

Safe Ireland
Submission to the
Family Justice Oversight Group
Consultation Topics

Phase 1 Consultation

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1. About Safe Ireland

SAFE Ireland is the National Social Change Agency working to end gender based violence with a specific focus on male violence against women in intimate/domestic relationships. We believe that at the root of all violence is what happens in the home and that the single biggest barrier to achieving gender equality and human rights for women is the high prevalence of gender based violence and its wider personal, family, social and economic impacts. We collaborate closely with 39 frontline domestic violence services across communities in Ireland, state agencies, civic society organisations, business, community, and cultural organisations throughout the country. We also work directly with women to bring their experiences and voices into research, policy, service development and violence prevention programmes. Our core strategic focus is to change culture and transform the response to gender based violence in Ireland and to progress towards realising our vision for a safe Ireland.

2. Introduction

Safe Ireland welcomes very much the opportunity to contribute to this Consultation, and looks forward to participating further in the work of the Family Justice Oversight Group as it develops its vision for the development of a new national family justice system. This work is linked to the parallel evolution of the new Family Court Bill, of which the General Scheme was published late last year.

In this submission:

- Safe Ireland begins with a brief introduction on the nature of domestic violence itself and the challenges it poses to women and children in the family law courts.
- We outline key or priority recommendations under each of the specific consultation topics.
- We address each one of the specific topics in more detail, and with reference both to the task of identifying the commitments which are necessary in order for all relevant agencies and professionals to work together to develop the new national family justice system, and to the twin themes identified in the invitation letter, namely training (including interdisciplinary training) and the culture of family justice and its challenges.
- We conclude with brief submissions on both training and family justice culture.

3. Women and children, domestic violence and the family law system

Women and children enduring domestic violence and abuse, including coercive control are victims of criminal behaviour which has extremely far-reaching and profound adverse consequences. These consequences include trauma so severe that its impacts may last for years and may affect every aspect of its victims' lives. Unfortunately, the background to a large proportion of family law cases involves such trauma. Therefore, it is vital that all professionals working on family law cases have a well-developed understanding of the nature, dynamics and impacts of domestic violence and abuse. While the precise impacts of domestic violence vary with every individual victim, significant levels of trauma are common to them all. As far as possible, family court systems should be designed to minimise the risk of re-traumatisation through the judicial process itself, for this most vulnerable group of victims. Effective access to justice in family law proceedings for women and children who are victims of domestic violence and abuse including coercive control is key to effective legal protection for this vulnerable group of victims. Effective access becomes much easier once all relevant professionals share a common understanding of the true nature of domestic violence and abuse. Such a common

understanding is necessary but not sufficient to ensure that all families who need to access any family law court can do so. This means that appropriate specialist training should be provided to all professionals working in the family law courts by experts in the area of domestic violence and abuse. Safe Ireland would be happy to work with others to help provide such training. Please see the section headed Training at the end of this submission for more detail on this theme.

In order to ensure that this new specialist family court system becomes truly accessible for all families who may need to use it, it is vital to identify and remove as many obstacles preventing or restricting access to justice as possible. Please see Section 5 below in which this theme is developed further.

4. Key Summary Recommendations

These are our top-line views and recommendations. They are not meant to be exclusionary of the detailed submission made here, or regarded as our only critical observations and views. However, for brevity, we want to outline what we would regard as 10 critical issues for consideration.

1. Remote Courts

There is a need for clarification on Safe Ireland/Women's Aid draft guidelines or protocols, already submitted to the office of the President of the District Court (June 2020), which would allow domestic violence support services with suitable spaces to be used as "virtual court-rooms" or "trusted intermediaries" to continue to improve limited access for certain groups of people to the family law court system.

2. Family Friendly Facilities

There should be greatly improved physical environments in family courts, with adequate facilities, private and secure rooms, guaranteed physical access for people with mobility difficulties, childcare, and increased availability of information about all aspects of family court procedure.

3. Greater Flexibility that Works

Greater flexibility about jurisdiction across Family Courts at the same level and from one level to another will make it easier to gain effective access to justice. However, judges, court rules, legal practitioners must be fully aware of and discourage attempts by abusive parties to manipulate the system in order to exhaust the other party's resources, or to punish or intimidate them.

4. Robust Case Management Principle

There should be a more formal, early and robust system of active case management to reduce delays and stress for survivors and to make the best possible use of available resources across the three Family Courts. The inclusion of Active Case Management as a guiding principle in the General Scheme of the Family Court Bill is very welcome.

5. Alternative Dispute Resolution (ADR) and Mediation

There is a need for caution and greater clarity with regard to the interpretation and use of ADR and mediation in domestic violence cases. While ADR is appropriate in many kinds of family law proceedings, it has its limitations and it may be very problematic and unhelpful in family law cases in which there is a history of domestic violence and abuse. Mediation should not be a prerequisite to initiating or progressing family law proceedings.

6. Legal Services and Legal Aid

The Legal Aid Board should continue to prioritise the provision of legal services to women and children living with domestic violence and abuse without the means to pay lawyers' fees.

7. Prioritisation for Hearings

Ex parte applications for an order under the Domestic Violence Act 2018, including special sitting cases, should always be prioritised by the family courts, as they are currently under Covid restrictions.

