

1. Introduction

One Family welcomes the opportunity to make a submission to the Judicial Planning Working Group. Judges have an enormous impact on the lives of families who come into contact with the Family Law system. It is imperative that they are appropriately resourced and trained to ensure the safe, speedy and sustainable resolution of family disputes, while holding the best interests of the child as their core guiding principle. The focus of our submission is on Family Law as this is One Family's area of expertise; however, some of our recommendations are relevant throughout the judicial system. We also make this submission in the context of the General Scheme on Family Law and plans for specialist Family Law courts and judiciary.

2. About One Family

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 service and our Parenting when Separated courses.^{1 2} We previously developed and evaluated a pilot project providing Child Contact Centres; unfortunately, these were not mainstreamed.³ Our full range of services for children and parents living in one-parent families can be reviewed at www.onefamily.ie. One Family represents the interests of court users on the Courts Service Board; the Family Law Development Committee, the Dublin Circuit Family Court User's Group and the Legal Aid Board's External Consultative Panel.

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. Family law queries comprise 20% of all calls to our national *askonefamily* Helpline and we work directly with fathers, mothers, children and step-parents to support them as they interact with the judicial system. As a result of this extensive work with family law court users we have a clear understanding of the needs of families and children and what is required from the judiciary to fulfil these needs.

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

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

³ <https://onefamily.ie/how-we-support-families/child-contact-centres/>

"The courts in my experience are often uncaring and provide no help. They give less than 5 minutes to make a decision, and don't hear you out."

Mother of 1⁴

3. Guiding Principles

We believe there should be a set of principles which underpin the work of the judiciary consistently across the family law system and beyond.

- **Child's best interest** – the safety of children must be prioritised above all else in public and private family law cases. 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.
- **Prevention and early intervention** - in all instances relating to families and children in the courts should make every effort to put measures in place to prevent the escalation of disputes and to support families to come to a resolution with as little court intervention as possible.
- **Sustainable decision making** – judicial decision making and practice should be sustainable and tailored for each family's unique set of circumstances.
- **Court User Focused** – judges should be focused on the needs of service users; in the case of family law this is all members of the family. They must pay particular attention to the needs of the most vulnerable family members, children, rather than the needs of institutions or professions which profit from family law cases.
- **Safety** - the safety of family members, particularly children, should be paramount and underpinned by a strong understanding of and training on Domestic Abuse.
- **Equality, dignity and respect** – All court users must be treated with respect and dignity. In family law cases both parents should be valued equally, and a cooperative, positive parenting approach fostered.
- **Timeliness**- judges should endeavour to resolve family disputes requiring court intervention as quickly as possible. Active management of conflictual cases or cases where non-compliance is an issue, should be used to avoid unnecessary or deliberate delays.

⁴ One Family, (2017) Ireland's First Shared Parenting Survey – Results and Recommendations. (Available at file:///C:/Users/One%20Family/Documents/Research%20and%20Policy%20Docs/One%20Family%20&%20OPFA/One-Family_Shared-Parenting_Results-and-Recommendations_FINAL-REPORT_Online.pdf)

4. Number and Type of Judges Required

Reform of the family court system as proposed in the **General Scheme of the Family Court Bill** will require additional judicial resources, as well as the redeployment and retraining of existing judges. Assignment as a Family Court Judge should be based on a transparent system of recruitment, training and support. Judicial skills and craft including empathy should be nurtured for these roles.

The Principal Judge of the District Family Court as proposed under the Bill will be a key position. The appointment of the Principal Judge should be based on possession of relevant skills, including strong interpersonal and communication skills. Relevant experience should include professional management experience. The Principal should have responsibility for the effective and efficient organisation and business of the family law courts across the country, with the authority to issue practice directions; caseload management; and oversight of specialist training.

The **Principals of the District and Circuit Courts** should consult and coordinate the business of their respective courts between them. This is an opportunity to work towards consistency between and to support judges and courts on common issues to maximise positive and consistent outcomes for court users and increase the efficiency and effectiveness of family courts.

"Different judges all the time. Never really felt heard, just a number. We're all going there for the kids, trying to do the right thing, but it ends up 'tit for tat'. I know that kids can't be in court, but I think they should have some sort of say."

Mother of two children⁵⁵

In addition to the Principal Judge, **Specialist Family Law Judges** should be assigned to the 'District Family Court Districts' as proposed under the Bill. This will be necessary to ensure consistency in case management. Proceedings in multiple Districts should not be permitted, although application for transfer should be made available. One Family supports recommendations for judges (along with other legal practitioners) in family court settings to forgo the wearing of wigs and gowns.

