



SUBMISSION TO THE FAMILY JUSTICE OVERSIGHT GROUP CONSULTATION

February 2021



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1 Introduction

1.1 One Family:

One Family welcomes the opportunity to make a submission to the Family Justice Oversight Group as part of the consultation process on Family Law Justice Reform. We recognise this submission is being made at a specific point in time and that we will continue to evolve the details of our proposals in the coming months through communication and collaboration with others, whilst maintaining a constant position on our general approach and principles.

We also recognise that we are making this submission in the context of our practical experience of working with families and that there will be other equally valid aspects of reform required such as public childcare proceedings; civil legal aid; Domestic Abuse and others. We hope that in the coming months, the Family Justice Oversight Group (FJOG) will ensure collaborative and creative sessions that will enable the sharing of expertise so that together we can ensure a world class system of family law for children and their families.

One Family is Ireland's organisation for people parenting alone, sharing parenting and separating. We provide a range of specialist family support services some of which are specifically designed to decrease conflict in separated families such as our Separating Well for Children service¹ and our Parenting when Separated courses². We previously researched and ran pilot Child Contact Centres which were evaluated very positively but unfortunately not mainstreamed.³ Our full range of services for children and parents living in one-parent families can be reviewed at www.onefamily.ie.

Over the 49 years we have been delivering services, we consistently see parents and children unnecessarily struggle through, and feel let down and defeated by, the family law system. As a result we have developed position papers and made submissions on a wide range of relevant issues including⁴:

- Child Contact Centres
- Child's Views Experts
- Courts Service Strategies
- Law Reform Commission
- Child Maintenance
- Pre-Budget Submissions.

¹<https://onefamily.ie/parenting-supports/separating-well-for-children/>

²<https://onefamily.ie/education-development/parents-programmes/>

³<https://onefamily.ie/media-policy/research-reports/>

⁴<https://onefamily.ie/policy-campaigns/>

We undertook the first National Survey on Shared Parenting in 2017⁵ which contains clear recommendations in relation to urgent family law reform. In July 2020, we held a Family Law webinar to highlight the upcoming legislative and systems reform with speakers from the Department of Justice, the judiciary, Courts Service and our keynote speaker was the former CEO of CAFCASS who had clear recommendations for our consideration in Ireland in relation to family law reform.⁶

Family law queries comprises 20% of all calls to our national *askonefamily* helpline and we increasingly work with fathers, mothers, children and step-parents to support them as they try to develop sustainable arrangements for their separated families. As a result of this extensive work with family law court users we believe we have a clear understanding of what is required to successfully reform family law in Ireland to ensure safety of family members and sustainable arrangements with lower levels of conflict.

Our CEO represents the interests of court users on the Courts Service Board; she sits on the Family Law Development Committee, the Dublin Circuit Family Court User's Group and the Legal Aid Board's External Consultative Panel. The Board of One Family is comprised of former service users, former senior civil servants, practicing legal practitioners and voluntary sector service providers.

1.2 The Purpose of Family Law Justice Reform:

One Family strongly believes that in order to create the cultural change required to deliver family law justice reform, a clear shared purpose is needed that can be understood and shared by all relevant stakeholders. In our view this shared goal should be the safe, speedy and sustainable resolution of family disputes by the family itself where possible, with state-subsidised supports to assist in this.

To achieve this, the guiding principle should be that the safety of children is prioritised above all other issues in public and private family law processes. The best interests of the child (Part V, Children & Family Relationships Act) should always be actively considered in any family law proceedings directly or indirectly concerning children in families. Other important priorities include the safety of all family members with a strong understanding of the prevalence of Domestic Abuse; a prevention and early intervention approach to resolving family issues; a cooperative and positive parenting approach where both parents are valued; participation of children; timely resolution to family conflicts; a holistic management of issues impacting a family; and the development of sustainable decisions and practices for each family's unique set of circumstances.

⁵https://onefamily.ie/wp-content/uploads/2017/01/One-Family_Shared-Parenting_Results-and-Recommendations_FINAL-REPORT_Online.pdf

⁶<https://onefamily.ie/family-law-conference/>

This transformation to a clear and active consideration of the safety of children will also require robust responses to Domestic Abuse at all levels of the system. We appreciate that there are many family law cases that do not involve children either as minors or as adults. This is outside the remit of One Family but also requires careful consideration and appropriate supports.

1.3 Outcomes:

Ultimately the outcomes of this reform process should be that families have their family law needs met with the lowest level of intervention possible (including the jurisdiction of courts), should be empowered and supported to reach their own decisions where possible, should be assisted in an informed way through clear pathways as required, should be kept safe and are required to participate in these alternative processes to court once it is safe to do so.

In order to achieve these outcomes; the services, processes, culture and resources that currently exist needs to be radically reengineered – we appreciate this is challenging but a new approach is essential to meaningful reform. This will require vision, courage, leadership, as well as significant resources from political and other stakeholders as well as participation by court users.

A family law system as envisaged above should be built around the specific needs of the court user – families - and not around the existing services, the needs of legal practitioners, the judiciary, Courts Service or the limitations of existing family support services.