8. In Camera Rule

There is a need for a thorough overhaul of the current in camera rules, to ensure as much clarity and certainty as possible about what can and cannot be discussed or shared outside the court, with whom and in what circumstances, to ensure fair access to direct case information and to overcome the chilling effect of the current rule on research, and on the voices of children, young people and parents most impacted by proceedings.

9. Voice of the Child

Any child old enough to form their own views should be asked if they want to speak privately to the judge in chambers about any decision to be made which will affect him or here. Any child who wishes to do so should be facilitated by the court, unless of course the court's view is that this would not be in the child's best interest.

10. Specialist Training

There should be specialist and accredited training for all judges concerned with family law proceedings, family lawyers, legal professionals as well as those professionals required to write reports, to ensure that they have a thorough understanding of the nature and dynamics of coercive control, including its potential impacts on the course of family law proceedings. Only those who have completed such accredited training should be appointed to prepare a report in family law proceedings.

5. Consultation Topics – submission in detail

Topic 1: Optimising the delivery of family justice:

The use of modern technology

Safe Ireland recommends that there should be renewed and intensive focus on:

- Increased, and continuing, use of **remote technology** for the filing and hearing of applications under DVA 2018 and eventually, other family law applications. A very good start has been made on this as a result of the current Covid crisis.
- It is now time to use this learning and progress the new legal and logistical structures, including a protocol (see below) which would allow domestic violence support services with suitable spaces to be used as “virtual court-rooms” or “trusted intermediaries” to continue to improve limited access for certain groups of people, to the family law court system;
- Safe Ireland, with Women’s Aid, drafted guidelines or protocols for Remote Hearings where a client is giving evidence from a DV service in ex parte applications for a DVA 2018 Order. These guidelines were submitted to the office of the President of the District Court in June 2020, outlining specifically where clarity was required or where further consultation may be required. However, to date, there has been no response from the office. Clarification on these guidelines would allow Safe Ireland to proceed with plans to tender for a specialist consultant to coordinate and support at least 26 domestic violence service providers to facilitate remote/online courts
- This is particularly important in isolated areas with scattered populations, where there is often poor or non-existent access to public transport and finally
- Sustainable systems to support the holding of remote hearings, including good broadband services, become especially important as the number of local District and Circuit Courts hearing family law matters will reduce once the Family Court Bill is implemented, to ensure that women and children everywhere in the country, even those in the most rural and inaccessible areas, have equal effective access to the Courts.
- Without these systems in place, there is a real danger that effective access to justice in our courts will be barred to women and children in more remote rural areas without a physical court building in the vicinity.
- Another advantage of having a system of remote court hearings in place is that it would then be possible to arrange to have an interpreter present via video-conferencing for the hearing of an ex parte order in DVA 2018 proceedings. This would do much in itself to increase effective access to justice for women whose first language is not English.

The provision of facilities and supports in the family justice locations

Safe Ireland will address these vital points under separate sub-headings below:

a. Physical environment in Family Courts:

Family Court users all need the following facilities and supports to have effective access to these courts:

- **Basic facilities:** adequate numbers of bathrooms, changing areas, drinking water, some form of basic catering at least such as drinks and snacks machines, adequate broadband;

- Guaranteed **physical access** to court buildings for people with mobility difficulties, guaranteed availability of aids for people with other physical difficulties, such as induction loops for court users with hearing difficulties;
- More and more suitable **private and secure rooms** at court in which to give instructions, consider legal advice, settlement proposals, etc, and await hearings throughout family law proceedings, including some child-friendly spaces.

b. Information about Family Court processes

- Increased availability of **information** for all on all aspects of family law court procedure, in formats which are easy to understand and to access, both at court and elsewhere, including online, both at Family Courts and elsewhere including online.
- This information should be available in a range of other languages commonly used in Ireland, and should also be available in accessible formats for anyone with extra needs (on account of e.g. visual impairment).
- There should always be some short, easy to read hard copy leaflets on display in court buildings, Garda stations, libraries and other public service offices.

c. Practical, Administrative and Legislative Supports

- **Access** to free court accompaniment services run by domestic violence support services for all family court users who wish to use them;
- **Increased access to child care** during justice related appointments, including court appointments, for those unable to afford it, perhaps through a voucher system;
- Increased availability of **special measures** such as giving evidence by video-link and/or behind screens or through an intermediary, eventually to all family law proceedings. It is necessary when dealing with parties and witnesses who may be already traumatised by their experiences at the hands of the opposing party, to do everything possible to reduce the risk of re-traumatisation by the court process itself;
- To this end, **statutory provisions and rules of court** which allow for imaginative, novel and individually tailored solutions which enable every witness's voice to be heard clearly – are really necessary to ensure that all those who need to use the family courts can do with the minimum risk of being re-traumatised by the justice process itself;
- **Increased availability of Legal Aid** would do much to increase effective access to the family court system: this could be achieved in part by raising the financial threshold for access to legal aid and by ensuring that effective access to legal aid is not denied by rules limiting the number of certificates which may be granted in a given period and by unavoidable yet hard to afford expenses involved in attending legal appointments. Effective access to legal advice and representation also needs to be furthered by continuing efforts to recruit more solicitors onto the Legal Aid Board private practitioner panel to take on family law files.
- **A much more formal system of active case management:** Safe Ireland notes that active case management is a guiding principle of the General Scheme of the Family Court Bill (See Head 5(3) (c)). Safe Ireland's view is that this principle is an essential one to make the best possible use of available resources in all three new Family Courts. It is also essential from the point of view of women and children enduring domestic violence and abuse who must engage in family law proceedings: robust case management can do much to reduce delays and attendant uncertainty about how the case is likely to unfold, particularly if it occurs at the earliest possible stage in the proceedings. This is important because these women and children are living with the effects of trauma, so that any initiative which reduces the time before the case itself or which clarifies how it is likely to proceed, helps to reduce these effects.