Court sitting times and court offices should be made available out of office hours to increase accessibility for court users; as a result, additional judges and Court Service staff may be required. Court hearings should be scheduled, with staggered hearing times and cases actively managed to avoid delays and long

⁵ Ibid

waiting time in court buildings for court users. It is also possible that if a radical reform process in relation to family law is successful and includes a strong out of court settlement system, then judges should not need to spend as long on cases. We recommend a review of international wait times, judges per head of population and a comparison of legal systems to assist in the development of an evidence-based requirement of judicial numbers.

4. Development of Judicial Skills

It is vitally important judges are **trained to deal with complex family law cases**, all family members' needs (particularly the needs of children) and the contextual issues which arise for families using court services. It is critical that training is provided and is mandatory on key issues of relevance to family law and that this is done before appointment to the family law division, to maximise positive and consistent outcomes for court users and increase the efficiency and effectiveness of family courts. All judges – High, District or Circuit – should have the same requirement of tenure and training.

We recommend specialist training, prior to appointment to the Family Law Division and regularly during appointment, be provided to judges on complex issues relating to family law. This includes **domestic abuse**, the dynamics of abuse (before, during and after separation), the impact on the abused parent, the complex impact on children, ongoing access, coercive control, financial abuse (including withholding maintenance) and programmes which can support children and families.

"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 child⁶

Judges also require training on child protection and associated issues, such as an evidence-based understanding of parental alienation and knowledge of attachment issues. Judges should be trained in the latest trauma informed practice and knowledgeable about available specialist family support services. Judges should be trained in communication and soft skills, children's rights and participation, including how best to consult and listen to children.

All Family Court practitioners, including judges, should be **trained on how to minimise conflict** between parties. This training should include modules required prior to appointment to the Family Court Division and regular CPD/Judicial refresher training. The entire structure of service pathways needs

⁶ Ibid

to be developed to provide an early intervention approach to family dispute resolution as alternatives to immediate court action.

"Mediation was our saviour ... No slugging 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 slugging 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 children⁷

We recommend that training on all services, including mediation, should be part of judicial training. 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.

5. Use of Digital Technology

We recognise and welcome the radical changes brought about in the operation of courts due to the Covid-19 pandemic. We support the ongoing development of data collection and analysis tools; the digitalisation of court processes; and the Courts Service Modernisation Plan. 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.

The promotion and use of technology to assist in remote hearings and the electronic filing of papers, in particular in respect of centralised Courts should be supported to ease the issue of access to those Courts. For such centralised Courts, there should be a specific intent to reduce, where possible, the requirement for parties to attend the Court physically, in particular for procedural and similar applications unless they wish to do so or have a lack of access to technology.

6. Covid-19 Pandemic

The Covid-19 pandemic has caused a considerable backlog of family law cases, placed additional pressure on the judiciary and caused an enormous amount of stress and trauma for families and children awaiting resolution. We know from our work with families that **there is a tsunami of separation and divorce caused by the pandemic**. For many families lockdowns and the associated

⁷ Ibid

stressors, such as job losses, isolation and lack of personal space, acted as a pressure cooker exacerbating grievances and increasing conflict. Calls to One Family's helpline in Q2 of 2020 were up 68% on the same period the previous year. Demand for our specialist family support services were up 20% in 2020 and registration for our parenting during separation course was up 17%.

We recognise efforts were made during the pandemic to alleviate some of the backlog. For example, we welcomed the announcement the District Court would be hearing more cases in May 2020; however, while the initial emergency stage of the pandemic may have passed, the conflict, pain and trauma experienced by families has only grown in the proceeding time. Judicial planning must take this backlog of demand into account. Essentially, the emergency period for family law is post-pandemic in nature. It will continue into the coming years and decades if not appropriately planned for. We recommend additional judges and resources are allocated specifically to reduce the post-pandemic backlog.

7. Case Management

Case management by judges plays a crucial role in the quality of the experience of families interacting with the courts. Ideally **the same highly trained, specialist judge should manage all aspects of a family's case.** Active case management, where delays and/or non-compliance are identified and managed at an early stage, should be an essential and crucial role for all judges.

In cases involving non-compliance with Court Orders, or concerns where non-compliance may arise, judges must ensure active and regular case management to monitor and take proactive steps to ensure compliance. This should include meaningful sanctions against a defaulting party with clear and defined pathways to escalating sanctions for repeated or on-going non-compliance.

Management or seizure of cases by a particular judge to ensure consistency, case management and integration of all issues particularly where there is a concern that the case is, or may become, conflictual where possible. A comprehensive case management system is required to facilitate consistency across family courts, integration of all issues to be considered and reduction as far as is possible of conflict in the conduct of the case.

We recommend the Principals of relevant Family Law Court jurisdictions collaborate to identify the appropriate court for a particular case based on a transparent set of principles. This may require additional capacity and resources for lower courts to enable them to have the time required for more complex cases. We note that the District Court already has experience of dealing with complex, difficult Childcare, and private family law cases.