To truly understand what is needed to achieve the outcomes above, we recommend the following actions are undertaken:

1. An international review of other family law services and models including an understanding of their limitations, the impact of their models on families, their engagement with children and an awareness of any recommendations for improvements.
2. A description of a range of Family Law Court User Journeys so that a clear understanding of the current challenges, needs of court users and possible pathways can be identified. The most vulnerable court users should be prioritised in this mapping process.
3. A mapping of all existing family law stakeholders and services provided with an emphasis on those available for free or at accessible rates to court users.
4. An understanding of state investment and private investment by families in all services currently and a cost-benefit analysis of all proposed reforms. This should include an understanding of the long-term impacts of familial conflict and domestic abuse on children and their parents. This may also require research on the fees of family law practitioners, reports to court, time

elapsing in listing of cases, reasons for and frequency of adjournments, length of court cases, reasons for re-entry of cases etc.

5. Research on contentious and complex issues that are currently points of inconsistency in order to have evidence-based, child-centred policy making in the future. Consistent approaches are required on issues such as Parental Alienation; Infant Attachment; Shared Parenting; Domestic Abuse and Children's Participation.
6. The development of 'perfect' pathways or journeys for court users and an understanding of the gaps between what currently exists and what is needed.
7. Stakeholders should continue to be engaged with and included in this journey with court users and in particular children, being prioritised for consultation and participation.
8. Build on the pilot work that has been completed or is taking place now (for example the Limerick project), document the learning and use it to inform this reform process.
9. Develop a clear strategy and action plan, to include priority issues for immediate judicial and legal practitioner training.
10. Establish the relevant Family Rules Working Committee as soon as possible to begin its work.
11. Initiate a regular process to survey court users on the functioning and impact of the family court process. Ensure that the findings are considered and inform Court Service planning.

1.4 International Review:

Recent UK reports provide detailed recommendations for family law reform which are instructive to us in Ireland. Despite being many decades ahead of us and despite the fact that the British Department of Justice developed the CAFCASS service⁷ in 2001; they are still on a journey of reform and prioritising safety. We urge that this recent report from the Family Solutions Group⁸ and a study of CAFCASS are essential reading for all parties involved in the reform of family law in Ireland. The report's terms of reference are to consider what improvements can be made now, within existing legislation, to meet the needs of children and parents following family breakdown.

In Australia, there is a Family Advocacy and Support Service which provides duty lawyer and social support services at the courthouse referred to as Family Consultants who will assist families to resolve issues outside court but will also

⁷<https://www.cafcass.gov.uk/>

⁸<https://www.judiciary.uk/publications/what-about-me-reframing-support-for-families-following-parental-separation/> accessed 24.1.21.

report to court, assess families, and hear from children.⁹ The focus of community-based Family Relationship Centres is to assist families and parents to resolve their issues in order to avoid court; to support and provide social and emotional support services; and services are free or low-cost.¹⁰ We have based some of our thinking on these international models but there is much more that can be researched that is outside the scope of our resources.

"I would love an agency that deals purely with separation."

Mother of two children

National Survey on Shared Parenting 2017¹¹

2 Key Themes

2.1 Training (including interdisciplinary training):

We addressed the essential need for specialist training for all personnel in family law proceedings such as legal practitioners and judiciary in our recent submission to the Joint Committee on Justice in relation to the General Scheme of the Family Law Courts.¹² There is great benefit in creating a team-based approach to understanding issues impacting families through interdisciplinary training without undermining judicial independence in any way.

Specialist training should include (but not be limited to) the following:

- Child-Centred: what does this really mean in practicing the law; how to fully include and consult with children and ensure their meaningful participation.
- Domestic Abuse including how it manifests; impact on children; impact on adult abused; programmes that are effective to mitigate it; ongoing access issues; financial abuse; coercive control.
- Child Abuse including attachment issues and how children respond to and articulate their experiences of abuse; Parental Alienation (based on evidence-based research) and how children respond; a Trauma-Informed Approach.
- Communication skills including consultation with traumatised people; the development of empathy and other relevant soft skills.
- Knowledge of the full Family Law Service Model.
- The impact of judicial decisions and court proceedings on families.

⁹<http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/reports-and-publications/publications/child+dispute+services/family-consultants> accessed 30.01.21.

¹⁰<https://www.familyrelationships.gov.au/> accessed 30.01.21.

¹¹All quotes in this report unless otherwise stated are from the **National Shared Parenting Survey**. One Family, 2017. <https://onefamily.ie/wp-content/uploads/2017/01/One-Family-Shared-Parenting-Results-and-Recommendations-FINAL-REPORT-Online.pdf>

¹²<https://onefamily.ie/wp-content/uploads/2021/02/JOC-Justice-Submission-on-Family-Court-Bill-General-Scheme.-One-Family-2.21-1.pdf>

A comprehensive training plan will need to be developed and resourced with mandatory participation of all relevant stakeholders as an integral part of family law justice reform. We recommend that training should be participatory so as to be most effective; efforts should be made to work towards standard approaches and understanding of fundamental issues to ensure best practice and consistency.