- Even more importantly, early and robust case management will give the judge an early opportunity to identify and address any attempts in bad faith by an abusive party to manipulate the outcome through dishonest and/or oppressive behaviour. Finally, active case management has the potential to identify and exclude from any ADR process, any family law proceedings in which there is a background of domestic violence and abuse, including coercive control.
 - To illustrate how active case management practices would work well for parties in whose case a professional person is appointed to write a report: an active case management system would enable the judge to supervise closely every major step in the preparation of any court reports including the sharing of any documentation or other evidence which are relevant but extraneous to, those reports.
 - Safe Ireland has already seen the positive difference for clients using family courts which an active case management approach, through which cases are allocated fixed time slots. Having a fixed slot means that it is possible to plan child care and time off work to attend court with reasonable certainty and that the stress of attending court is reduced significantly.
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- Greater flexibility about jurisdiction across Family Courts at the same level and from one level of the Family Court to another will make it easier to gain effective access to justice.
 - Safe Ireland broadly welcomes the powers given in the General Scheme of the Family Court Bill to both District Family Court and Circuit Family Court judges to transfer cases both “up” and “down”, whenever they consider that that is appropriate themselves, or on foot of a request to do so from either party and taking into account the nature of the case. However, we submit that either Court must be alive to the possibility that one party in a case in which there is a background of domestic violence and abuse – may be determined to use the courts system to exhaust the financial and emotional resources of the other. If that is the case, the abusing party may see this power of the court as a useful weapon against the abused party.
 - Safe Ireland also broadly welcomes the proposed greater flexibility in the Family Court Bill General Scheme with regard to Family Courts at the same level.
 - From the point of view of survivors of domestic violence and abuse who must engage in family law proceedings, this new, more flexible legal landscape will mean savings in terms of time and cost, as they will now be able to apply for a judicial separation or divorce at District Family Court level instead of incurring much higher costs by being obliged to apply at Circuit Court level. Also, if their separation or divorce is heard in the same District Family Court as their earlier custody or maintenance application, or their application for an order under the Domestic Violence Act, it is much more likely that the presiding judge will be already familiar with the background to their case.
 - Judges, court rules, legal practitioners and specialist training in the nature and dynamics of abuse - must all do their part to discourage attempts by abusive parties to manipulate the system in order to exhaust the other party’s resources, or in order to punish or intimidate them - e.g. by seeking unwarranted transfers to higher (and more expensive) courts or by making applications in the highest court possible without justification.
 - Safe Ireland recommends that all judges and all legal professionals working on family law cases should do their best to ensure that they have a very good understanding of the nature and dynamics of coercive control, including its potential impacts on the course of family law proceedings¹.

¹ For an overview of academic perspectives on how family law proceedings may be manipulated unfairly by abusive parties, see this journal review article: “In the Best Interests of the Abuser: Coercive Control, Child Custody Proceedings and the “Expert” Assessments That Guide Judicial Determinations” (Jeffries, S), in *Laws* **2016**, 5, 14, accessible online via: <https://www.mdpi.com/2075-471X/5/1/14/htm>

Topic 2: The place of mediation in family justice

The desirability of using mediation to resolve family law issues

- The benefits of ADR are obvious: it is entirely appropriate in many kinds of private family law proceedings. It can save substantial amounts of court time and other resources, not least public funds, and there is no doubt that in appropriate cases, its use should be encouraged, facilitated and resourced adequately. However, it has its limitations: it may be very problematic and harmful in family law cases in which there is a history of domestic violence and abuse.
- Safe Ireland understands, and welcomes the fact that, both Domestic Violence Act 2018 applications and proceedings under the Child Care Act 1991 are excluded from the ambit of the Guiding Principle found at Head 5(3)(a) of the General Scheme of the Family Court Bill promoting the use of ADR in family law proceedings as far as possible.
- Head 5(3) (a) of the General Scheme of the Family Court Bill promotes the use of “alternative resolution methods” as far as possible to resolve disputes in **any** family law proceedings. The only caveat is in relation to cases where this would not be appropriate “due to the nature of the proceedings”. The most obvious interpretation of that phrase is that Domestic Violence Act 2018 proceedings, public law proceedings and domestic violence related criminal proceedings are all excluded, but private family law proceedings with a background of domestic and/or sexual violence are not obviously excluded. If at all possible, this group of private family law proceedings should also be explicitly excluded².
- We are concerned that private family law disputes over custody, access, maintenance, guardianship, judicial separation, divorce and other issues where there is credible evidence of domestic violence and abuse, including coercive control, being part of the factual background – would become the subject of attempts at ADR, if the Guiding Principle is not refined and is strictly interpreted. We think that every effort should be made to ensure that family law cases involving allegations of domestic and sexual violence and abuse are not directed to ADR in the first instance;
- In circumstances of domestic violence and abuse, alternative dispute resolution (ADR) is at best an ineffective strategy to achieve a fair outcome for the victim(s) of the abuse and at worst, a source of multiple opportunities for continuing abuse through manipulation of the process by the abuser to achieve an outcome favourable only to that abuser. There is a clear imbalance of power in any abusive relationship based on the fear of one partner of the other, so that from the outset, there is enormous pressure on the abused partner to accept whatever solutions are put forward by the abusive partner;
- Many women living with domestic violence and abuse would be extremely reluctant to articulate solutions addressing their own needs and those of their children in mediation, for fear of adverse consequences from the abuser. This means that they may well not achieve a fair outcome for themselves and their dependents. Further, their own position and their evidence may be misrepresented to the mediator by an abuser well able to persuade others that his or her partner is unreliable and/or abusive themselves.
- Please refer to the relevant section of the Safe Ireland Submission on the Reform of the Family Law System (April 2019) for more information on this point, including a review of some relevant academic evidence³.

