Review of the Child Care Act 1991
July 2020 Consultation Paper

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Context – The Child Care Act 1991

The Department of Children and Youth Affairs is currently reviewing the Child Care Act 1991. This is the primary piece of legislation regulating child care and child protection policy in Ireland. The 1991 Act is a wide ranging piece of legislation which, at its core, seeks to promote the welfare of children who may not be receiving adequate care and protection. The legislation covers the following main areas:

- Promotion of the welfare of children, including the relevant functions of the Child and Family Agency
- Protection of children in emergencies, including section 12 which governs the powers of An Garda Síochána to take a child to safety
- Care proceedings, including the different types of care orders which can be made by a court
- Children in need of special care or protection
- Private foster care
- Jurisdiction and procedure, including provisions for the appointment of a guardian ad litem for a child and the in camera rule
- Children in the care of the Child and Family Agency
- Supervision of preschool services and
- Children's residential centres.

Under the Act, the State, as a last resort and in the common good, may intervene to take the place of parents as provided for under Article 42A.2.1 of the Constitution, following the thirty-first amendment. Although the Act has undergone some amendment (such as to make provision for special care), many of its key provisions have been in force for over 25 years.

The Review

The purpose of the review is to:

- Identify what is working well within the legislation, including its impact on policy and practice;
- Address any identified gaps and new areas for development;
- Capture current legislative, policy and practice developments;
- Building on those steps, revise the original legislation.

Work to date

The Department has consulted extensively with stakeholders to collect their views on the legislation including through a call for written submissions and a number of consultation events. This included extensive engagement with Tusla on subjects covered by the 1991 Act.

In September 2017 the Department held an Open Policy Debate where the implementation of the current Act was discussed with reference to three key themes: supporting families and children, listening to the voice of children and inter-agency work. In 2018 the Department received a large number of submissions as part of a written consultation process. In their submissions stakeholders

were invited to comment and make recommendations on the main parts of the Act, as well as on any new parts that they wished to propose. Responses to this consultation are available here[*].

In 2018 the Department also sought the views of Tusla staff and management on what aspects of the legislation are working well and what needs improvement. Last year, following consultation with Tusla frontline staff on initial proposals, and a seminar on reforming child care proceedings with a selected group of stakeholders, there was a focussed stakeholder workshop on foster care, followed by regional events on the same topic. The Department is currently preparing for a separate consultation with children who have experienced interventions under the Act, however this had to be postponed in light of the current health crisis.

As part of the Review process the Department has also been represented on the informal working group convened by the Department of Justice and Equality on the development of Family Court reform and has provided input on the draft Heads of Bill. The Review itself and our feedback on Family Court reform has also been informed by research the Department commissioned on reforming child care proceedings that was completed in June 2019.

Current Consultation

Building on this research and consultation, the Department has concluded that the Child Care Act, 1991 continues to serve children well, and contains much that is worth retaining. However, Ireland has changed greatly in the quarter of a century since the Act's full commencement, and it is unsurprising that there are areas that require updating to reflect both these changes in society and our understanding of children's rights, and also to allow for positive practice developments to be enshrined in law where needed. The Department has identified a number of areas where improvements could be made to address gaps in the legislation, to bring it up to date with current best practice and to ensure that it reflects important changes such as a greater focus on children's rights and their best interests.

These proposals, and the thinking behind them, have been outlined in a number of separate papers below, with topics ranging from more abstract themes such as the incorporation of guiding principles into the Act, to more concrete topics such as proposed changes to care orders.

Please note that the current consultation does not cover all sections of the Act. The Department will continue to engage with stakeholders on proposals in other areas in the coming months.

You are **not** required to comment on **all** proposals. Contributions are welcomed on one or more areas of interest and expertise, or the entire paper as appropriate.

Please note that while wider policy and practice issues must of course be considered, the primary purpose of this consultation is to identify the appropriate legislative approach. This will allow us to update and revise the Child Care Act to ensure that we have legislation that both requires and enables any necessary future policy and practices to be put in place.

[*] https://www.gov.ie/en/publication/ee2a23-submissions-to-the-written-consultation-on-the-review-of-the-child-c/

Your Response

The Department is now inviting focussed comment on these proposals. Responses should be emailed to: ChildCareAct1991@dcya.gov.ie by Friday 11 September 2020**.** Any submissions received after this date may not be considered.

It would assist the Department if as an introduction to any response you would provide a short narrative (not exceeding 800 words) setting out the basis of your/your organisation's experience and interest in this area.

Responses to this consultation are subject to the provisions of the Freedom of Information Act 2014. Parties should also note that responses to the consultation may be published on the Department's website.

You may wish to consult the reference documents provided at the previous consultation. These are available at https://www.gov.ie/en/publication/97d109-review-of-the-child-care-act-1991/#consultation-process]

Proposals

NEW PART of Act

Guiding Principles

Current position

The Child Care Act 1991 currently does not contain explicit guiding principles; however, there are a number of quasi-principles, primarily in Section 3 and Section 24, with regard to the duties of Tusla and the court, respectively, towards children and their parents.

The Child Care Amendment [Guardian *ad litem*] Bill 2019 aims to revise Section 24 to introduce principles regarding the best interests and views of the child[*]. It presents a list of factors to be considered in relation to the best interests of the child and also prescribes the duty of the court to ascertain the views of children and give them due weight. However, several stakeholders have also called for the introduction of guiding principles with a view to making the legislation more child-centred and to bring it into line with the United Nation Convention on the Rights of the Child. Stakeholders have also recommended that parental participation and the importance of family support and early intervention are given a stronger basis in the Act.

Proposal

On the basis of the consultation and scoping review, the Department is proposing the introduction of a new section on principles which would provide guidance on the implementation of the Act in its entirety. It is worth noting that several contemporary pieces of Irish legislation have incorporated guiding principles and a dedicated section on principles has been included in a number of international examples of child care legislation.

The proposed section will contain a number of principles that will apply to the revised Act. Among these, the best interests of the child will have a central role and the best interests of the child will override any other principles in cases of possible conflict. The principle will contain a list of enumerated factors, similar to the Children and Family Relationships Act 2015[†], but excluding the last three factors more specific to private family law. Furthermore, it is proposed that additional factors be added to the list in line with consultation findings such as timely decision-making, stability of care and promoting the rights and development of the child. The section will also prescribe that the views of children should be ascertained and given due weight in accordance with their age and maturity in all decisions made under the Act.

It is further proposed that a new principle addressing the importance of parental participation will be introduced. This will provide the basis for relevant operational measures, many of which are underway, which aim to ensure adequate parental participation in decisions concerning the care and protection of children. It is also suggested that rather than stating that generally it is in the best interests of the child to be brought up in his/her own family, the emphasis is given to recognising families as the preferred way to safeguard the welfare of children unless this is prejudicial to the welfare of a child. Such an approach is intended to support proportionate intervention into families provided that this does not put the child at risk. It should also recognise diverse family configurations in contemporary Irish society and allow for the involvement of the wider family in ensuring the welfare of the child.

[*] See https://www.oireachtas.ie/en/bills/bill/2019/66/ Note that this Bill has lapsed with the dissolution of the Dáil.
[†] See list at http://www.irishstatutebook.ie/eli/2015/act/9/section/63/enacted/en/html#sec63

Future position

The amended Child Care Act will contain explicit guiding principles. In all decisions under the Act the best interests of the child will be considered and their views will be ascertained and given due weight. Parental participation will be facilitated in all decisions concerning the care and protection of children as far as practicable and attempts will be made to safeguard the welfare of children within the family, including the wider family when appropriate. In cases of conflict between principles, the best interest will always be paramount.

Please provide your response to the above proposal

Barnardos welcomes the inclusion of guiding principles in the legislation. The inclusion of timeliness of decision making, recognising diversity, striving for stability of care arrangements and promoting the child's development and rights are all welcome. Barnardos agrees that keeping the child's best interest at the core of decisions under the Act and the use of a positive approach to working with parents who are involved in child care proceedings should be the core guiding principles. Barnardos also supports the importance of family support and early intervention being given stronger basis in the Act.

Equality and partnership between parents, children and State social services should be at the heart of the guiding principles. Children's participation in the decisions which affect their life where possible is key. The best interest of the child should be paramount and their voice listened to. The legislation should explicitly set out what the 'voice of the child' and the 'best interest of the child' means.

The legislation should promote the belief that when parents seek help it is an indicator of strength, rather than proof of failure on their part. Care proceedings are stressful, complex, intensely legalistic and difficult for everyone involved; so much is often at stake for both parent and child. The guiding principles should set the tone for the legislation, ensuring the child's voice and best interests are central and promoting an approach in which parents are equal partners in proceedings affecting their child.