2.2 Culture of family justice and its challenges:

We argue that the current family justice culture frequently places the needs of the most vulnerable court-users at the bottom of the pecking order with the 'system' weighted towards the use of adversarial family law courts. There are few options available to families other than moving straight to court, and Ireland is lacking coordinated information on what is available. Few services are available to support families in conflict and what exists are frequently *ad hoc* and not accessible by many people around the country. The state does not currently support families and vulnerable children to safely resolve their own difficulties using a prevention and early intervention approach. Family law is seen as a private matter, without regard to the significant societal impact, children's wellbeing, or the effect and the financial and emotional costs of the adversarial court process on court users.

The fundamental cultural shift must be from an adversarial, under-resourced court-based system to a child and family-centred prevention and early intervention system. This means that courts should be better resourced, have more time but fewer cases. Courts should take clear and timely action on any abuse of the court process e.g. unnecessary adjournments, applications and actions likely to increase conflict between the parties. The state's resources should shift from funding large numbers of court cases to funding lower-cost, widely accessible family support services. A family's resources should shift from paying private family law practitioners to represent them in adversarial proceedings to paying for family support services on a sliding scale basis. This would remove many cases from the family court system and free up valuable court time for cases in need of judicial action.

We require a cultural shift to ensuring the prioritisation of child safety and enabling that through rapid information sharing and collaboration between different statutory bodies. We believe that general society as well as family law stakeholders would benefit from an exploration of the benefits of being aware of children's voices, needs and participation in family law changes, conflicts and court cases. There needs to be a conversation and cultural shift around the value of early intervention and prevention services as we describe in Section 3. It is important that their benefits to families are well known so that failure to engage is a red flag.

"To access many of the above services there is no option but to go privately. I could afford legal support and secured this (Section 47) report, had I not been in a position to do this, as many aren't, my child's life would have a very different outcome.

Essential reports like this which affect a child should not be left to be funded privately."

Mother of three children

3 Family Law Service Model:

When we discuss a Family Law Service Model we mean the entire service provision a court user may encounter, from realising they have a family law-related issue, right through to resolution through court if required. We recognise that for some people they are not in conflict but our work as an organisation is focussed on those who do have complex problems. This model should be able to support families in no conflict as well as those in high conflict.

The development of an appropriate Family Law Services Model is critical and will require significant parallel planning and resourcing in conjunction with court and legislative reforms. We would be happy to submit an entire paper just on this subject and believe it should be the subject of a specialist sub-group and consultation process by the FJOG.

We propose a truly child-centred model of family dispute resolution that requires resourcing, quality assurance and regulation with strong links to the court system. This means that active and clear consideration of all issues directly or indirectly relevant to a child at all stages of this process from services to court is essential to ensure success.

"Most cases that end up in court are disagreements over parental arrangements. That's why I would tell couples, 'You have to agree that first'. When they can't, it is torture, torture, torture. People tell me 'We don't fight in front of the children', but children as young as two are like sponges. They pick up on everything."¹³

Marion Campbell | Family Law Solicitor

All services need to be accessible to the diverse range of families in Ireland today including those where English is not their first language; or where there are disabilities that may need additional supports; or those families who are hard to reach or mistrustful of the state.

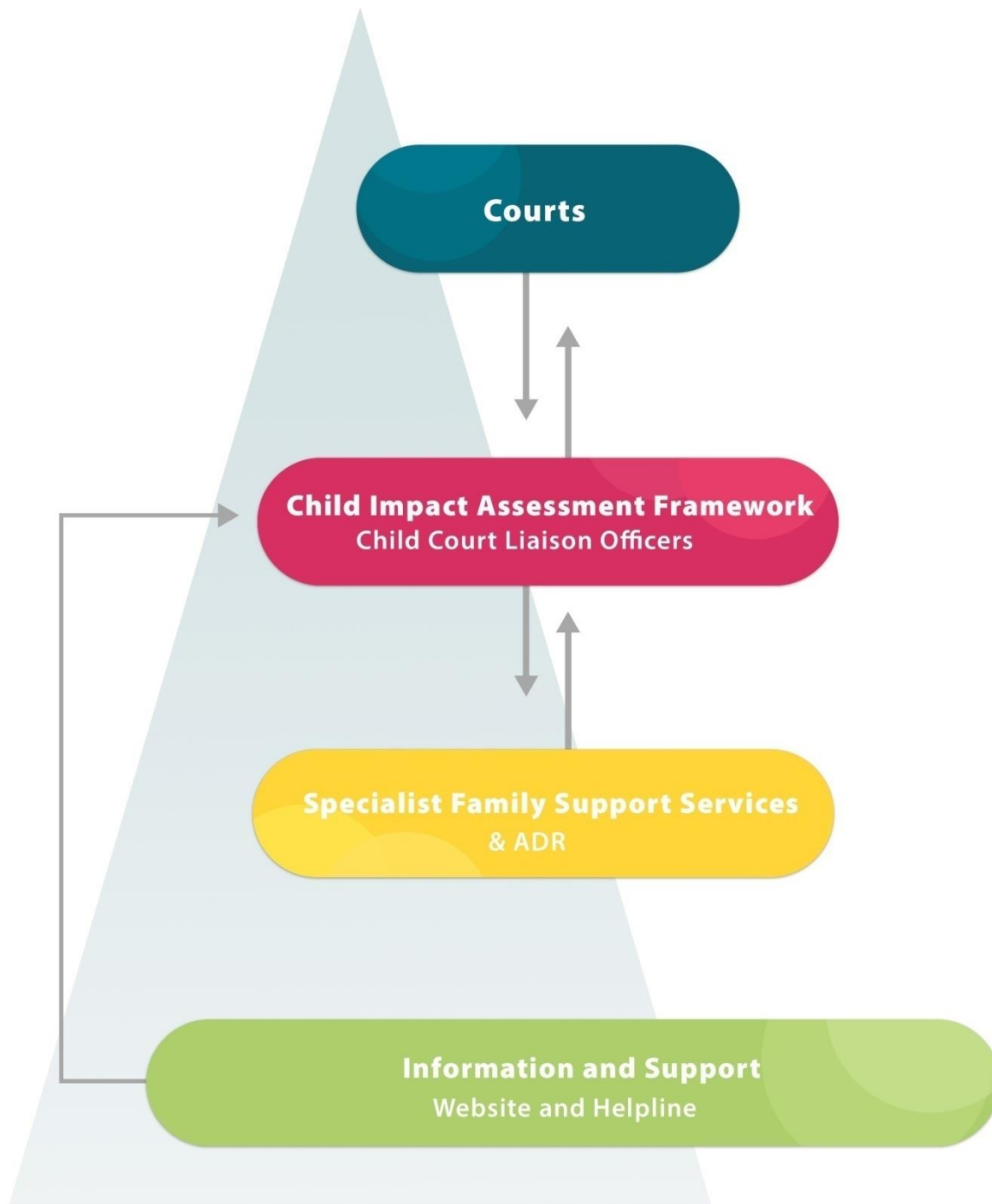
One Family has been advocating for a Court Welfare Service¹⁴ for several years now. The Family Law Service Model could be delivered in a number of ways by a number of delivery agents. We are currently undecided on the most appropriate

