote address Dr. Gardner presented to the International Conference on the Parental Alienation Syndrome (PAS) held in Frankfurt/Main, Germany, October 18-19, 2002 available at <http://richardagardner.com/ar22>.

4. APA Dictionary of Psychology definition of parental alienation syndrome (PAS) available at <https://dictionary.apa.org/parental-alienation-syndrome>.

5. Los Angeles Times, June 12, 2003 12 AM PT, Richard Gardner, 72; Had Theory on False Claims of Abuse Against Parents available at <https://www.theguardian.com/commentisfree/2021/jul/21/abused-uk-children-family-courts-parental-alienation>.

6. Allen v. Farrow, 197 A.D.2d 327, 335 (N.Y. 1994).

Gardner's 'syndrome' is not recognised by the American Psychological Association, the American Medical Association, or the American Psychiatric Association. Having initially been approved, the World Health Organisation removed the term from its International Classification of Diseases (ICD 11) in 2020.

The United Nations agency states parental alienation is not a health care term, and is used in legal contexts; generally custody disputes in divorce or other partnership dissolution. It notes that comments and questions have persisted about the misuse of the term to undermine the credibility of one parent alleging abuse as a reason for contact refusal and even to criminalise their behaviour. Following extensive review, the WHO considers that parental alienation is an issue relevant to specific judicial contexts, inclusion of the term in the ICD will not contribute to health statistics, and there are no evidence-based health care interventions specifically for parental alienation.⁷

The National Council of Juvenile and Family Court Judges 'Guide to Child Safety in Custody Cases'⁸ states that the supreme court ruled the syndrome was based on soft sciences, and is thus inadmissible. However, the concept is still raised as a legitimate complaint in many family law situations. An American empirical study⁹ of ten years of cases involving abuse and alienation claims found that mothers' claims of abuse, especially child physical or sexual abuse, increase their risk of losing custody, and that fathers' cross-claims of alienation virtually double that risk. It further argues that alienation's impact is gender-specific; fathers alleging mothers are abusive are not similarly

undermined when mothers cross-claim alienation. In non-abuse cases, however, the data suggest that alienation has a more gender-neutral impact. Research¹⁰ conducted by Brunel University London examined judgments in England and Wales from 2000 to 2019 where parental alienation had featured, and concluded that a parental alienation claim often dominated family law cases to the exclusion of all else.

Ireland

There is currently no clear definition of parental alienation in Ireland, and there are no reliable statistics on its prevalence. Parental alienation is contested as a concept, and little is known about how best to address it. In January 2021, Wicklow County Council and Galway County Council passed motions¹¹ recognising parental alienation, and called on government to address the issue by introducing legislation. In total, 30 of 31 local authority councils in Ireland have passed similar motions.

During spring 2021, the Department of Justice sought research tenders into the framing, legislative and otherwise, of the concept of parental alienation internationally and the various approaches being taken to deal with this issue in other jurisdictions.¹² The tender documents states that establishing a knowledge and evidence base in the area had become a priority for the Department, and outlines its aims as follows:

1. identify the various definitions of parental alienation being used internationally;
2. identify and outline the various approaches and responses being taken in other jurisdictions (legislative and otherwise);
3. evaluate any studies that have examined the

7. WHO update on parental alienation <https://www.who.int/standards/classifications/frequently-asked-questions/parental-alienation>.

8. A Judicial Guide to Child Safety in Custody Cases available at https://www.ncjfcj.org/wp-content/uploads/2012/02/judicial-guide_0_0.pdf.

9. Meier, Joan S. and Dickson, Sean and O'Sullivan, Chris and Rosen, Leora and Hayes, Jeffrey, *Child Custody Outcomes in Cases Involving Parental Alienation and Abuse Allegations* (2019). GWU Law School Public Law Research Paper No. 2019-56; GWU Legal Studies Research Paper No. 2019-56. Available at SSRN: <https://ssrn.com/abstract=3448062> or <http://dx.doi.org/10.2139/ssrn.3448062>

10. Adrienne Barnett (2020) A genealogy of hostility: parental alienation in England and Wales, *Journal of Social Welfare and Family Law*, 42:1, 18-29, DOI: 10.1080/09649069.2019.1701921.

11. Wicklow County Council pass motion on Parental Alienation available at <https://wicklownews.net/2021/01/wicklow-county-council-pass-motion-on-parental-alienation/>.