However, merely having guiding principles relating to the child's best interest and parental participation is not sufficient nor will it achieve the desired outcome. It is essential these guiding principles filter down into practice and underpin proceedings under the legislation. The best interest of the child and parental participation must be both guiding principles **and** must also be woven throughout the legislation in order to be effective.

It is important to strike the right balance between the best interest of the child and proportionate intervention in to families and parental participation. An emphasis on proportionate intervention can lead to short orders that do not provide the child with stability and security. For example, a child aged two years who comes into care on a succession of interim care orders; a process which currently can take two and a half years outside of Dublin. A short term care order for three years could then be granted as it is considered a proportionate intervention into the family. This scenario would result in the child having no sense of security or stability between the key developmental ages of two to eight years. Decision making must take into account the child's developmental needs and their timeline.

Similarly, parental participation must be balanced with the child's best interests. Where pursuit of full parental participation causes delays to decision making it impedes protection of the child's best interests. There may be merit in specifying a reasonable limit on the time it should take to reach full parental participation on a case by case basis. Ultimately, the child's best interest should be the primary guiding principle influencing decision making under the Act.

Barnardos recommends an additional guiding principle promoting cultural sensitivity to ensure children's ethnic backgrounds are given due care, respect and protection. We also recommend development of a culturally sensitive child protection strategy. Under this strategy, it should be compulsory for Tusla to gather information on the ethnic background of children referred to their services or taken into care.

Children from ethnic minority backgrounds should be put in placements which are culturally appropriate. Gathering information on ethnic background is essential to implementing this practice.

Additional consideration should be given within the principles to greater inclusivity for children with disabilities. These children often experience difficulty in accessing child welfare and protection services. Inclusivity as a guiding principle would facilitate better access to appropriate care and services for children with disabilities.

PART II Promotion of Welfare of Children

Interagency coordination and collaboration

Current position

Section 7 sets out that the Child and Family Agency shall establish Child Care Advisory Committees (CCACs). These committees may consult with voluntary bodies, report on child care and family support services, review the needs of children in their areas and advise the Agency on relevant matters. Under Section 8 Tusla is required to report annually on the adequacy of child care and family support services and to pay due consideration to the needs of children who are not receiving adequate care and protection. For the preparation of this report Tusla must consult with CCACs and other bodies that provide relevant services. However, while CCACs were established in line with the legislation, they have since been replaced with new structures and are no longer in operation.

At a national level the Children Acts Advisory Board (CAAB) was responsible for advising the Minister regarding the coordination of service delivery under the 1991 Act between 2007 and 2011. However CAAB was abolished in 2011 and its coordination functions were not replicated in a new structure. Recent years have seen the establishment of a number of relevant local and national inter-agency mechanisms (including co-ordination structures and protocols); however, it has not been set out explicitly what role they might play in supporting the implementation of the Act.

During the consultation process the need to provide for inter-agency co-ordination in the Act was the issue which was most frequently raised by stakeholders, including the Ombudsman for Children and the National Review Panel, which both identified it as a major problem in meeting the needs of vulnerable children under the Act in an integrated manner. Contributors referred to recent English and Scottish legislation which list bodies that need to collaborate for the purpose of promoting the welfare of children. In Northern Ireland children's authorities have recently been empowered to share resources under the Children Services Co-operation Act 2015. Notably, the recent review of safeguarding boards in England resulted in the allocation of a shared statutory responsibility to a strategic leadership group to improve inter-agency co-ordination. Their local representatives have to develop joint plans and report on delivering those.

Challenges

- Need to adopt more strategic approach to inter-agency co-ordination in promoting the welfare of children in the context of the 1991 Act.
- Previous co-ordination structures under the Act are now defunct.
- New structures have taken on relevant functions but do not have a formal link to the Act.
- It is difficult to achieve the joint planning and delivery of measures on a consistent basis without a clear legislative underpinning.

Proposed solutions

The Department is considering replacing Child Care Advisory Committees with Children and Young People Services Committees (CYPSCs[*]) in the legislation. There is a large degree of overlap in the functions of CYPSCs and the former CCACs. All the relevant services are represented on CYPSCs and they are strategically well-positioned to link together more specific co-ordination mechanisms (e.g. Child and Family Support Networks, Children First Tusla-AGS or Tusla-HSE structures). Other bodies are narrower in their scope, while re-establishing CCACs would result in the creation of yet another local structure. It is also proposed that a national strategic oversight group should also be incorporated in the legislation. The

[*] See https://www.cypsc.ie/ for further information

Department's preference would be to utilise an existing national structure such as the Children First Inter-departmental Group or a Better Outcomes, Brighter Futures structures on which all Departments and key agencies are represented, rather than to create a new national governance structure. Within this overall context, consideration is being given to including a statutory duty on all relevant services to work together in the planning and delivery of services which promote the welfare and well-being of vulnerable children under the Act. Details of what such a duty would entail and the list of relevant agencies and services involved would be most appropriately specified in Ministerial guidance rather than in the legislation itself.

Future position

CYPSCs will assess the needs of children in their local area on a regular basis to inform planning and co-ordination of services inclusive of both universal and targeted measures relevant to the 1991 Act. Utilising relevant sub-groups, they will liaise with specific delivery and co-ordination structures to monitor the local co-ordination and delivery of multi-agency support to vulnerable children. They will provide a report on their assessment to the national oversight body e.g. Children First IDG. The national body will also liaise with Departments and key agencies in collating information on relevant services. It will also provide a forum for discussing services that promote the welfare of vulnerable children under the Act and co-operation among them. The information and discussion will inform the report on the review of services under the revised Section 8 that will be published annually. Furthermore, Ministerial guidance will support the implementation of the statutory duty concerning inter-agency co-operation and the compilation of the Section 8 reports (e.g. list of priority groups). Further independent reviews of co-operation among relevant services may also be commissioned by the Minister.

Please provide your response to the above proposal.

Barnardos believes Tusla should have primary responsibility for the coordination and commissioning of services for vulnerable children. CYPSCs take a population wide approach to planning service provision which can complement more targeted interventions; however defining their role in assessing the needs of children and coordination of services under legislation would likely be problematic from a practical standpoint. This makes CYPSCs simultaneously a cooperative and competitive environment. Furthermore, new services may find it difficult to penetrate the CYPSC structure without local representation and could lead to in-built biases towards existing or legacy service provision.

Barnardos welcomes the proposed focus on interagency collaboration and coordination which is key in the adoption of a corporate parenting approach. We are aware of issues such as children falling between two stools with court directions being required to compel a cohesive approach in some instances. For example, for HSE to engage in care planning for young people with disabilities aging out of care, for school transport to be arranged between Tusla and Department of Education. Lack of interagency collaboration and coordination can also cause problems in access to mental health services for children and young people who have moved placement and in citizenship applications where there is no parent in Ireland

Putting interagency collaboration on a statutory footing must be accompanied by clear guidance and a robust statutory mechanism. Barnardos welcomes the proposal that legislation would include a statutory duty to work together in the planning and delivery of services to children and that there would also be a statutory mechanism to liaise, monitor and report on the local coordination and delivery of multi- agency support to children.

We note that DCYA propose that Ministerial guidance would be used to set out the details of the statutory duty and who it involves. We believe that it is imperative that timeframes and review mechanisms for the provision of interagency services should also be detailed in such guidance, in order to ensure that

interagency provision of services occurs in a timely manner and to allow parents and carers route for redress if such provision isn't provided. There is a risk the response could become very disjointed without strong coordination, with the outcome being that ultimately nobody takes responsibility.

Early intervention and family support

Current position

The Child Care Act 1991 (the 1991 Act) states that the Child and Family Agency (Tusla) shall provide family support and child care services and maintain premises for that purpose. The 1991 Act does not differentiate between the various levels of support (early intervention or child protection focused) required for vulnerable children. The Child and Family Agency Act 2013 (the CFA Act) is more specific in that it states that Tusla is responsible for *encouraging and supporting the effective functioning of families where such service may involve preventative family support services*, domestic, sexual or gender-based violence services and those related to the psychological welfare of children and their families. In addition, the 2013 Act also transferred the functions of the Family Support Agency and the Educational Welfare Board to Tusla.[*]

Since the adoption of the 1991 Act major developments have taken place leading to a broader range of family and parenting services being made available while Tusla has also embarked on major reforms through the Prevention, Partnership and Family Support Programme. The programme has established Meitheal, the national practice model for multi-agency early intervention and commenced the process of standardising the commissioning of family support services. Tusla also recently combined the educational welfare and two school support services into the new Tusla Educational Support Service. Furthermore, as outlined in the First 5- Whole Government Strategy for Babies, Children and Young People – the Government has begun to develop a National Parenting Model.