¹³<https://www.independent.ie/irish-news/divorce-is-off-the-richter-scale-i-took-on-10-new-clients-in-january-alone-40088936.html>

¹⁴ <https://onefamily.ie/wp-content/uploads/2019/10/Vision-for-a-Court-Welfare-Service.pdf>

mechanism for delivery and believe this requires further consideration and consultation.

Diagram 1: Family Law Service Model



3.1 Information, Support and Signposting:

The purpose of this universal service is to achieve the following:

- Provision of basic information to the public to ensure clear information on all options to support people resolve their family dispute;
- Ensure there is information provided about the child-centred approach that will be taken by all elements of the Family Law Service Model;
- To support callers with difficult emotions through containment and de-escalation; and
- To ensure people are signposted appropriately to services.

This can be achieved through the following two services:

- (i) Website: clear family-centred information on the services model including the courts, service pathways, signposting, accessible language and format, multi-lingual, section for children and young people.
- (ii) Helpline: provision of emotional and practical support, listening, signposting, information about available options to resolve a family dispute. Clear information on what is available from the state and what requires payment. Appointments could be booked to undergo the Child Impact Assessment Framework as below.

These services could be provided by a Government Department, appropriate statutory agency or be tendered out to an expert third party.

3.2 Child Impact Assessment Framework:¹⁵

This is a universal service currently practiced in many other jurisdictions with the purpose of prioritising the safety and interests of the child in a family dispute and is routinely used by CAFCASS in the UK. It is similar to Information and Assessment Meetings which are thoroughly discussed in the Family Solutions Group report.¹⁶

All families must undergo this mandatory two-step assessment either through voluntary participation before going to court or by referral by court following an application by the family. Failure to engage or comply should result in referral to court for case management.

- (i) Risk Assessment/Safe Guarding Assessment: A rapid desk-based risk assessment should be conducted to identify whether there are risks or safeguarding issues presenting for the child. Information can be

¹⁵<https://www.cafcass.gov.uk/grown-ups/professionals/ciaf/>

¹⁶https://www.judiciary.uk/wp-content/uploads/2020/11/FamilySolutionsGroupReport_WhatAboutMe_12November2020-2.pdf-final-2.pdf. Page 50. Accessed 25.2.21.

sought from family members including the child, from Tusla, An Garda Síochána or other organisations as appropriate. The family needs to be screened at this early stage for High Conflict Parenting, Domestic Abuse, Child Abuse, Financial Abuse, Mental Health issues, Addiction, Parental Alienation etc. All information found will be reported to the court for the first hearing to support informed decision making from an early stage.

- (ii) Child Impact Assessment: This is a more thorough assessment that is focused around identifying what the children need rather than what parents want. This framework looks at what parents are currently doing, what they are planning to do, looks at the impact on children, and then develops a plan with the family to decrease any negative impacts on children. Full participation by the child is essential and this may require other specialist roles such as Early Years professionals, Play Therapists or people with disability specialities.

The purpose is to develop a child-centred Parenting Plan that the family can implement themselves with or without court ratification as appropriate.

In straightforward cases a parenting plan could be readily developed between the parents or with minimal assistance. In more conflicted cases, the family would be required to access further support in order to reach agreement, this would be aided by engaging with a range of family support and ADR services as below.