12. Request for Tender for Research Services Approaches to the Concept of Parental Alienation in Other Jurisdictions available at <https://ipo.gov.ie/en/JELR/RFT-Approaches-to-the-concept-of-parental-alienation-in-other-jurisdictions.pdf/Files/RFT-Approaches-to-the-concept-of-parental-alienation-in-other-jurisdictions.pdf>.

effectiveness of these various international approaches;

4. assess the relevance of these studies to the Irish context;
5. investigate what is known about the prevalence of this issue (in Ireland or internationally) through examination of the literature; and,
6. identify any gaps on a policy and/or legislative level in Ireland that need to be addressed.

Offaly County Council, the outlier among other local authority councils, agreed to withdraw a motion in relation to parental alienation due to concerns around potential consequences for domestic violence sufferers¹³, opting to wait on recommendations from the Department of Justice family law oversight group.

The Department of Justice committed to undertake a public consultation on the issue of



opportunity to express their views. Results of the consultation, along with consideration of a final report on parental alienation in other jurisdictions, will inform the Department's consideration of policy and law in the area. Speaking in Dáil Éireann¹⁵ last November,

This ongoing examination, and recent media coverage, indicates the term parental alienation is increasingly cited in Irish courts.

parental alienation as part of Justice Plan 2022. The department¹⁴ notes that parental alienation generally refers to a process through which a child becomes estranged from a parent as the result of the psychological manipulation of the other parent. It may also refer to situations where one parent is wrongfully influencing their child or children against the other parent.

The public consultation was held last year, giving stakeholders and citizens the

Minister for Justice Helen McEntee said all views, opinions, and experiences submitted as part of that consultation were under review and would be integrated with the separate strand of research on parental alienation in other jurisdictions. A report outlining the outcome of the research and consultation process, and any resulting recommendations to arise from it, is expected to follow in due course. This ongoing examination, and recent media coverage, indicates the term parental alienation

13. Comhairle Chontae Uíbh Fhailí Minutes of February Monthly Meeting of Offaly County Council Held In Áras An Chontae, Charleville Road, Tullamore on Monday 15 Th February 2021 available at <https://www.offaly.ie/eng/Services/Your-Councils/Offaly-County-Council-Meetings/Meeting-Minutes/Minutes-2021/Minutes-15-February-2021.pdf>.

14. Department of Justice public consultation available at <https://www.gov.ie/en/consultation/c7235-open-consultation-on-parental-alienation/#>.

15. Dáil Éireann Debate, 'Family Law Cases' Wednesday, 9 November 2022 available at <https://www.oireachtas.ie/en/debates/question/2022-11-09/106/>.

is increasingly cited in Irish courts.¹⁶¹⁷

Submissions of opposition

A range of support groups including Women's Aid¹⁸ and Survivors Informing Services and Institutions¹⁹ (Sisi), are concerned by the increasing use of parental alienation in disputes involving domestic abuse and coercive control. The Rape Crisis Network question if the concept results in the child victim being silenced, and the protective parent being punished by the State for supporting their child's disclosure and safety.²⁰ One Family state it is a divisive, under-researched, and complex issue, which is often misunderstood and sometimes misrepresented.²¹

In their submission, Men's Aid recommend²² family law courts consider providing sufficient qualified child safety assessors to provide free reports where domestic violence or child abuse is present, emphasising an expertise in coercive control, parental alienation, and prioritising child safety. The service urges the Department to carry out empirical research to assist stakeholders and those who serve the victim. Examples of parental alienation which have been disclosed to Men's Aid by male victims of domestic violence and coercive control include:

- Limiting contact with that parent, and or

extended family.

- Erasing the other parent from the life and mind of the child (forbidding discussion and pictures of the other parent).
- Seeking to have the child reject the other parent.
- Creating the impression that the other parent is dangerous.
- Forcing the child to choose between the parents by means of threats of withdrawal of affection.
- Belittling and limiting contact with the extended family of the targeted parent i.e. Grandparents.
- Not meeting access arrangements / agreements/ court orders.
- Not allowing delivery of gifts, messages, milestone cards.
- Not allowing participation in milestone events such as birthdays.