Recent reforms to child protection legislation in a number of countries have adopted a diversified approach where early intervention measures are distinguished from child protection interventions to reflect new service models. A number of contributors to the consultation favoured a similar approach in Ireland, with a separate legislative provision for early intervention measures.

Challenges

- Need to provide family support measures on a more consistent basis, with more frequent involvement of statutory partners in multi-agency responses, and offer more targeted support to high-risk groups such as ethnic minorities and people with disabilities.
- Unlike in many other countries, early intervention has a weak legislative basis in the 1991 Act, which is oriented towards children with higher level of risks.

Proposed solutions

It is proposed to remove the statement in S3 of the 1991 Act that Tusla shall provide family support services, since the Child and Family Agency Act 2013 includes a similar, more detailed provision. Instead, a new provision which is framed more broadly in terms of promoting the well-being of children is proposed to underpin the provision of early intervention measures. Setting out specific interventions is not advisable given that this may create unnecessary constraints. Ministerial guidance on early intervention would be better suited to provide an indicative list of interventions and priority groups. The local co-ordinating body, outlined in the previous section, will have responsibility for co-ordinating arrangements to promote the well-being of children in the local area. Further requirements concerning cooperation among organisations may be supported via emerging national policy or set out by the Minister in statutory guidance or protocols.

Future position

[*] Section 71 and 72, Child and Family Agency Act 2013.

Early intervention measures will be used consistently to prevent an escalation in the needs of vulnerable children. Tusla and its partner organisations will collaborate consistently in promoting the well-being of children through co-ordination, and where necessary, the joint delivery of measures. Statutory guidance and national policy will provide further details on the types of measures utilised and details around how collaboration should take place and will also assist in setting out a structure for regular reports.

Please provide your response to the above proposal.

It is important to note child care proceedings are taken under the 1991 Act and not under the Child and Family Agency Act 2013. Therefore, Barnardos recommends retaining Section 3 of the 1991 Act amending the wording in line with the Child and Family Agency Act 2013 that Tusla will provide "preventative family support services aimed at promoting the welfare of children, including activities which are ancillary to child and family support services provided by the Agency or by a service provider on its behalf." Barnardos recommends strengthening the commitment in Sections 9 and 10 to the provision of services by voluntary bodies and other persons by mandating Tusla to ensure such services are available.

Barnardos supports the addition of a new provision framed more broadly in terms of promoting the well-being of children in relation to early intervention. For prevention and early intervention measures to be successful they must be given equal if not higher priority as measures responding to crisis, they must be timely and allocated sufficient resourcing. It is important to explicitly set out who Tusla's "partner organisations" are and should be. These should include but not be limited to the HSE, the Department of Health and other relevant Government Departments, and funded NGOs.

Voluntary Care Agreements

Current position

Voluntary care agreements can be reached between Tusla and the parents of a child under section 4 of the Act. This section allows Tusla to receive a child into care with the agreement of the parents or where a child has been abandoned or orphaned. Instances where a child may be taken into care with parental consent might include serious illness, sudden bereavement or other family crises. In such instances, Tusla must have regard to the wishes of the parents in the provision of care.

Challenges

- Purpose of voluntary care agreements unclear and may allow child to "drift" within system
- Power imbalance between parents and State in the making of an agreement
- Court hearing required to move from voluntary care to a care order with parent's consent
- No parental rights transferred to Tusla under a voluntary care agreement
- No Data Protection clarity around information sharing between professional services

Proposed solutions

- Limit voluntary care agreements to a maximum of 12 months. After this period (which aligns with the care planning reviews) Tusla can (i) reunite child with family, (ii) apply to court for care order or (iii) enter into a new voluntary care agreement with renewed consent and planning and a record of why renewed voluntary care was the most appropriate option for the child. Annual reporting obligation also placed on Tusla to provide details of the number of children in care under a voluntary agreement; the duration of such care; the number of annual assessments completed and the associated outcomes (at (i), (ii) and (iii) above).
- Introduce 3 (working) day standstill period before and after the voluntary care agreement. Tusla to also provide written details to parents, prior to the agreement taking effect, setting out the reason the child needs to be in care; the changes needed for reunification; the supports available; and the parental rights transferring to Tusla if any.
- Allow care order to be made ex parte, from voluntary care, where the court is satisfied that the relevant threshold is met and there is acceptable consent from the parents so that parents can avoid the court system if they wish and consent to care out of court.
- Allow for day-to-day parental rights to transfer to Tusla under a voluntary care agreement (subject to appropriate proportionality) to include school trips, GP appointments etc.
- Allow for the explicit sharing of information on the child and the parents of the child, e.g. from wider health services, educational professionals etc.

Future position[*]

Voluntary care agreements can be reached between Tusla and the parents of a child under section 4 of the Act. This section allows Tusla to receive a child into care with the agreement of the parents or where a child has been abandoned or orphaned. Instances where a child may be taken into care with the parental consent might include serious illness, sudden bereavement or other family crises. In such instances Tusla must have regard to the wishes of the parents in the provision of care. *Agreements are limited to 12 months when Tusla assess the situation and either return the child; apply for a care order; or enter into a new agreement. Tusla publish annual details of the number of children in voluntary care; the duration of the care; the number of annual assessments that have taken place and their outcome. Agreements come into force 3 days after parent's consent and are withdrawn 3 working days following the removal of consent. Tusla provide written details to the parents prior to the agreement taking effect setting out the reason the child needs to be in care; the changes needed for reunification; the supports available; and the parental rights transferring to Tusla, if any, such as permission for school trips and GP appointments. Sharing of relevant information on the child and the parents between Tusla and health and education*

[*] Note: changes from current position are marked in *italics*.

professionals is allowed. Care orders can be made ex parte, from a voluntary care agreement, where the court is satisfied that the relevant threshold is met and there is acceptable consent from the parents who choose the out of court option to consent to care.

Please provide your response to the above proposal.

Barnardos welcomes the inclusion of a 12 month limit to voluntary care agreements; however we recommend a review at six months is included also. The aim should be to resolve the reasons for a voluntary care agreement within the 12 month limit, after which time the courts must address why resolution is not possible. Where there is no hope of reunification a care order should be sought in order that the child can have a sense of stability and permanency in their foster home. Unaccompanied minors should not be provided care under voluntary care agreements.

Transfer of parental rights is not always in the best interest of the child and measures which support ongoing parental participation should be developed and promoted. Barnardos recommends that under voluntary care agreements parental rights should be shared between the parent and State as 'corporate parent', rather than transfer from one to the other.

The proposals put forward do not mitigate the likelihood of children drifting within the care system. The use of ongoing voluntary care agreements deny the child security or stability. Children in voluntary care should have access to a care plan and independent review of their care. Barnardos recommends establishing a properly resourced and sufficiently robust independent review function which could offer an alternative in cases where resolution has failed.

The proposals lack an independent mechanism which would allow for the child's views, wishes and feelings to be gathered and given due consideration. After 12 month limit a mandatory formal review of the initial assessment of the child's interests should be carried out by an independent review function (as above) where their views are sought. While the wishes of the parents should be taken into account, the best interests of the child should be the paramount consideration.

The proposed legislation should recognise that some children come into care for reasons that don't relate to their parents care of them and include this as a category to ensure adequate support for and more accurate reporting out on such care arrangements. It is unfair in these circumstances that such care arrangements are incorrectly categorised and in order to align with the principal of parental participation, this should be amended. Barnardos recommends section 18 (1) is amended to include a 'proactive choice' criteria for accessing voluntary care for parents who know they are not in a position to care for a child and are acting proactively; but where no harm or neglect has taken place.

There is a disparity in power between parents and Tusla. While embedding a culture of parental participation may reduce this disparity, it will take time and effort and full equality may never be attainable. Parents making agreements with the State in this context places parents in a vulnerable position. Voluntary care agreements and any decision made by the independent review mechanism should be in writing in accessible language and parents should be provided with independent legal advice from the Legal Aid Board. Access to the Legal Aid Board should not be reserved for parents involved in proceedings, but also available to parents who are at risk of proceedings being taken against them. This would allow parents to seek advice, become fully informed and prepare in advance for legal proceedings.

Barnardos is concerned that ex parte application could mean some parents aren't fully aware of what they are consenting to. We recommend that a formal offer of independent legal advice via the Legal Aid Board is considered as part of reaching the threshold for acceptable consent. Furthermore, consideration should be given to placing advocacy for parents on a statutory footing to provide a robust mechanism under which parents with poor mental health, learning difficulties or addiction issues can provide informed consent.