² See Article 48 of the Istanbul Convention, cited in full in note 3 below:

³ The full text is available online at: <https://www.safeireland.ie/policy-publications/> (see list of publications for 2019). See pages 5 to 8.

- In our view, the wording of this guiding principle should make it clear that there is no question of a *mandatory* ADR process being imposed on the parties in any family law proceedings. In any proceedings with a background of domestic violence and abuse, any such mandatory ADR process would be contrary to Article 48 of the Council of Europe Convention on preventing and combat violence against women and domestic violence (“Istanbul Convention”), which Ireland has now ratified⁴: “1 Parties shall take the necessary legislative or other measures to prohibit mandatory alternative dispute resolution processes, including mediation and conciliation, in relation to all forms of violence covered by the scope of this Convention”.
- Safe Ireland also has some reservations about the emphasis at both District Family Court and Circuit Family Court levels on ensuring that in most private family law proceedings, the court is notified about the mediation status of the case, and about whether any legal representative has fulfilled their specific statutory obligations to notify their client about the possibility of mediation or conciliation before commencing proceedings – through the application to commence the relevant family law proceedings.
- In Safe Ireland’s view, urgent, especially **ex parte**, applications should be exempt from this requirement. In any family crisis in which time is of the essence, having to find information about any previous mediation attempts may be a hurdle too high to jump for many women who need to apply urgently to the court to have a vital concern resolved. This is neither desirable nor necessary.
- More generally, Safe Ireland is concerned that the provisions at both District Family Court and Circuit Family Court levels on alternative dispute resolution are drafted so widely that they may be open to abuse by unscrupulous abusive parties. As drafted, a request may be made by either party at any stage of the proceedings for the case to be suspended to allow the parties to resolve issues by ADR. If the court considers that this would help to resolve “some or all issues in dispute”, the court may suspend proceedings. With great respect, this wording means that a final, comprehensive decision in the case may be put off without notice and regardless of how far advanced proceedings are, for an unspecified period, in any case in which a judge agrees to a request from the other party to suspend proceedings so that ADR can be attempted – because even one issue might be resolved by ADR.
- Our experience supporting women in private family law proceedings tells us that there are many abusive ex-partners who would not hesitate to do everything in their power to persuade the court that ADR was possible knowing that there was no chance of that, with no purpose whatever other than punishment or intimidation of their ex-partner by delaying the resolution of the case.
- Safe Ireland suggests instead that private family law proceedings should not be suspended to allow the parties to resolve issue by ADR unless and until the court is satisfied that **both** parties are in genuine agreement that this is what they want to do. The court should always bear in mind the possibility that the party who does not request resolution by ADR may be the one who should be spared any (possible further) attempt at it.
- Finally, Safe Ireland recommends that there should be more research on the use of **Alternative Dispute Resolution** in non-DVA 2018 family law proceedings where there is a background of domestic or sexual violence or abuse;

Should mediation be a requisite?

Should mediation be a requisite to initiating or progressing family law proceedings with the court only being required in irresolvable cases or as the last step?

⁴ Accessible online via this web-link: <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168008482e>

- Safe Ireland’s view is that mediation should not be a prerequisite to initiating or progressing family law proceedings, for the reasons outlined above, and also because both domestic and sexual violence remain prevalent within families, sadly.

Topic 3: Reimagining the structure of civil legal aid in family justice

Non-court based solutions

In response to the question, should a greater focus of the system of civil legal aid be on the promotion and use of non-court based solutions to family issues where these are possible?

- Safe Ireland’s view is that for women and children suffering domestic violence and abuse without the means to pay lawyers’ fees, it is vital that expert legal advice and assistance, including representation in court, remains accessible so that their need for, and right to, justice can be vindicated. In our respectful submission, providing legal services to this vulnerable group should remain a priority for the Legal Aid Board.

Topic 4: The Family Courts

What issues should always be prioritised for hearing?

Safe Ireland’s view is that **ex parte applications for an order under the Domestic Violence Act 2018, including special sitting cases**, should always be prioritised by the family courts (as they are at present under Covid restrictions).

It is clear that the importance of access to the legal system for these urgent applications is recognized in the General Scheme of the Family Court Bill, as it provides that a non-specialist District Judge or Circuit Court judge may hear these applications, so that they do not have to wait for a District Family Judge or Circuit Family Judge to hear them (see Head 34).