Meanwhile, groups such as the Family Therapists Association of Ireland welcome increasing awareness of what they say is a treatable mental disorder.²³ Their chairman, Professor Jim Sheehan, describes it as a unique form of family violence that can lead to longstanding damage. Alienated Children First, which provides peer support to parents affected by parental alienation also considers parental alienation a form of child abuse, and said that its main objective is to ensure that appropriate policy, principles, and supports are put in place to address the issue.²⁴

International Developments

In November 2022 the United Nations Special Rapporteur on violence against women and girls, Reem Alsalem, issued a public call for inputs on custody cases, violence against women, and violence against children.²⁵

16. The Irish Times, Parental alienation: Child abuse, or a pseudoscientific tool to silence domestic violence victims?, Kitty Holland available at <https://www.irishtimes.com/ireland/social-affairs/2022/11/05/parental-alienation-child-abuse-or-a-pseudoscientific-tool-to-silence-domestic-violence-victims/>.

17. Guardian article lists Ireland as a country where concept of parental alienation is gaining traction in family courts <https://www.theguardian.com/global-development/2022/dec/14/un-to-investigate-into-misuse-of-parental-alienation-tactic-in-custody-cases>.

18. Submission to the Department of Justice on Parental Alienation June 2022 available at https://www.womensaid.ie/assets/files/pdf/submission_on_parental_alienation_june_2022.pdf.

19. See n16 above.

20. Rape Crisis Network Ireland (RCNI) submission to the Department of Justice on Parental Alienation June 2022 available at <https://www.rcni.ie/wp-content/uploads/RCNI-Parental-Alienation-Submission.pdf>.

21. Submission to the Department of Justice on Parental Alienation June 2022 available at https://onefamily.ie/wp-content/uploads/2022/06/One-Family-Submission-on-Parental-Alienation_final.pdf.

22. Men's Aid submission to the Department of Justice on Parental Alienation June 2022 available at <https://www.mensaid.ie/parental-alienation-june-2022/>.

23. See n16 above.

24. Irish Examiner, 'Action urged to address parents' rights', Ann Murphy available at <https://www.irishexaminer.com/news/arid-40931153.html>.

25. OHCHR Calls For Input, Custody cases, violence against women and violence against children issued by Special Rapporteur

It is argued that academic theories on the existence and prevalence of parental alienation should not be accepted without analysis of the impact on survivors of domestic abuse and their children.

Observing that parental alienation has become a tool for denial of domestic and child abuse, Alsalem recognised that relevant data on treatment of the history of intimate partner violence, and other forms of domestic violence and abuse, by family courts is limited. Data is also limited regarding the degree to which family courts use a gender analysis in their decisions. Contributions received will inform a report on the nexus between custody and guardianship cases, violence against women and violence against children, with a focus on the abuse of the concept of parental alienation and related concepts.

A report²⁶ by Grevio, the expert body responsible for monitoring implementation of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), concludes the minimisation of domestic violence within family court processes is closely linked to an increasing use of the concept of parental alienation to undermine the views of child victims of domestic violence. The report cites research indicating claims of parental alienation are used to negate allegations of domestic and sexual abuse, and concerns or findings of domestic abuse are diminished once the focus turns to parental alienation.

The UK Home Office draft statutory guidance²⁷

to the Domestic Violence Act made explicit reference to ‘parental alienation’ and ‘parental alienation behaviours’. Following responses to a public consultation which highlighted a lack of shared understanding of parental alienation, its definition and implications, and how to approach it in practice, those references were removed and are not included in the final document²⁸ published in July 2022. The press release cites a growing body of evidence relating to false allegations, and the impact that the fear of false allegations can have.²⁹ It is argued that academic theories on the existence and prevalence of parental alienation should not be accepted without analysis of the impact on survivors of domestic abuse and their children. It also highlights that research indicates fears of such counter allegations have prevented survivors from disclosing domestic abuse to the court and accessing support services.

Conclusion

In a 2005 opinion piece³⁰ on the in-camera rule in family law cases, Vincent Browne wrote that a judge in the Circuit Court had accepted a ‘novel and controversial concept’; Parental Alienation Syndrome as a basis for deciding

on violence against women and girls available at: <https://www.ohchr.org/en/calls-for-input/2022/call-inputs-custody-cases-violence-against-women-and-violence-against-children>.

26. 3rd General Report on Grevio’s Activities <https://rm.coe.int/prems-055022-gbr-2574-rapportmultiannuelgrevio-texte-web-16x24/1680a6e183>.

27. Draft Statutory Guidance Framework available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/896640/Draft_statutory_guidance_July_2020.

pdf.