With direct support from the court, the family will be encouraged to engage in such support so as to achieve as much as possible before returning to court with their Child Impact Assessment Report, which again will inform the judge. The family works towards the resolution of identified issues and this should be monitored by the courts to ensure compliance and participation with non-compliance being identified early on and actively managed.

Specialist diagnostic assessments and supports will be necessary for a minority of families that do not have the capacity to move beyond conflict and whereby children remain impacted negatively. The court will have the ability to redirect these families back to such services and make provision for child welfare as deemed appropriate.

The recent UK Family Solutions Group report¹⁷ examining their family law systems from a child's perspective discussed the following:

"E. Choice of Pathway. The difference between domestic abuse and high conflict separations must be understood by family professionals from the

¹⁷[ibid](#)Page 57. Accessed 25.2.21.

strengthen parent's skills and can provide a focus on the needs of children.

- (iii) Mediation/ADR: We recommend that mediation should be child-inclusive and not solely focussed on parents. This is important in order to hear children and bring their voice into the mediation process. This requires well trained mediators and collaboration with Early Years specialists as appropriate. Mediation should be available on a shuttle basis as well as in joint sessions in order to develop sustainable parenting plans and other arrangements as required in family conflicts.
- (iv) Peer Support: Group support for children such as the Rainbows¹⁸ service or group-based therapy can be very beneficial.
- (v) Child Contact Centres¹⁹: We know that for some children they need safe places in which to spend time with the parent they do not live with. This can benefit parents who need additional supports and use of these centres should be linked to other family support services to ensure progression out and into self-arranged contact.
- (vi) Domestic Abuse Services: Specialist accessible support services are vital to support children, adult victims and perpetrators of Domestic Abuse including Financial Abuse. To avoid misunderstandings and manipulation, very experienced professionals who will be trusted by courts are essential.
- (vii) Other Specialist Services: Parents may be identified as requiring specialist supports with major challenges such as addiction issues; mental health issues; child abuse or welfare issues; and parental alienating behaviours amongst others. These challenges may result in increased conflict within families and the inability to parent appropriately. Progress on difficult issues may be slow and require long term supports and case management by the CCLO and courts.

All of these services need to be accessible both in terms of availability of appointments, cost and geography. We recommend that some of these services such as mediation and Domestic Abuse Services may be appropriately placed in regional Family Law Relationship Centres. Others may be available in regional or local communities. These services may best be provided by expert voluntary sector

¹⁸<https://www.rainbowsireland.ie/separation-links/>

¹⁹https://www.onefamily.ie/wp-content/uploads/One-Family_Child-Contact-Centre_Key-Learnings.pdf

(rather than statutory) organisations that are appropriately funded, regulated and managed by a relevant Government Department or statutory agency.

These services should be confidential and highly supportive for participants, but outcomes or agreements should be fed back to the CCLO and the courts as appropriate. This is to ensure progression on the Child Impact Assessment Framework. We already provide a scaled down version of these services in One Family through our Separating Well for Children Service.²⁰

3.5 Role of Courts:

The new Family Law Courts will benefit greatly from both the training and expertise of specialist judges but also from the range of assessment and support services outside court. A strong link between the CCLOs and the courts will be essential for success. We know that for many families one parent maybe willing to participate in support services or mediation; whereas the other parent may not be. Some families may wish their children to undergo services but not to do so themselves. We do not believe that the Family Law Services Model will work effectively unless there is an ability for sanction and management by courts to ensure timely and meaningful participation by adults.

The development of the Child Impact Assessment will form the basis for the court of the plan to be actioned in order to reach sustainable resolution and safety within a family. This should centralise the safety, best interests and involvement of children in all stages of this process.

Families that proceed straight to court should be redirected to the CCLO for a Child Impact Assessment before a court appearance other than for emergency safety issues. Families that proceed to court with a parenting plan and proposals for resolution via the CCLO should require minimal intervention by court. The court needs to be satisfied that the plan is in the best interests of children by systematically examining any plan against all elements of Part V of the Children and Family Relationships Act.

In families where there are child protection concerns there needs to be an appropriate connection between the courts and Tusla supported by the CCLO. The courts should take strong action in relation to case management of all issues relevant to a family as well as appropriate criminal sanctions, remedial actions and/or safety orders to be put in place to prevent further Domestic Abuse as required.

More information can be provided on the detail as required in the future.

²⁰<https://onefamily.ie/parenting-supports/separating-well-for-children/>

3.6 Reform of Legal Practice:

There are some examples of excellent and innovative practice amongst legal practitioners who are working through mediation and other collaborative practices to support families in dispute to reach resolution outside the court room. We believe these should be nurtured and supported in family law specialists and have their place as non-adversarial ways of reaching legal agreement.

We believe they are not a substitute for family support services which can support people with their very personal and emotional difficulties that are extremely common in family law disputes such as separation and divorce. They are a useful way of supporting families to reach sustainable agreement in the legal domain. Again, there are excellent international examples of different systems that work well.

We regularly hear from court users that they were not aware of how much or how long court proceedings would cost or take – a higher level of transparency is required in this area.

"I wanted to go down a collaborative route but my ex's solicitor advised him against it ... Court needs to be the very last option."