However, it seems to us that this provision may not go far enough to cover certain **other urgent family law situations** besides those outlined in DVA 2018. We set out two examples below:

- **Breach of a DVA order:** It is not absolutely clear from the General Scheme of the Family Court Bill whether a *District Family Court Judge* also has jurisdiction to preside over criminal proceedings for breach of Section 33 DVA 2018 (breach of any order made under this Act). A person arrested for breach of Section 33 is likely to be brought before the District Court very quickly. If the charge cannot be disposed of at that first appearance, the issue of bail pending the next hearing falls to be decided. In our respectful submission, Head 34(1) should also make it clear that either the District Court judge or the Family District judge can hear and determine criminal proceedings under Section 33.
- **Urgent Family Law Applications which may have to be made ex parte:** We are also well aware from our daily work with survivors of domestic violence that sometimes, urgent family law applications must be made **ex parte**, for instance to prevent a child being taken abroad or receiving medical treatment in defiance of a prior agreement or order of the court. If it is only a Family Court judge (at either District or Circuit Court level as the case may be) who has jurisdiction to hear these cases, this may cause a delay so long that it is not possible for a court order to be made to prevent actions being carried out without consent of the other parent,

contrary either to a prior agreement or to a court order. In certain very urgent circumstances, it should be possible for a “generalist” District Court or Circuit Court judge to hear and determine **ex parte** family law applications other than those under DVA 2018, that is, where there is no District Family Court judge or Circuit Family Court judge readily available to hear the application in a timely manner.

Professional supports

In response to the question regarding the professional supports both privately funded and in the case of eligible persons, publicly funded that most benefit the participants in the process or the court in dealing with family cases (examples include psychologists, social workers, family support services, anger management training etc.), Safe Ireland’s view is as follows:

1. Specialist Psychologists (e g) writing reports for Family Court purposes

Women and children who are living with domestic violence may not always be well served by professionals (psychologists e g) appointed by the court to write reports to guide its decision-making on custody, access and related matters. In order for these reports to have the greatest possible chance of reflecting accurately the situation of a family affected by domestic violence, their authors should have:

- Specialist training and experience in the nature, dynamics and effects of domestic violence and abuse, including coercive control – our experience is that there is a shortage of report writers with either one, to the detriment of this group of women and children;
- Sufficient time and money (preferably from the State) to complete a court report within a reasonable, and ideally court-specified, period;
- No extraneous personal connection to either party which predates the court order directing the report;
- An understanding that they must maintain their independence from either party by refusing to accept, transmit, or create any communication purporting to come from either, which has not been directed by the court;
- An understanding that they must also maintain their independence from either party by refusing to accept or suggest any meeting with one party which is proposed to be held without the prior consent of the court;
- An understanding that any professional may be deceived by an abuser determined that his or her narrative alone will be reflected in the final report.

2. Active Case Management of Report Writing Process

- In Safe Ireland’s view, these reports would be likely to reflect the reality of most families’ lives better, and therefore be more useful to the Court, if there were much more formalised supervision over the process of their preparation, to ensure that opportunities for unfair manipulation of the court report process are minimised or eliminated.
- Directions should be given restraining the parties from contacting the report writer outside designated appointment times, or sending him or her unsolicited material, without the knowledge or consent of the other party, or restraining the report writer from discovering one party’s sensitive personal data to the other, without that party’s consent⁵.

⁵ See Appendix for a list of Safe Ireland recommendations in relation to active case management in private family law proceedings.

- The preparation of reports for use in family law proceedings should be taken over as soon as practicable by an independent, State funded agency responsible for ensuring that the highest standards are maintained, not least in terms of extensive knowledge and understanding of all aspects of familial violence and abuse.
- Professionals preparing reports under any statutory provision for use in family law proceedings, including public family law proceedings, should not be appointed unless they can demonstrate that they have appropriate qualifications and experience about all aspects of domestic and sexual violence and abuse, and
- Such professionals should be capable of carrying out risk assessments to children in access cases where there is good reason to believe that a background of domestic violence and abuse exists, in a timely manner.
- Finally, the use of Section 20 Child Care Act 1991 reports to determine issues of access should be examined. Their use should be confined to their statutory remit set out in Section 20 (3) CCA 1991.