Further information is required on the three day standstill period. What does this mean for a child's welfare? Will the child remain in the care of their parent/s during this time? If not, what is the legal basis on which they are placed elsewhere as currently the only options are an emergency care order or an interim care order? Voluntary care should not exclude the use of Section 47 assessment and report if necessary to clarify issues or to appoint an expert. Equally, the option to seek a care order is open to Tusla if grounds arise or if disclosures are made while in voluntary care.

Unaccompanied children seeking asylum and taken into care

Current position

Unaccompanied children seeking asylum and taken into care have no specific provisions contained in the Child Care Act 1991 governing their pathway into care, rather their place in the care system is based on the interaction of Department of Justice and Equality Legislation (the International Protection Act 2015) and the Child Care Act 1991. Under the "equity of care" principle, operationalised some years ago, an unaccompanied child seeking asylum and taken into care is afforded the same standard and quality of care as would be provided to any other child in the care system. Voluntary care agreements (section 4) and care orders (section 18) are the mechanisms by which unaccompanied children seeking asylum are taken into State care.

Challenges

- No definition in the Act of unaccompanied children seeking asylum and taken into care.
- No reference to unaccompanied children seeking asylum within the Act as grounds, of itself, for taking a child into care – rather it is based on the interplay between Justice and Child Welfare legislation.
- No clarity in relation to application for residency status for unaccompanied children seeking asylum.

Proposed solutions

- Define unaccompanied children seeking asylum as those unaccompanied children without a right to reside in Ireland.
- Amend sections 4 (voluntary care), 17 (interim care order) and 18 (full care order) to provide that any presentation of an unaccompanied child seeking asylum is of itself grounds for being taken into State care and can be made ex-parte.
- Introduce a statutory requirement for Tusla to provide national guidance in relation to the application for residency status for unaccompanied children seeking asylum.

Future position[*]

Unaccompanied children seeking asylum and taken into care *are specifically mentioned in sections 4 (voluntary care), 17 (interim care order) and 18 (full care order). Their presentation as an unaccompanied child seeking asylum is of itself grounds for being taken into State care e.g. for a care order the grounds for being taken into care are now:*

(a) the child has been or is being assaulted, ill-treated, neglected or sexually abused, or
(b) the child's health, development or welfare has been or is being avoidably impaired or neglected, or
(c) the child's health, development or welfare is likely to be avoidably impaired or neglected, *or*
(d) the child is an unaccompanied child seeking asylum, defined as an unaccompanied child without a right to reside in Ireland, and orders in relation to these children can be made ex-parte

Tusla publish national guidance in relation to the application for residency status for unaccompanied children seeking asylum and taken into care.

[*] Note: changes from current position are marked in *italics*.

Please provide your response to the above proposal.

It is unclear what status national guidance *'in relation to the application for residency status for unaccompanied children seeking asylum and taken into care'* published by Tusla would hold. Barnardos recommends provision for Ministerial regulations granting Tusla powers to make an application for citizenship for children in care, instead of the young person having to wait to apply independently at 18 years.

Also, unaccompanied children seeking asylum should have a care plan, be kept informed of their care plan and should have a right to aftercare and financial support to complete education in keeping with other young people who are or have been in the care of the State.

The proposed changes to legislation should also include children and young people who have been trafficked into Ireland. All unaccompanied children and young people seeking asylum or who have been trafficked into Ireland should be placed in care using court proceedings, use of voluntary care agreements are not appropriate. The voice of the child is paramount when children are unaccompanied. The need for the child to have a way of giving their views plus access to legal representation should be an automatic part of the process.

Legislation needs to address the anomaly that an interim care order can be sought on a child or young person without any documentation such as birth certificate or passport, while a care order cannot.

Accommodation for homeless children

Current position
The powers in relation to the provision of accommodation for homeless children are contained in section 5 of the Act. This section places a duty on Tusla, where it appears that a child is homeless, to enquire into the child's circumstances and, if satisfied that there is no accommodation for them to occupy and unless taken into State care, to make accommodation available for the child in question. Usually, such scenarios would see children coming to the attention of An Garda Síochána, or presenting in the absence of parents, with no viable accommodation options, on foot of some form of family dispute. This power is held to refer to children who are homeless outside the family and is not to be confused with the obligations of local authorities in relation to homelessness.

Challenges

- Risk that a small number of vulnerable teenagers could be accommodated with the bare minimum of care and protection (shelter, a key worker) without the additional care planning, long-term planning, oversight, aftercare and other supports which children taken into care receive.
- The title of section 5 – "Accommodation for homeless children" implies a role in homelessness which is not accurate. Tusla's interventions in this space revolve, in the main, around temporary accommodation while family difficulties are managed.

Proposed solutions

- Introduce a statutory requirement for Tusla to provide national guidance in relation to the use of section 5, including but not limited to, minimum appropriate age for intervention, time limits for use, circumstances in which it may be used etc.
- Change section title to "Support for children temporarily out of home."

Future position[*]
The powers in relation to the provision of *support for children temporarily out of home* are contained in section 5 of the Act. This section places a duty on Tusla, where it appears that a child is homeless, to enquire into the child's circumstances and, if satisfied that there is no accommodation for them to occupy and unless taken into State care, to make accommodation available for the child in question. Usually, such scenarios would see children being picked up by An Garda Síochána, or presenting in the absence of parents, with no viable accommodation options, on foot of some form of family dispute. This is not to be confused with the obligations of local authorities in relation to homelessness. *Tusla publish national guidance in relation to the use of section 5, including minimum appropriate age for intervention, time limits for use, circumstances in which it may be used etc.*

[*] Note: changes from current position are marked in *italics*.

Please provide your response to the above proposal.

Barnardos recommends the new wording should require the State to make sure ***appropriate accommodation and supports*** are available to children temporarily out of home. The use of residential units/hostels which require a young person to leave accommodation from 9.30am - 5pm should be reviewed and suitable accommodation should be provided which includes day care if the young person is not attending educational facilities. The duty on Tusla to make accommodation available to children where no alternative is available should include parameters on the type of accommodation and the length of stay. There is a need for a national 24 hour social work service to respond to children and young people who present as homeless.

National guidance from Tusla is not sufficiently robust to govern the use of section 5. Barnardos recommends the provision of Ministerial regulations is required. Such regulations should be drawn up in consultation with stakeholders and would encourage social workers to consider whether the temporary homelessness is a form of neglect or abuse. Barnardos recommends the development of a reporting service/ tracking system as there is a tendency for young people to 'disappear' without any service knowing where they are. This is also a child protection concern.

PART III Protection of Children in Emergencies

Emergency Care Orders

Current position

Emergency care orders are provided for in section 13 of the Act. Under this section, a District Court may make an Emergency Care Order – on the application of Tusla – to take a child into the care of the State on an emergency basis for up to 8 days while Tusla investigates the family circumstances. The court must be satisfied that there is reasonable cause to believe that there is an immediate and serious risk to the health or welfare of the child or there is likely to be such a risk if the child is removed from the place where he or she is for the time being. It might be noted that this section interacts closely with section 12 – which provides An Garda Síochána with the power to remove a child, where in immediate danger or risk, and place in the custody of Tusla. Where section 12 is invoked, Tusla has 3 days to make an application to the court (if deemed appropriate) to keep the child in State care.

Challenges

- Not enough time to make application for Emergency Care Order post the invocation of section 12 by An Garda Síochána.
- Emergency Care Order durations not sufficient to allow for appropriate assessments to take place.
- Child, the subject of an Emergency Care Order, is not present at the address specified on the warrant.

Proposed solutions

- Amend Section 12 to allow Tusla to apply for an Emergency Care Order within "3 days or 2 working days, whichever is the longer" to account for weekends and bank holidays.
- Allow for an Emergency Care Order to be extended to 14 days (from 8) at the discretion of the court.
- Allow child care related warrants to specify that a child can be removed from any place where they are "reasonably believed to be located."

Future position[*]

Emergency care orders are provided for in section 13 of the Act. Under this section, a District Court may make an Emergency Care Order – on the application of Tusla – to take a child into the care of the State on an emergency basis for up to 8 days *or up to 14 days at the discretion of the court* while Tusla investigates the family circumstances. The court must be satisfied that there is reasonable cause to believe that there is an immediate and serious risk to the health or welfare of the child or there is likely to be such a risk if the child is removed from the place where he or she is for the time being. It might be noted that this section interacts closely with section 12 – which provides An Garda Síochána with the power to remove a child, where in immediate danger or risk, and place in the custody of Tusla. Where section 12 is invoked, Tusla has 3 days *or 2 working days, whichever is the longer,* to make an application to the court (if deemed appropriate) to keep the child in State care. *Child care related warrants can specify that a child can be removed from any place where they are "reasonably believed to be located."*

[*] Note: changes from current position are marked in *italics*.