Mother of two children

4 FJOG Consultation Topics

Below are our responses to your initial round of consultation topics which should be viewed in context of our introductory sections above. Many of the topics below continue to centralise the importance of courts whereas they should actually be the last resort or used to merely ratify agreements made elsewhere. It is pointless to develop 'perfect' family law courts without a considerable investment in other service streams so as to avoid the use of courts where it is unnecessary.

4.1 Optimising the delivery of family justice via:

- The use of modern technology;
- The provision of facilities and supports in the family justice locations?

Modern Technology:

The Court Service has a new ten-year strategy vision in place that aims to fundamentally transform how the Courts Service delivers services by deploying a greatly increased use of IT as part of their ambitious Modernisation Programme. Their vision is working towards: "Delivering excellent services to court users; working in partnership with the Judiciary and others, to enable a world class Courts

system.” Therefore, with appropriate plans and resources the main delivery partner for the use of technology and facilities is clearly stating its readiness on this issue. Modern technology to assist court user’s access to services is key. This should include considerations of safety, access and affordability. The use of online portals for secure uploading of relevant documents and effective case management should be prioritised.

The measurement of impact and outcomes as well as service activity is key and needs to be a cornerstone of the use of technology.

Facilities and Supports:

Before considering the development of improved facilities in new family justice locations and buildings it is important to have universal access to online and helpline information as described in our Family Law Service Model as the first point of engagement before someone goes to a building. The buildings used for family justice should be regional centres of excellence with world class facilities and support services and these should reflect the agreed service model. People should understand these as places where you travel to in order to access services to help you resolve your family law issue; make decisions in relation to your family, separation, home, finances etc; and/or seek legal interventions if you or your children are unsafe. They need to be worth travelling to by having the appropriate services and facilities in place to support people.

It may be helpful to think about these buildings as Family Relationship Centres rather than primarily as family law courts. We recommend that the locations for these regional centres should be based on accessibility for court users including regular public transport; geographical distances to be travelled by court users; the availability of appropriate court buildings that have or can be upgraded with modern accessible technology as well as child-friendly and family friendly resources; an adequate supply of qualified staff; case volumes and waiting times; and location of Legal Aid Board offices. There should also be a dedicated and fully resourced District Court Family Law Office attached.

4.2 The place of mediation in family justice:

- The desirability of using mediation to resolve family law issues;
- Maximising family court users’ understanding of the role mediation can have in settling family disputes;
- Interdisciplinary training in mediation for family justice practitioners;

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?

Desirability of mediation:

Mediation is one part of a suite of early intervention and prevention tools and services that should be available to families as part of a Family Law Services Model. It is not a panacea and is obviously not suitable in families where there has been abuse, violence or control. There is an opportunity to build on the innovations and pilot projects undertaken by the Family Mediation Service in developing accessible mediation services in partnership with family law courts and a Family Law Service Model.

Maximising family court users' understanding of the role mediation can have in settling family disputes:

Mediation should be an integral part of a Family Law Service Model and information should be provided to families by the CCLO when planning the appropriate services to develop their Parenting Plan. The limitations and opportunities provided by the range of mediation and ADR methods should also be well developed and transparent. Information should be clearly available on mediation online and from the helpline provider as well.

Interdisciplinary training in mediation for family justice practitioners:

We recommend that training on all services including mediation should be part of what family law practitioners and judiciary should participate in. We strongly recommend that the Mediation Council and all necessary steps to full professionalisation and regulation of mediators is undertaken as quickly as possible as per the Mediation Act 2017.

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?

As per our Family Law Service Model mediation should be integrated into all stages of supporting a family before court. As it is not suitable for all families due to the dynamics of abuse and control it cannot be a pre-requisite to family law proceedings, but neither can the current situation of rubber stamping a discussion of mediation by some solicitors and courts continue.

"Mediation was our saviour ... No slagging matches on the court steps or any of the other sad goings on that you see hurt people partake in. Yeah, we did have our slagging matches but in the company of the mediator who quickly brought our focus back to what was important ... our children. Our solicitors were at the ready to fight our battles for us but thanks to the judge asking us to try mediation first, and as much as he could, make it compulsory, our story was as much as a success as it could be."

Mother of three children

"The mediator said she could not mediate in our situation as there was a history of violence (his violence to me). I later secured a barring order. Mediation does not work in my situation."

Mother of three children²¹

"My reservation with mediation would be that as a free service with variable commitment from parties it can be viewed as a pseudo resolution rather than the complete resolution... Reports suggest that mediation agreements can be disregarded when submitted to court, this makes no sense whatsoever as the emotional effort applied by parties in mediation is then in vain."

Father of two children

"Mediation should be compulsory for separating couples and the interests of their children should be hammered home at every opportunity."

Mother of one child

"Solicitors told me not to bother 7 years ago. It was a huge mistake, things became very acrimonious because of legal teams."

Mother of two children

4.3 Reimagining the structure of civil legal aid in family justice:

- 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?
- In addition to mediation, is there scope within a civil legal aid system for utilising other ADR mechanisms including but not exclusively arbitration and collaborative law as a means of achieving family justice?
- Legal Aid in family justice - more than legal advice and representation!