3. Court Reports and the In Camera Rule are linked

- Safe Ireland's view is that the effect of the current in camera rules is to make it difficult if not impossible for anyone affected by the conclusions of a court-ordered report to read the report itself, and as a consequence, to mount an effective challenge to those conclusions. This affects the weight which should be attached to any of those conclusions;
- Accordingly Safe Ireland suggests that there should be a thorough overhaul of the current in camera rules, so that all concerned in family law proceedings know exactly what these rules do and do not permit, and also
- So that the court can attach more weight to its conclusions, as those potentially affected by them will have had a full opportunity to challenge them in court.
- The current in camera rules do not make clear whether there are any circumstances in which in camera proceedings can be discussed, or in camera documents shared, other than the limited ones set out in Section 40. This means that their interpretation in a particular situation which comes to the attention of the court depends on the view of the judge in that case.
- Safe Ireland's daily experience is that parties to family law proceedings are uncertain whether they can, or should, discuss any aspect of what transpired in court with support workers, their doctor, counsellor or confessor, any friend or family member or at least those unconnected with the proceedings in question, or even their own children. They are even more afraid of disclosing any document produced for the proceedings to any trusted person not concerned in the proceedings, should they be allowed access to a copy of that document.
- Sometimes, they are denied access to reports about themselves and their children by their own lawyers, on the basis that to share the reports would breach the in camera rule. They must rely instead on their legal representative's summary of the contents, or even just the conclusion.
- This means that they are ill-equipped to evaluate either content or conclusion, much less challenge either effectively. They may therefore be denied effective access to justice on issues of the most fundamental importance in their children's lives as well as in their own.
- So, the result of this general cloud of unknowing about the exact rights and duties of everyone concerned in family law proceedings with regard to the in camera rules – is that not only are some parties denied a fair hearing, but they may also feel constrained to deny themselves access to both professional and personal support while the family law proceedings are still "live".
- As we all know, these proceedings usually go on a long time and even in straightforward cases, are very wearing. In circumstances in which there is a history of domestic violence and abuse, having to live with this lack of support, uncertainty about whether any particular action

contravenes the rules, and the attendant fear of being prosecuted with the risk of a criminal conviction and sentence – is a significant additional source of anxiety.

- Safe Ireland fears that the cloud of unknowing hovering over the in camera rules may also have a dampening effect on bona fide research conducted outside court into what happens in family law proceedings. Findings from such research could inform public policy and service provision in every aspect of family law.

The current position is summarised well in the Joint Oireachtas Committee on Justice and Equality (32nd Dail) Report on Reform of the Family Law System:

“In essence, any person involved in in camera proceedings in the field of child protection, private family law or elsewhere risks being held in contempt of court every time he or she discusses the proceedings with anyone other than his or her legal representative or the other parties to the proceedings. The law neither clearly allows nor prohibits interviews with children, young people and their parents. In the absence of clarity, researchers, children, young people and parents are at risk of being held in contempt of court. The in camera rule has therefore had a chilling effect on research, thereby silencing the voices of children, young people and parents who are most impacted by proceedings. While the sensitive nature of family law proceedings means that identities of parties should not be disclosed, the general consensus amongst witnesses was that the current application of the in camera rule has contributed to a significant lack of transparency in the system and that legislation clarifying the precise extent of the in camera rule is desirable”⁶.

- Safe Ireland suggests accordingly that the proposed in camera provisions of Head 36 be replaced by easily understood rules setting out clearly what can and cannot be discussed or shared (including on social media) outside the court, with whom, and in what circumstances – in *all* family law proceedings, not only the list of “relevant enactments” under Head 35.
- It could and should preserve the current list of situations in which evidence and documents may be shared legitimately – but
- It should reframe the list so that it is easy to read and understand for anyone affected by its provisions.
- Above all, it should aim to create as much certainty as possible about what can and cannot be shared outside the court and the circumstances in which such sharing is allowed (or not).
- Where possible, it should permit limited sharing of information, documents, accounts of evidence given etc, for bona fide purposes, subject to conditions as appropriate.

4. Domestic Violence Specialist Support Services including Court Accompaniment Services

- Specially trained volunteers and staff from these services are well placed to support women giving evidence in family law proceedings where they are suffering from domestic violence and abuse – many could not and would not go through the court process without this support.
- Safe Ireland’s experience is that court accompaniment support is often refused to women attending court to give evidence in family law proceedings, in particular those which are not applications under the Domestic Violence Act 2018. Our own view is that unless there are exceptional circumstances which preclude the presence in court of an accompaniment support worker, this important support should be allowed in all family law proceedings.

⁶ See page 27 and following pages of: Joint Oireachtas Committee on Justice and Equality Report on Reform of the Family Law System, published October 2019 and available online via this web-link: https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_justice_and_equality/report_s/2019/2019-10-24_report-on-reform-of-the-family-law-system_en.pdf

5. Domestic Violence Perpetrator Programme Organisers

- Provided that they are well run, to the best international standards and are led by evidence-based practice by appropriately qualified and experienced professionals, these services can play a valuable role in the family law courts in some cases.
- Information about appropriate perpetrator programmes should be made available and accessible in court buildings, Garda stations, libraries, and through other public services, to the general public, to legal representatives, to the judiciary and to Courts Service staff, in easy to read hard copy formats as well as online.

6. Legal Advisors and Legal Representatives

- Everyone in the whole family court system benefits when survivors of domestic violence and abuse have ready access to a cohort of family law practitioners with appropriate specialist training in the nature and dynamics of domestic violence and abuse including coercive control.

7. Judges at each level of the Family Court system

- Similarly, everyone taking part in family law proceedings benefits when family judges at each level have specialist training in the nature and dynamics of domestic violence and abuse, including coercive control.

8. Courts Service staff

- The family court system as a whole would benefit from more **data collection, analysis and evaluation** of all aspects of family law proceedings, not least on the incidence of domestic violence and sexual violence in family law proceedings other than DVA 2018 applications, to inform future policy and practice in this area;
- Courts Service staff should be supported and resourced to help the development of all Family Courts as **hubs of information** about a wide range of services to support families.
- Courts Service staff who will meet and assist women attending court in DVA 2018 or other family law proceedings should all be trained in Trauma Informed Care;
- Courts Service staff should all have training in their responsibilities to pass on information about local domestic violence support services to any applicant for a DVA 2018, under Section 28 of that Act, and should consider offering information about these services e.g. in leaflet form to any applicant for other private family law orders, e.g. maintenance/access orders, as a matter of course.