Please provide your response to the above proposal.

There have been some legislative developments since the enactment of the CCA which have extended responsibility for child protection across more public agencies; most notably the Withholding Information Act 2012, the National Vetting Bureau (Children and Vulnerable Persons) Act 2012 and the Children First Act 2015. Despite these changes there is an over reliance on Section 12 of the CCA due to the lack of a comprehensive nationwide out of hours social work system. As a result children and young people are needlessly suffering and receiving inappropriate care due to the lack of available social workers.

The 2017 audit of Section 12 carried out by the Special Rapporteur on Child Protection highlighted this issue along with many others including the inadequacy of the Garda Pulse system, woeful interagency communication and co-operation and a dearth of child protection training for members of the Gardaí.[*] Barnardos supports the recommendations contained in that report, including better training for Gardaí and introduction of a nationwide out of hours social work system.

[*] Shannon, G. (2017) *Audit of the exercise by An Garda Síochána of the provisions of Section 12 of the Child Care Act 1991.*

PART IV Care proceedings

Interim Care Orders

Current position

Interim care orders are granted under section 17 of the Act. These orders are granted for a period of 29 days (or for longer periods where the parents of the child who is the subject of the order consent). Interim care orders allow for a child to be taken into State care, pending a judgement being made on a care order, in circumstances where there is reasonable cause to believe that the grounds exist for the making of a care order. In addition, the interim care order is deemed necessary for the protection of the child and places the child in care pending the determination of a full care order hearing.

Challenges

- The 29-day duration of the interim care order results in the parties reappearing in court on a regular basis to seek renewals, creating uncertainty for the child and placing significant strain on social work and court resources.
- Child on an interim care order may "drift" within system
- An interim care order is dependent on the lodgement of an application for a care order
- Perception that an interim care order should not be granted before voluntary care agreements and supervision orders are explored
- No parental rights transferred to Tusla under an interim care order
- No Data Protection clarity around information sharing between professional services
- Decisions in relation to the care of a child not made in a suitable time period

Proposed solutions

- Interim care order extensions for a maximum of 3 months, after initial 29 day interim order.
- Annual reporting obligations to be placed on Tusla to include number of children in care on interim care orders; the length of time in interim care; the number who have moved from interim care orders and to where (i.e. care orders or return to family)
- Allow interim care orders where a care order application is under consideration but an application has not or is not about to be made. This ensures active case management of the situation but does not require a care order application to be applied for prematurely if further work on the case shows that it is not in the child's best interest.
- Interim care orders can be granted without voluntary care or supervision orders being explored if previous work with the family such as child protection plans and care plans show that an interim care order is warranted and proportional given the interventions already tried.
- Allow for day-to-day parental rights to transfer to Tusla under an interim care order (subject to appropriate proportionality) to include school trips, GP appointments etc.
- Allow the sharing of relevant child and parent information between professional services
- As a guiding principle final decisions should be taken as quickly as circumstances allow.

Future position[*]

Interim care orders are granted under section 17 of the Act. These orders are granted for a*n initial* period of 29 days *with 3 month extensions* (or for longer periods where the parents of the child who is the subject of the order consent) *with the guiding principle that final decisions should be made as quickly as circumstances allow. They can be made without Supervision Orders or Voluntary Care Agreements previously being in place and can be used to* allow for a child to be taken into State care, pending a judgement being made on a care order *or where a care order application is under consideration*, in circumstances where there is reasonable cause to believe that the grounds exist for the making of a care order and the interim care order is deemed necessary for the protection of the child. *Tusla publish annual*

[*] Note: changes from current position are marked in *italics*.

data on the numbers of children in interim care; the duration of the interim care; the numbers that have moved out of interim care and where they have gone (e.g. into care or home). Day-to day parental rights can transfer to Tusla such as permission for school trips and GP appointments. Sharing of relevant information on the child and the parents between Tusla and health and education professionals is allowed.

Please provide your response to the above proposal.

Barnardos welcomes the proposed change in duration for interim care orders. We recommend a limit be placed on the number of interim care orders which can be granted in succession in order to reduce delay and avoid care orders rolling indefinitely. The aim should be to resolve issues within a 12 month limit, after which time the courts must address why resolution is not possible. The legislation should consider the proportionality of seeking a short care order rather than seeking a further interim care order, as well as impact on same for child's sense of security and stability.

Barnardos recommends the legislation explicitly sets out that interim care orders can be granted in the absence of voluntary care or supervision orders being explored **if** previous work with the family such as child protection plans and care plans show that an interim care order is warranted and proportional given the interventions already tried.

It is not necessarily the case that transfer of day to day parental rights is in the child's best interest. Barnardos recommends legislating for the possibility of shared parental rights where it is in the child's best interest. Where parental rights are transferred there must be clear guidance on the decision process and which rights this extends to. Tusla should be required to outline the conditions for family reunification from the outset when applying for a care order.

Currently there are different practices pertaining to interim care orders in different courts; any new proposals should be designed to make the system more uniform and ensure parity for children in such proceedings.

Care Orders

Current position

Care orders are granted under section 18 of the Act where the court is satisfied that a child has been or is being assaulted, ill-treated, neglected or sexually abused or where the child's health development or welfare had been, is being or is likely to be avoidable impaired or neglected and that the child requires care and protection which he or she is unlikely to receive unless placed in the care of Tusla. Under a care order Tusla has like control over the child as if it were the parent and shall do whatever is reasonable to promote the child's welfare. A care order remains in force until the child attains the age of 18 (or for such shorted period as the court may determine) unless it is successfully challenged by the parents or discharged by the court because of changed circumstances.

Challenges

- Tusla can only apply for a care order until the child is 18 and not for a shorter period.
- No written reasons provided when Court grants a shorter care order than applied for.
- Certain actions (e.g. repeat non-attendance of any party) can obstruct holding a care order hearing.
- Applications for section 22 hearings to vary or discharge a care order or supervision order, or any condition or direction attached to the order, can be made without presenting evidence that the circumstances that warranted the order, condition or direction have changed.
- Extended parental rights for foster carers only granted after a minimum of 5 years.
- Perception that a care order should not be granted before voluntary care agreements, supervision orders and interim care orders are explored.
- No Data Protection clarity around information sharing between professional services.
- Decisions in relation to the care of a child not made in a suitable time period.

Proposed solutions

- Allow Tusla to apply for short care orders where proportional to the need.
- Court to provide written reasons when a shorter care order granted than applied for.
- Allow court to hold hearings ex-parte where circumstances warrant it.
- Allow "leave to apply" hearings for any section 22 application to confirm new evidence.
- Allow for foster parents to apply for extended rights under s. 43A of the Act after 6 months in line with the transfer to the foster parent of the children's allowance.
- Care orders can be granted without voluntary care, supervision orders or interim care orders being explored if previous work with the family such as child protection plans and care plans show that a care order is warranted and proportional given the interventions already tried.
- Allow the sharing of relevant child and parent information between professional services.
- As a guiding principle final decisions should be taken as quickly as circumstances allow.

Future position[*]

Care orders are granted under section 18 of the Act where the court is satisfied that a child has been or is being assaulted, ill-treated, neglected or sexually abused or where the child's health development or welfare had been, is being or is likely to be avoidable impaired or neglected and that the child requires care and protection which he or she is unlikely to receive unless placed in the care of Tusla *with the guiding principle that final decisions should be made as quickly as circumstances allow. They can be made without Supervision Orders, Voluntary Care Agreements or Interim Care Orders previously being in place and can be made ex-parte at the courts discretion.* Under a care order Tusla has like control over the child as if it were the parent and shall do whatever is reasonable to promote the child's welfare*. Parental rights can be applied for by a foster parent after 6 months.* A care order remains in force until the child attains the age of 18 *or a shorter proportional time applied for by Tusla* (or for such shorter period as the court may

[*] Note: changes from current position are marked in *italics*.

determine *and provide a written judgement for*) unless it is successfully challenged by the parents or discharged by the court because of changed circumstances *identified initially through a Section 22 leave to apply hearing. Sharing of relevant information on the child and the parents between Tusla and health and education professionals is allowed.*

Please provide your response to the above proposal.

Barnardos recommends where a care order is made, and subject to matching having been made between the child and their foster careers, the foster carers should be able to apply for enhanced rights without further delay.

Barnardos is not in agreement that care orders could be sought without first recourse to interim or emergency care orders as this does not allow sufficient time for consultation with children or parents.

In our experience Tusla frequently applies for shorter duration care orders; however we recognise this practice may need to be formalised under the renewed legislation.