28. Domestic Abuse Statutory Guidance available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1089015/Domestic_Abuse_Act_2021_Statutory_Guidance.pdf.

29. Cardiff University, ‘Review of research and case law on parental alienation’, Julie Doughty, School of Law and Politics, Nina Maxwell and Tom Slater, School of Social Sciences. Commissioned by Cafcass Cymru April 2018 available at <https://www.gov.wales/sites/default/files/publications/2018-05/review-of-research-and-case-law-on-parental-alienation.pdf>.

30. Irish Times, ‘Lifting the veil on family law: The relaxation of the in camera rule in family law cases announced by Michael McDowell on Monday is inadequate’, 13 July 2005 available at <https://www.irishtimes.com/opinion/lifting-the-veil-on-family-law-1.467699>.

to which parent to award custody of a child. Browne acknowledged that such reasoning may be valid in some extreme circumstances, and highlighted the substantial risk attached to a judge deciding to take a child from the custody of a loving, caring, and competent parent, to whom the child is very attached, to the other parent, whom the child has no attachment, describing it as a 'gamble of astonishing proportions'. Browne noted the theory was questioned within the international psychiatric and psychological community, and was rejected in most European countries at the time, including our closest neighbours, England and Wales.

The piece largely blends in with recent coverage of parental alienation, in that there have been no dramatic changes – yet. The term is gaining traction, though that is not equal to acceptance, or legalisation. Those who support the premise of parental alienation agree it is a serious form of child abuse, while cynics

view it as a junk science instrument employed to suppress victims of domestic violence. Neuroscience has shown that being ignored or rejected causes a similar chemical reaction in the brain as experiencing a physical injury.³¹ This response may be of even greater magnitude in a parent who feels rejected, or alienated, given the instinctive nature of the parent-child bond, and the idea we are hardwired to be parents. While it is vital to recognise the harm caused by manipulative behaviours of one parent, designed to create a distance, or fracture the child's relationship with the other parent, in the context of domestic abuse, it is clear that application of parental alienation as a legal concept could risk further endangering victims of abuse, particularly children.

31. Kross, E., Berman, M.G., Mischel, W., Smith, E.E. and Wager, T.D. (2011). Social rejection shares somatosensory representations with physical pain. *Proceedings of the National Academy of Sciences*, [online] 108(15), pp.6270–6275. doi:<https://doi.org/10.1073/pnas.1102693108>.



SUPPORT AND HELPLINES

Samaritans: 116 123

Aware Helpline: 1890 303 302

GROW: 1890 474 474

Pieta House: 1800 247 247

Men's Aid's Helpline: 01 554 38 11

or email hello@mensaid.ie

Women's Aid Freephone Helpline: 1800 341 900

WELCOME TO OUR NEW CEO

In April 2023, Joan Crawford became the first female CEO of the Legal Aid Board. Her appointment was announced by Minister for Justice Simon Harris on the 31st of March 2023. She will manage a budget of €56 million as well as a team of more than 520 staff around the country.

Joan Crawford, who will be well-known to almost everyone in the Board, was appointed CEO on the departure of John McDaid at the end of March 2023. Joan is a solicitor. She previously served as Director of Internal Service Delivery (Civil) and Regional Manager, having worked as a solicitor and subsequently as a Managing Solicitor in various Law Centres in the Dublin region. She is a graduate of University College Dublin and the Institute of Public Administration, holds a Masters in Public Management and Diplomas in European Law, Child Care Law and Mental Health and Capacity Law.

Announcing the appointment Minister Harris said "I congratulate Ms Crawford on becoming the first female CEO of the Legal Aid Board. Over the past 20 years, Joan has built up a wealth of experience, both in frontline service delivery and across a variety of leadership roles."

The Minister added, "I wish Joan the very best in her new role and look forward to seeing how her experience and expertise will contribute to the many future-facing developments that are happening in relation to the Legal Aid Board, including the ongoing Review of the Civil Legal Scheme."

Regarding her appointment, Joan said, "It is a great honour to be appointed to the role of chief executive officer of the Legal Aid Board."

Commenting on Joan's appointment, Nuala Jackson, Chairperson of the Board of the Legal

Aid Board, observed, "Joan's appointment marks a new era for the Legal Aid Board. I look forward to working with her to advance the attainment of access to justice and alternative dispute resolution through the dedication and commitment of all members of the Legal Aid Board family. Joan has already enjoyed a stellar career promoting the aims and objectives of the Legal Aid Board and I know that she will continue to do so as she assumes her leadership role within the organisation."