We note and concur with recommendations made by the Children's Rights Alliance in its submission to the FJOG in this consultation on civil legal aid which are:

- "Consider updating and amending the financial thresholds for family law cases so that eligible families have access to legal advice and representation.
- When reviewing the Civil Legal Aid scheme, ensure that children can access civil legal aid in relation to family law proceedings to ensure that their interests are independently represented and they can access justice in proceedings that directly impact their lives."

We note that FLAC is also making a submission to this consultation process and we concur with their following recommendation:

"The planned review of the legal aid system should be treated by the Family Law Oversight Group as integral to the reform of the family law system, but also consider the need for civil legal aid provision in areas that impact on

²¹https://onefamily.ie/wp-content/uploads/2017/01/One-Family_Shared-Parenting_Results-and-Recommendations_FINAL-REPORT_Online.pdf

families outside of the family law sphere, including but not limited to social welfare and housing.”

Civil Legal Aid and non-court based solutions:

If the Family Law Service Model we suggest is adopted, this issue of linking Civil Legal Aid (CLA) with non-court based solutions should not arise *per se* as all cases will go through the Child Impact Assessment Framework. The question as phrased raises concerns though as we cannot have two parallel but separate systems with different approaches. Civil Legal Aid and private practitioners should be expected and required to behave in the same way in relation to the management of family law cases - common rules of engagement are essential.

Other ADR mechanisms:

Mediation is not the only type of ADR, indeed therapeutic services can be helpful as can more outcome-focussed practices such as conciliation or evaluative mediation. All should be considered as part of the Family Law Services Model.

What is Legal Aid?:

Legal aid should work in the same way as the rest of this reform process which is to play its part in ensuring sustainable, child-centred solutions to family disputes. It is more likely that legal aid will be required in more challenging cases if the Family Law Services Model is adopted and therefore it must be readily available to ensure safety in families. Access to justice in the domain of family law must be child-centred, safety focussed with a view to developing sustainable solutions for a family. We regularly hear from service users who cannot access legal aid due to being in receipt of HAP, or being slightly over thresholds and as a result can be out manoeuvred in court and put in harm.

We note that in 2005 the Legal Costs Working group report²² stated:

“Access to justice is a particular concern given the nature of proceedings. In this regard, the Group notes that the vast majority of cases supported by legal aid are family law related.

“The Group believes that the development of lowcost litigation procedures could play a significant role in providing citizens with greater access to justice and, in this regard, the Group would encourage the implementation of its recommendations in the context of the jurisdictional limits of the District Court and the Small Claims Court. Similarly, the Group feels that the development of alternative dispute resolution systems must be further explored.”

4.4 The Family Courts:

- What issues should always be prioritised for hearing?

²²<http://www.justice.ie/en/JELR/legalcosts.pdf/Files/legalcosts.pdf>

- What are 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.);

Hearings:

Cases involving safety issues for any family member must always be prioritised for hearing. This obviously includes any aspect of domestic abuse including financial abuse²³ both during and following a separation; and all other decisions that need to be made by a family post-separation including access, maintenance, custody, guardianship etc. These issues cannot be dealt with separate to the issue of domestic abuse and radical resourcing and changes are required here to ensure the safety of children and their parents.

The current difficulties in relation to private family law courts and how domestic abuse is treated are numerous but include the following:

- The state does not consistently take responsibility for ensuring the safety of the child in private family law hearings sometimes even where child protection issues are raised.
- Coercive control and abuse can continue during a court case; are not universally understood and courts can inadvertently punish an abused parent further.
- In some instances the abused parent is court-ordered to provide supervised contact or access visits for the abusing parent.
- Financial abuse is not well understood and the non-payment of child maintenance or mortgage payments are not necessarily treated as abuse.
- Legal and family support staff can be manipulated by some abusers unless highly trained and supported.

We also recommend that all cases in relation to children are prioritised as we see children's lives being lost due to their family's conflicts and the long-time spans between court appearances and the production of reports combined with a lack of case management and progression.

Professional supports:

This requires an entire paper on its own merit and for now we refer you to the Family Law Service Model in Section 3. We recommend a separate consultation on

²³ Department of Justice has the following definition: "Financial abuse is a form of domestic violence in which the abuser uses money as a means of controlling their partner. It can include: non-payment of child maintenance". <https://whatwouldyoudo.ie/> accessed on 10.02.21

this area when thinking has been more developed. It is critical for success that this is correct and well-resourced.

"Parenting classes should probably be made compulsory as even when they are available, people believe they don't need them or would be embarrassed to go."

Mother of two children²⁴

4.5 Voice of the Child:

- 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?

We note and concur with recommendations made by the Children's Rights Alliance in its submission in this area which are:

- "Ensure that court settings are designed to be child-friendly by including the provision of interviewing and waiting rooms for children 'in a child-friendly environment'.
- Make proceedings more child-friendly by including provisions to ensure that children are familiarised with the Court setting, the layout and the roles and identities of officials ahead of attending proceedings. Court sessions involving children should be adapted to the child's pace and attention span with planned regular breaks and hearings that are limited in duration.
- Introduce mechanisms to provide that relevant child-friendly information is given to children and their parents or legal representatives and that child-friendly material on legal proceedings could be made available and widely distributed."