Barnardos recommends Tusla should have an obligation to provide a detailed report into possible relative care placements in the first instance and placements within the child's community in the second instance prior to making of a Care Order. Relative care placements and placements in the community require assessment and support to ensure capacity to meet the needs of the child. These resources must be allocated as required. Barnardos recommends legislating for a specific 'Relative Care Order' to provide greater legal protection and supports to relative carers.

Barnardos recommends written judgement outlining the reasons for decisions are provided for **all care orders,** regardless of whether there is a difference between the Court's position and Tusla's position. Similar procedures are in place for decisions about detention at mental health tribunals. Implementing a similar process for child care proceedings would allow for greater transparency and provide children and parents a record for future reference.

Barnardos recommends the State set up a system of independent child contact centres to facilitate consistent, meaningful and safe access for children and their parents during the duration of court orders.

Barnardos recommends Ireland emulate other jurisdictions, such as the UK, where children in care are regarded as priority for services from all arms of the State. Therefore, children ageing out of care or reunified to their birth family would be prioritised for services such as housing and education. Schools attended by children in foster care should receive additional resources to support those children. Children with disabilities who have been in care should be prioritised for disability services, including residential services if required.

Barnardos recommends **all children** who have spent time in care or who are part of a family group in care are provided with financial aftercare supports. Barnardos is aware of a significant number of cases where young people have been denied access to aftercare despite spending time in care or where delays taking a young person into care meant they did not meet the threshold. Furthermore, we recommend the legislation includes a statutory obligation to implement aftercare plans.

Supervision Orders

Current position
Supervision orders are provided for in section 19. The grounds for granting a supervision order are the same as those for an interim care order (but a lower threshold to that of a full care order). A supervision order authorises Tusla to have a child visited at home to ensure that the child is being cared for properly. The court also has the power to direct the parents to bring the child to a day care centre, hospital etc. Supervision orders can remain in force for up to 12 months.

Challenges
- Purpose of supervision orders unclear and may allow child to "drift" within system
- Orders cannot direct parents to comply with child centred actions such as bringing the child to school on time
- Breaches of supervision orders are not addressed
- Limited powers for social workers to assess the home and talk directly with the child
- No Data Protection clarity around information sharing between professional services

Proposed solutions
- Written document for the family to provide details of the purpose of the order and the plans and supports available for the child and the family. Supervision Orders to be limited to 12 months with the possibility of a single 3 month extension where independent assessment shows improvement in parenting capacity and the extension serves the child's best interest
- Order to provide for parental direction in relation to child centred actions – e.g. child is be brought to school on time, child is not to be looked after by adult under the influence of alcohol etc.
- Breaches to be reported to court in all instances
- Provide that supervision orders will allow for an inspection of the house the child is living in, the ability to talk to the child on their own, to visit the child outside of the home (e.g. in school) and to consult with the wider family network
- Allow for the explicit sharing of information on the child and the parents of the child, e.g. from wider health services, educational professionals etc.

Future position[*]
Supervision orders are provided for in section 19. The grounds for granting a supervision order are the same as those for an interim care order (but a lower threshold to that of a full care order). *The order is accompanied by a written document that provides details of the purpose of the order and the plans and supports to be provided to reach the specified goal. It includes provision for the sharing of information on the child and the parents of the child, e.g. from wider health services, educational professionals etc*. A supervision order authorises Tusla to have a child visited at home to ensure that the child is being cared for properly *and allows for an inspection of the house the child is living in, the ability to talk to the child on their own, to visit the child outside of the home (e.g. in school) and to consult with the wider family network.* The court also has the power to direct the parents to bring the child to a day care centre, hospital etc*. and additionally to abide by child centred actions e.g. child to be brought to school on time; not to be looked after by an adult under the influence of alcohol etc.* Supervision orders can remain in force for *only one* 12 month *period, however, an extension of one 3 month period is allowed if the specified goal has not yet been reached but an independent assessment has shown improvement in parenting capacity and the extension is in the child's best interest. All breaches of supervision orders are reported by Tusla to the Court.*

[*] Note: changes from current position are marked in *italics*.

Please provide your response to the above proposal.

Barnardos recommends that there should be provision in the Act for mandatory plans to accompany supervision orders. The best interest of the child and listening to the child should be paramount when devising a plan. They should be detailed, specific and include access to services. Families who are subject to supervision orders should be given preferential access to support services.

Barnardos recommends rewording the text on breaches of supervision orders to "*All breaches of supervision orders are reported by Tusla to the Court in a timely manner aligned to the child's timeframe and best interest."*

Barnardos recommends the legislation clearly outline who will carry out independent assessments of parenting capacity.

The role of GALs in the application and implementation of supervision orders should be clearly defined. GALs can be appointed to applications for Supervision Orders and may remain appointed while the order is in place. However, they have limited ability to review the terms or operation of the order or to seek to amend any conditions. Recent shortages in social workers has resulted in Supervision Orders being left unmonitored.

Barnardos recommends that where a GAL is appointed, they should have a right to see the child, access to the child outside the home and access to the court. The court should have the power to extend supervision orders where required. The legislation should provide for GALs to apply to court to access Tusla and wider records in relation to the child if parental consent is withheld.

It is key that plans devised by Tusla would be monitored and reviewed. Supervision Orders should be granted with interagency collaboration in mind and should not include any restrictions on Tusla in respect of sharing information regarding the existence of an Order with relevant third parties such as An Garda Síochána, schools and other professionals involved in the child's life. While granted *in camera*, it is important that Tusla are able to discuss the granting of a Supervision Order, and any associated conditions, with relevant parties.

Supervision orders which are coming to an end should be mentioned in Court to allow for examination of the outcomes arising from the use of the supervision order and avoid drift. In line with the guiding principle of parental participation, Tusla should set out in writing (plainly in the parent's first language) why a further supervision order is not being sought.

PART IVB Private Foster Care

Private Foster Care

Current position

The provisions in relation to Private Foster Care are contained in Part IVB of the Child Care Act 1991. Not to be confused with the provision of foster care by (mainly private/for profit) independent service providers, this Part of the Act governs any arrangement whereby a child is placed in the full-time care of a person who is not a parent/guardian. This Part details: that Tusla be notified by those parties availing of such arrangements (where appropriate and not exempted), the information to be submitted, the duty to the child in such instances, the inspections that Tusla may carry out in relation to such placements, proceedings initiated by Tusla, restrictions on such placements and offences.

Challenge

- This section predates Children First legislation. It was a mechanism of bringing to Tusla's attention children who may be in need of care and protection. As Children First has introduced mandated reporting the need for Part IVB has been removed.

Proposed solution

- Remove part IVB from the Act.

Please provide your response to the above proposal.

There is a need to tighten the language used in Section 36 (1) (d) which allows for 'other suitable arrangements' to be put in place by Tusla to place children removed from their family of origin. The wording is too broad and in practice has resulted in children being placed with unassessed carers or sometimes even carers who have failed to meet the criteria to become foster carers.

Barnardos is aware of cases where these unassessed or unapproved carers are not relatives or known to the child. Barnardos recommends legislating for parental capacity to be addressed in such instances and for provision of oversight of the child living out of the home. The legislation should allow for regularisation of such arrangements when they are in the child's best interest.

PART V Jurisdiction and Procedure

Jurisdiction – operation of the courts and hearing of proceedings

Current position

Child care cases are currently heard in the general court system: District Courts hold jurisdiction in the first instance, with the exception of special care cases which are heard by the High Court, and appeals which are made to the Circuit Court. An application is made to the District Court where the child resides or where the child is currently staying. The District Court is required to hear and determine these proceedings at a different place or time from ordinary sittings of the Court. Proceedings should be heard otherwise than in public and as informally as possible; specific exceptions exist in relation to specific groups subject to certain safeguards. The Act prohibits publishing or broadcasting matters that are likely to identify a child who is the subject of care proceedings. The Act also enables the court to procure an expert report of its own motion. The details of case management are covered in District Court orders and, in Dublin, by the current Practice Direction by the Dublin Metropolitan District.

Challenges

- Lack of specialisation and judicial variance
- Insufficient case preparation and case management
- Under-resourcing of District Courts and related delays in concluding cases
- Mixing child care cases with other types of hearings
- Lack of flexibility in relation to local jurisdiction
- Adversarial proceedings
- Limited oversight regarding expert reports and appointment of expert witnesses

Proposed solutions

The key recommendation emerging from consultations is the need to establish a specialised Family court. Of relevance, therefore, is the fact, that the Department of Justice has prepared a General Scheme to establish a Family Court Division which will have specialised judges, its own rules of court and the option of issuing Practice Directions and creating a nationwide case management system. In addition, provisions concerning local jurisdiction will also be updated so that any court that the child has connection with can exercise jurisdiction. As a result, when a child is moved to a new location, cases can continue be heard at the same local court if that is deemed in his/her best interests.