As Joan stated in her first CEO's newsletter, stepping into her new role reminded her of her "first weeks in Gardiner Street Law Centre, 26 years ago. The Family Law (Divorce) Act 1996 had come into effect on the 27th February, 1997 and some weeks later I began my career with the Legal Aid Board"

Joan has seen a great deal of change to the landscape in which the Board delivers services and has dealt with a great many challenges during her time in the Board. That landscape continues to change, as it must if services are to meet the changing needs of those to whom they are directed.

Some of the challenges facing Joan are ongoing. There are the issues involved in the recruitment and retention of staff of all grades and the ongoing problem of competing with other state agencies in the recruitment of solicitors on what is the unfair playing field of starting salaries. There is the enormous challenge in IT, in which area there is a plan



Fiona McAuslan, Director Family Mediation; Emily Sherlock, Director of Internal Service Delivery; Joan Crawford, CEO; Minister for Justice Simon Harris TD; Nuala Jackson SC, Chairperson Legal Aid Board; & Toni Monaghan, Managing Solicitor, Wicklow Law Centre

to overhaul the existing IT structure across its spectrum from the overarching aspect of Governance down to the nuts and bolts of

opportunities, support work-life balance, and foster an inclusive culture that values diverse perspectives.

Joan sets out four main goals to focus on in the coming months; Strengthening our team; Enhancing collaboration; Streamlining processes; and Expanding our reach.

the user experience. And there is the delivery of services under the newly-commenced Assisted decision-Making (Capacity) Act, 2015, on which a huge amount of preparatory work has been done by the Board, involving a great deal of liaising with other stakeholders, drafting protocols and regulations, adapting the Administration Handbook and rolling out extensive training to staff. And that is to name but a few.

Of the challenges ahead, Joan, in her first CEO's newsletter sets out four main goals to focus on in the coming months, which are:

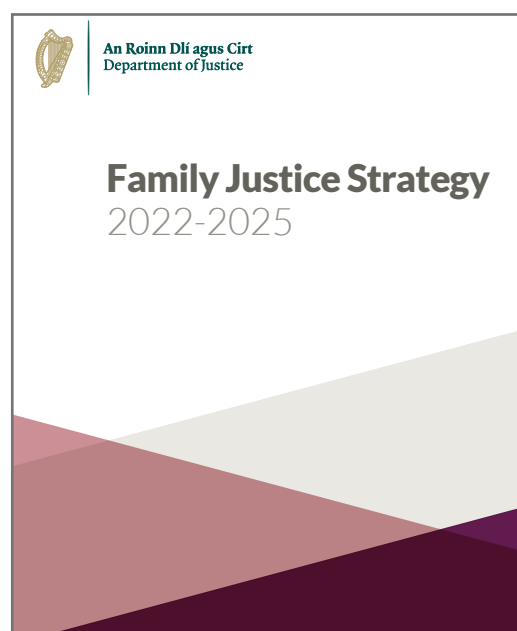
1. Strengthening our team – by working to provide professional development.

2. Enhancing collaboration – by forging new partnerships and strengthening existing ones, we can better leverage resources, share expertise, and improve our services.
3. Streamlining processes – by identifying inefficiencies and maximising our impact and ensuring that we serve our clients in the most effective way possible.
4. Expanding our reach – by exploring ways to reach underserved communities, ensuring that everyone who needs legal aid or mediation has access to our services.

And Joan sets out nine actions the Board will take to support meeting those four goals, and they are:

- To continue to lead and work with our justice sector partners on the implementation of the Family Justice Strategy.
- In Family Court Reform to Project Plan the necessary changes required in the Family Courts Bill.
- In Family Mediation Strategy to lead on information-giving and the promotion of mediation in the justice sector and in communities.
- To implement the provisions of the Assisted Decision-Making (Capacity) Act, 2015 and review how it is working with an oversight group.
- For International Protection to examine how to put in place a system that offers the earliest legal advice to applicants and continue to monitor changes in the process.
- To develop an IT Strategy which aims to unlock new opportunities for efficiency, collaboration and service excellence across our organisation.
- To develop a Communications Strategy incorporating both internal and external communications which aims to strengthen connections, promote transparency and focus future engagement within our organisation and the communities we serve.
- In property development, to establish new sites and refurbish our North Brunswick Street office.
- To map out a Resource and Capability Audit methodology to be brought to the People & Culture Committee.