Topic 5: Voice of the Child

Within this section, three questions were raised:

- How best to incorporate the voice of the child?
- How can the proposed new system of family justice be made more child friendly?
- How can we keep children informed in the family court system?

Safe Ireland answers all three questions together:

- **Head 5 (3) (d) of the General Scheme of the Family Court Bill:** This guiding principle is in two halves, both addressing the position of children involved directly in family law proceedings or likely to be affected by their outcome. It reiterates the twin principles of ensuring that the best interests of any child involved in or affected by family law proceedings are a “primary consideration” in those proceedings, and ensuring that as far as possible taking the age and maturity of that child into account, the views of any child “who is capable of forming his or her own views”, “are ascertained and given due weight”.
- Safe Ireland does not take issue with either of these guiding principles, which reflect the provisions of Articles 42A.4.1 and Article 42A.4.2 of the Constitution and which are reflected in many family law statutes. However, in our respectful submission it is important that these guiding principles articulate also a determination to take the greatest possible care to ensure that as far as possible, the **true** views of the child himself or herself are ascertained and considered in any decision making process which affects him or her. Even in cases where reports are prepared by well-qualified and genuinely impartial experts with great care, it is possible for the views of any child to be misrepresented.
- In our view, any child old enough to have developed his or her own views on a particular family law case affecting his or her future should be given the opportunity to speak to the judge alone in chambers to put forward their own view in advance of the decision being made, if that is what he or she wants. If it is, he or she should always be facilitated to do so.
- **Safe Ireland recommends** that any child old enough to form his or her own views should be asked if he or she wants to speak privately to the judge in chambers about any decision to be made which will affect him or her. Any child who wishes to do so should be facilitated by the court, unless of course the court’s view is that this would not be in the child’s best interests.

6. Safe Ireland: Recommendations on Training in Family Law System

1. Family Court Judges

- Safe Ireland recommends **specialist training** for all judges concerned with family law proceedings, to be provided by specialist domestic violence support practitioners and academics, covering:
 - the nature, dynamics and impacts of domestic violence and abuse including coercive control, including their potential effects on the trajectory of court proceedings themselves;
 - the nature and impacts of sexual violence as part of a wider pattern of familial violence and abuse, and societal violence, conducted against partners and children;
 - the full range of available supports from NGOs and from State agencies for victims of domestic and sexual violence and abuse, including those relevant to court proceedings (sometimes called “special measures”);
 - additional vulnerability of women and children belonging to certain marginalised communities seeking protection from our courts, such as but not limited to: Roma, Travellers, those whose immigration status is temporary or irregular and/or who do not speak English as a first language, people with a disability or disabilities which may make it harder for them to access and participate fully in, formal civil and criminal proceedings;
 - Trauma-informed practice in all their interactions with parties and witnesses who may be suffering from severe trauma even as they participate in family law proceedings;
 - Unconscious bias: how to recognise and address it effectively within oneself so that as far as possible, judgements are based on evidence, not on unfounded assumptions about how a “good” or credible victim behaves as party or witness. Anyone may become a victim of domestic violence or abuse and need the protection of the courts, even a white, middle-aged, middle-class professional woman who presents herself as calm, competent and in control in the witness box because that is how she is used to behaving in her professional role. The truth is that people who have been insulated from poverty and its effects all their lives can be targeted by abusers precisely because of their competence, income, assets, and status – and may find it extremely difficult not only to access support to get out of an abusive situation, but even to admit to themselves and to others that they are indeed victims of domestic violence and abuse.

2. Judges in Domestic Violence-related Criminal Proceedings

- Safe Ireland’s vision is that ideally, specialist judges would hear not only all civil family law cases, but also all criminal proceedings for domestic violence-related offences. However, this may not be feasible in the near future because there are not enough judges to hear all criminal cases in this category in addition to all family law cases.
- In our respectful submission, District Family Court judges and Circuit Family Court judges should not be *precluded* from trying domestic violence-related criminal offences. There is no doubt that their specialised family law experience and training would assist them in their assessment of the evidence before them.

3. Family Lawyers

- Safe Ireland agrees with the recommendation by the Joint Oireachtas Committee on Justice and Equality in their Reform of the Family Law System Report⁷, to the effect that specialist training should be afforded not only to judges but to lawyers appearing in family law cases and Courts Service staff working in this area.
- Specialist training as outlined above, is the gateway to increased specialisation not only for judges, but also for legal representatives. High quality training, provided by experts in domestic violence (whether from practice or from academia), based on international best practice and on the best available evidence, should not only be provided to legal representatives, but should also be capable of leading to some form of accreditation in the domain of familial abuse in all its forms, for both legal representatives and report writers.
- Safe Ireland recommends **that** all legal representatives who have an interest in the area should be encouraged and facilitated to access this specialist training on all the matters outlined above, and to become accredited.