In consideration of the need to streamline hearings and enhance the inquisitorial aspect of proceedings, it is proposed to put in place enabling provisions to facilitate active case management and the introduction of alternative dispute resolution mechanisms (ADR) in child care cases where appropriate. Consideration will also given to placing a statutory requirement on parties to hold pre-court meetings to identify issues at dispute, and providing the respondent with an opportunity to prepare a written reply to the application of an order. While ADR processes may not be suitable for deciding whether harm has reached the required threshold to take a child into care, they could be used for determining "ancillary questions" such as access to services, placement, or access to parents and family members, a mechanism which may also include supporting engagement between parents and Tusla. It is also proposed that the procurement of expert reports should be guided by a list of factors in S27 similar to private family law[*] and that standards required

[*] See S32(3) of the Guardianship of Infants Act 1964 as inserted by S63 of the Children and Family Relationship Act 2015 http://www.irishstatutebook.ie/eli/2015/act/9/enacted/en/print#sec63

of experts are set out in a Practice Direction while the early appointment of single joint experts is facilitated by the new case management system.

In addition, amending the current in-camera rule to facilitate research and consultation with children has been recommended. (Note that an amendment has already been proposed to the Child Care (Amendment) Bill 2019 to authorise the attendance of officials to assist in monitoring of the implementation of the Act, subject to necessary safeguards.) It is also proposed that social media be included in the definition of "publish" and that proportionate sanctions are outlined under Section 31.

Future position
The establishment of a dedicated Family Court Division will help to address the current difficulties in the court system around specialisation, judicial variance and resources. Child care cases will be heard separately, with specialised judges presiding over cases. The reform will also provide the opportunity to introduce concurrent jurisdiction between District and Circuit level courts so that complex cases can be transferred to the latter in a similar manner to neighbouring jurisdictions. New enabling provisions in combination with a detailed Practice Direction concerning case management (including the time frame) will facilitate effective case preparation and management and the use of ADR processes where appropriate. A nationwide case management system and ancillary services will support the implementation of those measures. The court will have enhanced oversight over the procurement of expert reports, and the appointment of expert witnesses (e.g standards required) will be regulated through a Practice Direction combined with the future development of panels of experts.

Please provide your response to the above proposal

Barnardos welcomes the commitment to establish a dedicated Family Court allowing for new child and family friendly practices, specialised staff and additional resources. However, there have been calls for and various commitments to establishing a Family Court for decades. It is imperative the new court division is established without any further delay. Barnardos recommends that family support services be given a role in the legislation to provide expert reports when requested by the courts.

Barnardos notes that if mediation is to be used for 'ancillary questions' it may require an amendment to Section 3(1)(i) of the Mediation Act 2017, which excludes proceedings under the Child Care Acts 1991-2015.

Voice of the child

Current situation
The Child Care Act 1991 provides for two explicit methods of ascertaining a child's views in child care proceedings: making the child a party, or appointing a guardian *ad litem* (GAL). In addition, the Act places a general obligation on the Court to give due consideration to the wishes of the child. Children are very rarely made a party to proceedings. It is currently not possible to retain a GAL if a child is made a party but the Child Care Amendment [GAL] Bill 2019 will change that.

Children may also speak to the judge, either in his/her chamber or in the courtroom or they can write to him/her. This is not specified under the Child Care Act but comes under the general provision of S24. Research suggest that this happens more often than party status for children but it is less common than the appointment of GALs. Again, there are great differences among judges as to whether they speak to the child and how much value they place on that option. A child may also give evidence but this is usually considered undesirable in child care proceedings. Instead, evidence given by a child to another person (hearsay) may be considered by the court. This is regulated by the Children Act 1997.

Contributors to the consultation were in favour of introducing training and guidance for judges as well as lawyers regarding how to facilitate children expressing their views and setting out requirements in terms of specialist training. It was also suggested that children should be informed of their options as it is currently not provided that they must be made aware of the different possibilities they have to convey their views and wishes.

Challenges
- Children may not be aware of their options for participation.
- Courtrooms often unsuitable for children
- Children are rarely made a party to proceedings
- Inconsistent practice regarding judicial interviewing of children
- Cumbersome process of assessing the admissibility of hearsay evidence from the child, (e.g. via foster carer).

Proposed solutions
As noted above, the Department is proposing that guiding principles be included in the Act. One of these proposed principles is that the views of the child should always be ascertained in respect of decisions that concern them. Added to that, the Department is considering making it more explicit in the Act that the child should be made aware of the options they have to express their views in care proceedings. Under S25 a child or young person can only be made a party if the judge considers it "necessary in the interests of justice". Consideration is being given to lowering this threshold. This, together with the planned removal of the prohibition on child parties having a GAL, would facilitate making children a party whenever it is deemed appropriate by the court. Lastly, it is proposed that a presumption in favour of the admissibility of hearsay evidence be introduced, with the judge retaining discretion as to the weight attached to it.

Future position
Children will be made aware of their options to give their views in care proceedings. The future Family Court reform will support the creation of child and family friendly venues and increased use of videolink and online technology. Allowing a child to retain their GAL when becoming a party to proceedings will have removed an important barrier to making a child a party (S25). Training of and guidelines in combination with specialist judges and panels of lawyers will facilitate the greater use of S25 and judicial interviews. The potential to separate ancillary issues from threshold issues during proceedings may also lead to an increase

in the number of children being made a party to the proceedings as this may facilitate their increased engagement and participation in respect of issues such as care planning and access. Hearsay evidence will be admitted without having to conduct separate hearings, with the judge determining how much weight he/she attaches to it.

Please provide your response to the above proposal.

Please note that legislation in relation to GALs is being progressed separately under the Child Care Amendment Bill 2019, and we are therefore not inviting comment on GALs at this time.

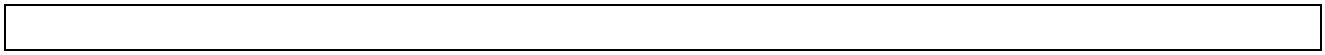
Barnardos welcomes plans to update the Child Care Act to bring it in line with other legislation in giving due regard to the best interests and views of the child. Facilitating children's participation in proceedings and in respect to issues such as care planning and access is also welcome. As mentioned previously, children's participation, prioritising their best interest and giving due regard to their views should be included as a guiding principle and also woven throughout the legislation (in tandem with parental participation). Barnardos recommends the legislation sets out clearly what the 'voice of the child' and the 'child's best interest' means, in line with the definition used in the Children and Family Relationships Act. Children must not be put under pressure to give their view.

Barnardos is concerned about the disparity between the best interest of the child being provided for in legislation pertaining to child care proceedings, with no such provision being legislated for in voluntary care agreements. This will lead to a system in which some children in care will have their views, wishes and feelings sought and represented independently to a judge, while other children in care won't. We recommend the processes and mechanism for independently gathering, representing and considering the child's views, wishes and feelings is the same whether they come into care on a voluntary agreement or a court order. The use of a lay-person forum, as is used in Nordic countries, could perform this function, as well as reviewing uncontested agreements which are up for review.

Barnardos recommends that children should not be precluded from having dual representation by a solicitor and a GAL. A variety of mechanisms should be made available to courts to fulfil their obligation to hear the voice of the child (e.g. GALs, judge seeking child's views directly, use of child's view expert). Section 30 (1) relating to the power to proceed with a case without the child present is redundant; however Section 30 (2) allowing a request by the child to be present to be granted provided it is in their best interests should be captured somewhere. It is important that court practice directions are in keeping with the CCA and other legislation. Barnardos recommends that children's testimony via third party should be allowed to be admissible as evidence as a matter of course.

Barnardos welcomes changes to procedures relating to hearsay evidence. It is widely accepted to be undesirable for children to have to give evidence in their own care proceedings for a number of reasons. The onus is, however, on the court to be satisfied that hearsay can be admitted in lieu of direct evidence. This law needs to be changed to allow children's disclosures and statements to third parties to be admissible as evidence as a matter of course.

All court staff who come in contact with children, including judges, solicitors and barristers, should undergo specialist training on how to engage and communicate with children in an accessible manner, which takes into account the trauma many children in care experience.



PART VI Children in the Care of Child and Family Agency

Corporate Parenting

Current position
There is no provision for Corporate Parenting in the Child Care Act 1991

Challenge

- Successful child protection and positive outcomes needs the collaboration and input from all state organisations involved with the child and family.

