

Submission to Judicial Planning Working Group

Tusla Submission

July 2021

The following is a summary submission on behalf of Tusla and relevant to the terms of reference for the Judicial Planning Working Group.

One of key points for consideration mentioned in the terms of reference is *“to consider, having regard to existing systems, the extent to which efficiencies in case management and working practices could help in meeting additional service demands and/or improving services and access to justice.”* In relation to this point, Tusla recommends that consideration be given to the following matters.

1. Nationwide Practice Direction for Child Care matters
2. Use of Alternative Dispute Resolution in Child Care matters
3. Introduction of a specialist child and family division within the Irish court system
4. Number and type of judges required
5. Training requirement for Judges

Tusla would be happy to provide further information in relation to the above matters or to make more detailed submissions if this is required.

1. Practice Direction for Child Care Matters

Tusla recommends that there be an update to the Dublin Metropolitan District Practice Direction (<https://www.courts.ie/content/case-management-child-care-proceedings>) which provides for case management in child care proceedings. The practice direction sets out that its overriding objective is to enable the court to deal with each case in a manner which is just, efficient, and cost effective and, ensuring that in all decisions and directions made with respect to the conduct of the case, the safety, welfare and best interests of the child or young person, the subject of the proceedings, are paramount. Other objectives of the practice direction are that cases are dealt with expeditiously and fairly, in a manner which is proportionate to the nature, importance and complexity of the issues, that the parties are on an equal footing and that cases are allotted an appropriate share of the court’s resources while considering the need to allot resources to other cases.

Tusla recommends that this Practice Direction be extended to operate on a national level. This will seek to ensure consistency of court functioning in child-care matters across all districts. A national case management would reduce the adversarial nature of proceedings and shorten the length of a hearing. Case management could be used to require parties to identify issues of relevance to threshold that are in dispute and issues that are accepted in advance of the commencement of the hearing which would reduce the need for witnesses to attend court to give oral evidence. Consideration should also be given to carrying out an

analysis of how efficient court processes currently are in bringing child and family proceedings to a conclusion. Tusla is aware that the impact of delay in finalising proceedings on families and children can be great as well as having cost implications for the State.

The use of remote links to hearings during COVID has also been hugely beneficial in ensuring effective attendance whilst not impact hugely on professional time waiting for matters to be heard. Other practical matters such a signing affidavit for application and review which was often very time consuming and alterations to such administrative practices were facilitated and hugely beneficial in terms of professional time.

2. Alternative Dispute Resolution

Tusla recommends that consideration be given to the introduction of alternative dispute resolution mechanisms (ADR) in child-care cases where appropriate. While ADR processes may not be suitable for all aspects of child-care proceedings (for example, deciding whether harm has reached the required threshold to take a child into care) ADR processes could be appropriately used for determining ancillary questions such as access to services, placement, or access to parents and family members. In addition to other benefits of ADR, (e.g., being more child-friendly and better facilitating a more inquisitorial approach), in some cases, ADR might remove the necessity to issue court proceedings in the first instance. Tusla notes that the use of ADR requires judges to have specialised training so that they can identify when ADR is appropriate. Specific Guidelines on Best Practice should be introduced for ADR in Child Care cases to ensure that the use of ADR does not cause delays and adjournments of court hearings.

This would also support less adversarial proceedings and would reduce the need for Court time with matters (extension to orders, assessments etc) being dealt with by agreement outside of the Court but under its jurisdiction and mandate and still with appropriate legal representation where required. It would also support ongoing and effective engagement between Tusla and parents where our relationship-based practice is essential to any change we are trying to achieve with families and for children. It also assist with professional's agreement in key areas when there are many parties represented the best interest of the child.

The attached SEALS report also highlights the adversarial nature of proceedings and the impact on same on practice and on costs [*SEALS Report Full.pdf \(tusla.ie\)](#)

3. Specialised Training and specialist child and family division within the Irish court system

Point 8 in the Terms of Reference provides that the working group will make "recommendations for developing judicial skills in areas such as white-collar crime." Tusla recommends that consideration should also be given to making recommendations for developing judicial skills and the provision of specialised training in child-care matters as part of a wider consideration of establishing a

specialised child-care court. In general, proceedings under the Child Care Act 1991 are heard in the general courts system by judges who, in many cases, do not specialize in child or family law. In some cases, child-care proceedings are heard in general District Courts, using the same judges and the same physical facilities used for proceedings such as minor crime and traffic offences.

There is a level of complexity and knowledge required associated with the dynamic of intimate partner/domestic violence, coercive control, child/parent attachment, trauma informed practice, briefings on Tusla approaches to practice and the importance of interdisciplinary training in key areas where shared learning and understanding of different perspectives needs to be developed

There appears to be universal support among experts, the legal profession and advocates for the introduction of a specialist child and family division within the Irish court system. As a general principle, Tusla supports the introduction of a specialist child and family division within the Irish court system believing it would bring benefits to an overall coherent approach to child protection by the courts.

On a general level, a specialised Family court could have Rules of Court governing timeframes for the exchange of documents, the admissibility of evidence, a single approach to hearsay evidence from children, active case-management, and other such procedural benefits. The Courts would benefit from clear guidelines in relation to when a child should have representation or when a Guardian Ad Litem is to be appointed, how best to hear the voice of the child and what weight to attach to the child's voice. On a more specific level, consideration ought to be given, in the context of Child Care Cases, to the establishment of a "Family Drug & Alcohol Courts" (FDAC). In the above context, it is submitted that a system, specifically in term of Child Care matters, be considered.

4. The number of judges

Consistent feedback across all Tusla operational areas would highlight the need for dedicated Judges to deal with family law/child-care cases particularly given the use of extended Interim Care Orders over extended periods. The absence of same means that significant time/resources is expended on waiting for cases to be heard in the context of other legal matters. Many operational areas cite the need for at least 2-3 dedicated judges

The use of travelling judges does not always support consistency and therefore can affect the effective administration of such cases.

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