Report Writers

- As outlined above, high quality training in all the matters set out above under the heading Family Court Judges, which is provided by experts in domestic violence issues from both practical and academic fields, should be made available to all those who wish to write reports for use in family law proceedings and
- Formal accreditation in all aspects of familial violence and abuse should be made mandatory, as soon as practicable; and
- Only those who have completed such accredited training in the nature, dynamics and effects of domestic violence and abuse, including coercive control should be appointed to prepare a report for use in family law proceedings.

7. Culture of Family Justice and its Challenges

Safe Ireland would describe the current culture of family justice and its challenges in the following terms:

- There is a common perception that some form of access must be granted on any application, even if it is remote, infrequent or unsupervised, regardless of how strong the indications may be that there is a background of domestic and/or sexual violence in the case, and little understanding of the appalling stress on both women and their children living with enduring domestic violence or abuse from their ex-partner, when those children express reluctance or worse, fear, about complying with court-ordered access, and the woman in the middle is faced with a truly appalling choice between enforcement proceedings and the risk of imprisonment and having to force her child(ren) to comply with the access and suffer the consequences, against every parental instinct to protect;
- There is also limited understanding among professionals about how access may be used as a weapon against a woman and indirectly, against her children. For instance: it is our experience that it often happens that once access is agreed or ordered by the court, the custodial parent gets abused by the partner when handing over the children, or the parent granted access

⁷ See recommendation 9 at pages 44-45 of the printed version. The Report is available online via this web-link: https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_justice_and_equality/reports/2019/2019-10-24_report-on-reform-of-the-family-law-system_en.pdf

starts being late, bringing children back late, uses the access to try to find out information from the children about the other parent, ignores the children for all or most of the access period, fails to turn up at all for access without warning, and so on.

- Safe Ireland's view is that a history of previous refusal by the parent granted access to engage with the children during access in a meaningful way, or with the other parent in a reasonable and polite manner, should be considered in deciding access arrangements.
- Many courts and lawyers are still reluctant to accept the bona fides of women's concerns about the safety of their children during access visits, whether these concerns relate to health and safety matters or to suspicions of child sexual abuse activities;
- Child access should be automatically supervised (and not by the victim) in cases of DV until a proper risk assessment has been completed.
- Safe Ireland strongly recommends that there should be State funding for supervised access services. Women having to supervise their children's access with an abusive co-parent is not at all acceptable. It is a weekly trauma for many which should be avoided.
- Some courts and lawyers are still reluctant to accept that children who are victims of child sexual abuse or negligence from the non-custodial parent may well be telling the truth as they experienced it, not as how they were supposedly instructed to tell it by the custodial parent;
- Domestic violence is still sometimes seen as a battle of (violent) equals, not the abuse of one person by another. The insidious consequence of this view is that non-abusive partners are put under pressure to "settle" the case by resolving it by cross undertakings, when they have done nothing wrong and pose no risk to the other party. This means that no court order has been made which if breached, can result in arrest without warrant followed by swift prosecution;
- Children are still not seen often enough as **individuals** separate from both parents, whose evidence about their own experiences, perspectives and hopes and fears for the future, if they felt free to give it, for example in chambers, would be very useful to the court;
- Safe Ireland also believes that maintenance needs to be addressed through the lens of a possible pattern of financial abuse. Women are often left without money due to their partner walking away, refusing to honour a Court Order which again means the woman is left to look for payments from Community Welfare or seek enforcements of the maintenance order, which can take time. This is particularly difficult for women who have little knowledge of how the system in Ireland works if they are dependent on husbands who control all financial dealings within the home and for whatever reason decide to move on without any supports in place.
- For practically every kind of court application involving two parties, and especially now during the pandemic for perfectly good public health reasons, no-one involved expects a speedy hearing and all resign themselves to living somehow with an unsatisfactory or perhaps even, dangerous, reality meanwhile till the case can be resolved;
- Listing all inter partes family law cases of all kinds together on the same day and often at the same time, results not only in prolonged and frightening proximity to hostile ex-partners, overcrowding, lost income, childcare problems and a host of other difficulties, but also in unrelenting pressure on both parties to settle cases on any unsatisfactory terms just to get out of the court precincts; and
- Sometimes it can happen that lawyers in family courts are so overwhelmed by having to cope with so many cases on one day that they too feel the pressure to try to settle cases out of court against the long-term interests of their clients. Safe Ireland's view is that no-one should be put under inappropriate pressure to settle, nor inadvertently put anyone else under such pressure, and especially not when the case has a background of domestic violence and abuse.

- Safe Ireland’s hope is that the new Family Court system will allow for every case to have its own, reasonably accurate timeslot so that difficult issues of domestic violence and abuse can be given the focussed attention that they need.

8. Conclusion

The new Family Court Bill, once implemented, will give every survivor of domestic violence and abuse a framework within which specialist understanding of their situation is likely to increase over time to the point where each one can be confident that their evidence will be heard and evaluated by expert professionals. This cannot come to pass without substantial and sustained commitment by the State to continuing investment in our courts, judges, legal professionals, mediators, report writers, court staff and domestic violence support services, to include dedicated time and money for regular training in all aspects of family law, including patterns of domestic and sexual violence and abuse.

Survivors of domestic violence and abuse deserve no less than a specialist, trauma-informed, gender-sensitive, and multi-faceted response from our justice system which makes the best possible use of the available expertise held by domestic violence support services and others with specialised knowledge in this important area.

For more information:

Safe Ireland



Website: www.safeireland.ie