Proposed solution

- The good collaborative structures and relationships under Better Outcomes Brighter Futures will be used to embed the concept of corporate parenting in Ireland before it is introduced in legislation. In Scotland, the corporate parenting approach to children in care was developed over many years *before* being enshrined in legislation, in 2014. This, it seems, allowed a cultural shift and the development of a collaborative mindset, which paved the way for the copper-fastening of the concept, and the reality of a more cooperative approach to children in care, in legislation. The Scottish example is instructive. It suggests that legislation is most effective when it builds upon shared public values which have been carefully cultivated over time. On this basis, it is not proposed to legislate, at this time, for the introduction of a "corporate parenting" approach in Ireland.
- Interagency collaboration is one of the biggest challenges to securing good outcomes for children in care. It is envisaged that the interagency coordination proposals outlined at pages 7-8 will help to lay the groundwork for any future corporate parenting approach.

Future position[*]
There is no provision for Corporate Parenting in the Child Care Act 1991 *however, the Better Outcomes Brighter Futures structure will be utilised to introduce the concept in Ireland*.
[See also Interagency coordination proposal]

Please provide your response to the above proposal.

Barnardos believes it is critical for corporate parenting be formalised in clear legislative and policy direction to ensure agencies work together and focus on the child's wellbeing. Corporate parenting is too important for children's wellbeing and safety to rely on an existing policy framework such as Better Outcomes Brighter Futures (BOBF). Indeed, BOBF is not without its limitations, suffering at times from implementation deficit, and is coming to the end of its lifespan (2014-2020). Furthermore, to leave such a crucial aspect of children's care in the ether in the hope a cultural shift and collective mind-set may develop would be negligent on behalf of the State as it would lead to several generations of children and young people not having their needs met.

Key to corporate care is that children in care are afforded a similar experience as other children and can enjoy minimal intrusions into the private and personal lives. Children in care have a right to lead normal lives just like other children; corporate care can allow them to do so. By setting out a policy and legislative framework for Corporate Parenting a culture can grow around it and a collective mind-set can be formed. Indeed, BOBF is a good example of where a policy framework can provide a structure upon which a culture change and shared purpose can grow.

[*] Note: changes from current position are marked in *italics*.

Barnardos recommends that corporate parenting is legislated for and that policy directions are put in place to inform and lead such a cultural changes and allow children and young people access to remedies if their needs are not sufficiently met in a timely manner.

Legislation should establish that children in the care of the state are regarded as priority for services from all arms of the state. Therefore children ageing out of care or reunified to their family of origin are prioritised for state housing; schools where children in foster care attend receive additional resources specifically to be used to support those children etc.

Further Comments

As mentioned above, this consultation does not cover every issue currently under review. The Department is currently progressing research and stakeholder consultation on a number of separate sections of the Act.

You may have further issues that you wish to address, such as:

- New sections to be added to the Child Care Act
- Suggestions for future proofing the legislation
- Proposals on other sections of the Act that you have not yet had the opportunity to comment on.

If you would like to add any further comment, please do so below.

- Access support should be readily available to children and their parents to support their ongoing relationship. Provision of quality access services (child contact centres) which enable meaningful contact in a child centred environment, as well as active support to assist parents to build on and develop their relationship with their child are essential; both when working towards the parent regaining care of their child and when the child being in a care placement long term is likely.

- Section 3 of the Act also places a duty upon Tusla to assess retrospective disclosures of childhood abuse. Retrospective disclosures are defined in our National Child Protection and Welfare Guidance as "abuse that an adult discloses that took place during their childhood".[*] Such disclosures can often contain information regarding potential future risk. However, reports by HIQA, the Office of the Ombudsman and others have shown significant issues regarding Tusla's assessment and management of such disclosures. Retrospective disclosures were first included in Irish child protection policy in 1999 and therefore were not foreseen as a function of the then Health Boards at the point of enactment in 1991. Barnardos welcomes the publication of Tusla's plan in response to the report of the Disclosures Tribunal. However, a clear legislative mandate is still required to assess disclosures of childhood abuse made by adults. Barnardos recommends the inclusion of statutory recognition of Tusla's role in respect of assessing retrospective disclosures of childhood abuse. The legislation should also incorporate relevant provisions of the EU Victims Directive to ensure the role is victim-centred and ensures support is provided to adults and children who disclose abuse.

- Barnardos recommends the establishment of a dedicated nationwide out-of-hours social work system and sufficient foster placements to reduce dependency on private providers for what should be a statutory service. The report by the Special Rapporteur into the use of Section 12 of the CCA by Gardaí noted in many instances individual Garda were unsure of the statutory footing of such private fostering organisations and sometimes weren't aware they were private companies.[†] Funding and support services to private foster agencies has been severely cut in recent years meaning they have not been able to provide the level of support and wrap around care to children. The model of outsourcing social services to private businesses is often costly and unsustainable. Market pressures can result in a service being withdrawn at short notice. Sufficient State provision of services, which may be further enhanced and supplemented by private services, is preferable.

[*] Department of Children and Youth Affairs, (2017) *Children First: National Guidance for the Protection and Welfare of Children.*

[†] Shannon, G. (2017)

- All children in foster and relative care placements must have access to a social worker and this should be set out in the legislation. Barnardos also recommends the legislation strengthens the State's obligation to provide foster care placements within a child's community, in accordance with the child's needs and best interests.

- Whole family residential placements are required in certain circumstances for a small number of extremely vulnerable families with high levels of need; usually time limited and for the specific purpose of assessment and support planning. This approach would provide a safe, secure environment for families to receive wrap around therapeutic and practical supports, providing a high level of child protection while also giving the family a much greater chance of successfully transitioning back into the community. Such facilities should be available to both parents.

- Include a more comprehensive definition of childminding services in the Act, such as 'A childminding service means a childcare service, which may include an overnight service, offered by a person who single-handedly takes care of children aged from 0-15 years old, which may include the person's own children, in the person's home for payment for a total of more than two hours per day.'

- Special Care Provision does not have any integrated step down facilities - that is, non-secure residential care situated as part of the Special Care campus, allowing for continuing or completion of therapeutic interventions and/or education. Times of transition are exceptionally difficult for young people who have experienced trauma and disruption, and many young people struggle with the move from Special Care to other care arrangements which may be located far from the Special Care unit. Both the legislation and the provision of care should be reviewed to allow for onsite step down while remaining under the supervision of the court that made the Special Care Order. This allows children to experience continuity of care.

- The way in which the criminal justice system interacts with children and young people in need of high level care needs to be improved. Where issues arise within special care placements the criminal justice system may step in and the young person can be subsumed with the criminal justice system. Many judges are reluctant to use criminal detention for children in care and Barnardos recommends this approach is standardised within the Act.

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- There is a need for more research and robust data on children and families interacting with the care system. Section 11 should be strengthened to include reports by the Health Information and Quality Authority (HIQA) and give HIQA powers to direct State and other agencies to implement its recommendations.

It would assist the Department if as an introduction to any response you would provide a short narrative (not exceeding 800 words) setting out the basis of your/your organisation's experience and interest in this area.

Barnardos is a leading provider of frontline services to children and their families. We have been providing practical services and emotional support to children and parents for almost 60 years in Ireland. We enable children and families to build their resilience and meet their behavioural, emotional, educational, physical and social needs. Our approach is to develop and deliver a suite of trauma informed programmes, driven by a culture of hope and possibility. In 2019, Barnardos worked with over 21,000 children and their families.

We work with children and families who have been affected by traumatic life situations such as poverty, abuse, parental mental health challenges, neglect, separation, bereavement and parental addiction. We do this by offering a range of early intervention and targeted services in our 44 project locations, in family homes, schools and communities. Our work combats social, educational and economic disadvantage, minimising the negative impact on children's lives through a range of services and programmes. Barnardos services are needs led, outcomes focused and based in evidence and research. Barnardos has always been, and remains committed to being, an innovative, cutting edge and adaptive organisation.

In 2019, Barnardos launched a new Trauma Informed Strategy at the centre of which, is our continued commitment to delivering supportive, helpful, nurturing services to vulnerable children and their families. Building on our high quality service provision, our new strategy incorporates current research and thinking on the impact of trauma and childhood adversity, both during childhood and across the lifespan. Our service delivery model and entire organisation is now underpinned by a trauma-informed approach. Barnardos is the largest and longest established National Guardian ad Litem service in Ireland. Our service independently establishes the wishes and feelings of the child and represents these to the court. We also advise the court on the child's best interests. Through our work providing family support and other services to children and families and through our National Guardian ad Litem service we have extensive experience and can provide a unique insight into the practical use of the Child Care Act and how it impacts children and families.