The Board is well-staffed with experienced, passionate and dedicated people who will help the CEO meet the challenges ahead. Regarding the Board's staff, Joan notes, "We have a dedicated and diverse workforce who aspire to excellence in service of our clients. Together, we will work to overcome present and future challenges and evolve as an



"I had chosen to come to work in the Board because I wanted to help people resolve their problems in the best way possible."

organisation that continues to place the client, access to justice, and problem-solving at the core of our decision-making."

So, on behalf of all staff, I extend a warm welcome to Joan as our new CEO, and look forward to meeting the challenges ahead with her direction, guidance and support. I'm sure we all believe the Legal Aid Board is uniquely positioned to help those to whom our services are delivered and we all look forward to working together to improve that service delivery. As Joan says in her first newsletter, "I had chosen to come to work in the Board because I wanted to help people resolve their problems in the best way possible. I believed there was no better organisation to join if I wanted to make a difference. Today, I am inspired by that same belief when I come to work in this organisation of ours."

What is Legal Ease?

The Legal Ease staff reporters
need your help to keep this
valuable tool in production





If you work for the Legal Aid Board, a browse of iLAB might bring you hovering over the Legal Ease tile. Do you click on it ever, rarely, sometimes, never? If you do, what will you find?

Nineteen editions of a publication first issued in July 2015, edited by Phil O’Laoide who was succeeded by Catherine Ryan in April 2019, who ably carried on the editorship of Legal Ease.

This publication brings the total number of issues to twenty in eight years. That’s one every 4.75 months or slightly fewer than three per year.

Legal Ease, as was intended, has consistently produced articles dealing with legal topics only. It sometimes highlighted topical issues but more often than not focused on a single theme and produced a number of legal articles around that theme.

“The goal is to produce an inclusive and professional in-house journal that serves the organisation and its staff”

Contributions more often than not came from outside the Board and were few and far between, with the bulk of each publication being scripted by whoever was editor at the time.

This issue is no different. Over the course of the last five months, one external and two internal contributions, both from the same generous contributor, have been received and the balance of the content has been penned by the Legal Ease staff reporters!

The central founding principle of Legal Ease was to circulate legal articles on topical issues, changes in legislation and case law of note in the practice areas in which the Board delivers legal services and that tenet should remain central to Legal Ease but, arguably, that only serves a limited cohort of the staff of the Legal



“Like any publication, it must be defined by its readership and the readership in turn will be determined by the content of the publication.”

Aid Board, principally the lawyers. What does Legal Ease offer the remainder of the staff?

While remaining cognizant of the principle that Legal Ease is a legal publication and the Board is an organisation providing legal services, I believe Legal Ease can offer a great deal more to staff at every level and in every unit across the organisation.

I wish to see future issues come out on a regular periodic basis. I want it to have topical articles about the legal practice areas in which the Board operates. I also want to see useful information carried regarding external experts being used by the Board, recording relevant new legislation and case law. But I also want to see contributions from every staff member and every unit in the Legal Aid Board, from CEO to CO, from HR, IT, Legal Services, Civil Operations and more. I want the contributions from those units to inform the staff of what is happening and what is planned, and I want the staff to make contributions in every area, be it with legal articles, articles or opinions or personal accounts about the functioning of Legal Aid Board or about matters pertinent to being a staff member in the Board, such as pertaining to Wellness or Mental Health.

The new e-mail for Legal Ease is printed below. Please submit material to it. Keep in mind that the goal is to produce a more inclusive but still professional in-house journal that serves the organisation and its staff of which the staff takes a measure of ownership that will turn Legal Ease into a functioning in-house publication to which more people will want to contribute and which everyone will read and from which get something positive.

So what is Legal Ease? Like any publication, it must be defined by its readership and the readership in turn will be determined by the content of the publication. Legal Ease is read by more than just the staff of the Legal Aid Board but the staff is the main audience and should be the principal source of the content. So I urge you all, colleagues, to make the effort and take ownership of this valuable tool.

LEGAL EASE

may 2023

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**An Bord Um
Chúnamh Díliúil**
Legal Aid Board

Contact us!

We welcome contributions and suggestions.

Articles for future issues of Legal Ease may be submitted to: legalease@legalaidboard.ie.

www.legalaidboard.ie



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Legal Aid Board