Voice of the Child:

There is a Constitutional imperative to hear the voice of children in court hearings relevant to them but a distinct lack of implementation. The regulations in relation to Child's Views Experts from the Dept of Justice are inappropriate for reasons detailed in other submissions from One Family²⁵. There is a danger in consulting children without also looking at their safety or best interest issues and this cannot be achieved in the current Section 32(i)b reports which not adequate in nature where there are complex issues occurring in the family.

²⁴https://onefamily.ie/wp-content/uploads/2017/01/One-Family_Shared-Parenting_Results-and-Recommendations_FINAL-REPORT_Online.pdf

²⁵https://onefamily.ie/wp-content/uploads/2019/10/Submission-to-DoJE-re-Regulation-of-Child-Views-Experts_Oct_2017.pdf

5 Other Areas to be Considered

We welcome this opportunity for consultation on these preliminary issues and would like to suggest some additional areas that are worth considering for additional exploration in this process.

5.1 Information on Family Law:

We note that the current statutory provision of information, signposting and support to people with family law disputes is inevitably focussed on legal solutions. This should be reviewed immediately to provide additional useful information.

5.2 Intersectionality of Courts:

In complex cases, the same family can be involved in cases in the public childcare courts, criminal courts and private family law courts. This results in a dysfunctional interaction or sometimes a complete lack of interaction between these siloed systems. We are aware of cases where this causes clear harm to some children and their families. The Family Law Service Model we propose should take account of proceedings in other courts and each court should be aware of what else is going on. The criminal cases could involve for example, child sexual abuse or domestic violence which directly impact on private family law arrangements as well as child protection concerns.

As a member of the Children Living with Domestic and Sexual Violence group we note their recommendation in this area:

“The Family Justice Oversight Group should consider how to improve linkages and collaboration between the Family Law court, the Criminal Court and Child Protection, in order to center the safety and wellbeing of the child and support the non-abusive parent in all proceedings.”

“There is a lack of protection from the ‘other parent’, who is dangerously abusive towards me and our child. The state/court system seems to favour parental contact regardless of the abuse therein. It is not fair or justified and the system must change to protect parents and children escaping from abusive relationships. Adequate financial supports are also imperative.”

Mother of one child

5.3 Timing and Case Management:

Children’s lives are being lost to court delays either through long lists, a lack of resourcing or legal manoeuvres by warring parents; as well as delays in court-ordered expert reports. Strong case management and time management by the courts will be essential to ensuring speedy resolutions of family’s issues. This of

course will require adequate resourcing and funding for the required levels of judiciary and other support staff.

5.4 Data and Outcome Measurement:

As part of the development of the new court system, appropriate data management systems will be required to record all activities, user journeys, and outcomes. If developed correctly this can provide invaluable information on whether the reforms are reaching their objectives, the costs, the times involved for families and much more. We recommend that extensive work is undertaken on this as an integral part of building the system to implement the reforms.

This will also require regular surveys and evaluations by court users on their experiences and suggestions for improvements.

Strong consideration should be given to how the family law courts can write up relevant cases and judgments; as well as how independent research can take place.

5.5 Data on Legal Costs:

There is a dearth of information on legal costs to family members using private practitioners in family law cases. We note that in 2005 the Legal Costs Working group report²⁶ stated:

“The Group did not have the opportunity to examine the dynamics, procedures and processes unique to family law and it believes that the issue of family law requires a separate and detailed examination.”

We are aware from service users that legal costs can spiral to multiples of what they anticipated and end up costing them significant proportions of their assets. We note the following illuminating comments in this recent media interview with an experienced family law solicitor:

*"In her experience, 90pc of divorces settle out of court."That's the aim. If they don't, then all the money that should be going into the family's asset pot is going on lawyers. I shouldn't be saying that, but it's true. And you could have an hourly rate of over €400. Then if a High Court case has to run, you could be into €90,000-€100,000 worth of fees. There are separate bills for forensic accountants, experts who look at pensions, child psychologists... the list goes on."*²⁷

²⁶<http://www.justice.ie/en/JELR/legalcosts.pdf/Files/legalcosts.pdf>

²⁷<https://www.independent.ie/irish-news/divorce-is-off-the-richter-scale-i-took-on-10-new-clients-in-january-alone-40088936.html>

We strongly recommend independent research should be undertaken as a matter of urgency to establish the costs associated with private family law proceedings. . This creates additional stress on families at an already difficult time. It should be part of the purpose of this reform process to lower costs to families as well as to decrease their conflict as they are invariably connected. We also note that child and family poverty rates increase following separation and family breakups; and that this is an issue of public policy concern. Further recommendations should be invited following this research into how legal costs can be regulated and reduced.

"Legal fees – stop the nonsense of overcharging parents in need, still to this day no one in the government cares to reinforce charges of flat fees or quotes by solicitors being honoured. They still overcharge, do not quote, intentionally delay the court systems to charge extra because a straightforward case is 'oh so complicated'."

Mother of one child

5.6 Review:

A timely review of the reform process and the impact of the reforms both at legislative, policies and practice level will be required regularly to work towards better practice. This should involve all stakeholders and be led by the Dept of Justice.

Ends