Interim Report

Child Care Law Reporting Project

Dr Carol Coulter *November 2013*

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The Child Care Law Reporting Project is supported by the One Foundation, Atlantic Philanthropies and the Department of Children and Youth Affairs. It receives technical and administrative support from Free Legal Advice Centres (FLAC).

ISBN 1 873532 245

Introduction

Background to the project

Historically all child care proceedings had, by law, to be held in private (the *in camera* rule), which meant that there could be no reporting of them, and the matters discussed could only be revealed to third parties by permission of the court. This meant that there could be no transparency to what is a very draconian power in the hands of the State – to take children away from their parents and place them in State care. Today the vast majority of children in such care are in foster homes, but in previous decades they were kept in residential institutions, which in recent years have been revealed to have neglected and abused many of them.

These revelations and the inquiries that flowed from them have placed a question mark over the *in camera* rule. Successive reports, including the Ryan report and the report of the all-party Oireachtas Committee on a Children's Amendment to the Constitution, have called for it to be modified and for reporting to be permitted, subject to maintaining the anonymity of the children. Legislative change came in the Child Care (Amendment) Act 2007, which permitted the attendance at child care proceedings of a barrister or solicitor or a person specified in Regulations to be made by the appropriate Minister, and the preparation of a report based on the proceedings, provided the reports did not contain any information that could lead to the identification of the child or children in question. However, no arrangements were made to put these provisions into practice and no Regulations were made to nominate people to carry out such reports until 2012.

The issue of the *in camera* rule in child care proceedings came to prominence again during the debate on the Children's Amendment to the Constitution in the months leading up to the referendum in November 2012, when it was highlighted by the fact that very few people knew what happened in such proceedings and what the circumstances could be that led to children being taken into care. Despite the considerable body of legislation that exists providing for the protection of children in such circumstances, there has been little public discussion of where the balance might lie between the constitutional rights of parents and the rights of children to be protected from abuse and neglect. Much of the discussion of child protection matters is driven by a public outcry about the latest scandal or tragedy, with little informed debate about the very complex issues involved.

The Minister for Justice promised to further modify the *in camera* rule during that debate and in July 2013 did so in the Courts Act, which permits the media to attend

such proceedings, again subject to court oversight and to restrictions to protect the identity of the children and their families.

In 2012 two philanthropic foundations, the One Foundation and Atlantic Philanthropies, came together with the Department of Children and Youth Affairs to support a project which would attend child care proceedings and publish reports on them. Regulations were made by the Minister for Children, Frances Fitzgerald, to permit such reporting, nominating bodies who could undertake this work, including Free Legal Advice Centres (FLAC), which sponsors the Child Care Law Reporting Project. It was set up under the direction of Dr Carol Coulter in October 2012 and launched by the Minister for Children and Youth Affairs on November 5th. Dr Coulter had previously taken a year out of her position as Legal Affairs Editor of *The Irish Times* to carry out a pilot project for the Courts Service on reporting from the family law courts, which were covered by the same *in camera* rule as applied to child care proceedings. These reports were published both in magazine format and on-line by the Courts Service and a report on the pilot project is available on the Courts Service website, http://www.courts.ie/Courts.ie/library3.nsf.

The child care legislative framework

Very fundamental issues are at stake in child care proceedings: the constitutional rights of the family, considered the fundamental unit of society; the rights of children, whose rights to life, to bodily integrity and to development as members of their families and society may sometimes be at risk; and the balance to be struck between these rights where parents "fail in their duty" towards their children.

During the debate on the Children's Amendment, yet to become law, some of these issues were aired, though in a situation of a dearth of information. With this amendment still in legal limbo at the time of writing, its implications are as yet unknown. Yet even without the Children's Amendment certain children's rights are spelled out in legislation and in various policy statements from Government departments. The 1991 Child Care Act and its amendments provide the legislative framework under which children may be taken into care or otherwise protected by the State.

This Act imposes a statutory duty on the health boards (now the HSE) to promote the welfare of children who are not receiving adequate care and protection. This includes the provision of child and family support services. In the performance of its functions the HSE is obliged to have regard to the rights and duties of parents under the Constitution and to the principle that it is generally in the best interests of a child to be brought up in his own family. However, it is also required to regard the welfare of the child as the first and paramount consideration.

The Act outlines circumstances in which the HSE must provide care for a child, notably where he or she has been lost, abandoned or is homeless.

It then outlines the circumstances when the State authorities must act to protect children. Section 12 of the Act empowers a member of the Garda Siochana to remove a child who is seen to be at immediate risk and place him or her in the custody of the HSE as soon as practicable. The HSE must then seek an Emergency Care Order in the District Court, which may be granted by the judge if he or she considers the health or welfare of the child to be at immediate or serious risk.

Part IV of the Act provides for the HSE to apply for Care Orders, taking into care children who have been or are being assaulted, ill-treated, neglected or sexually abused, or whose health, development or welfare has been or is likely to be impaired or neglected, and where this will continue if a care order is not granted. While Care Orders can be made "as long as [he] remains a child", that is, until the age of 18, the Act also states "or for such shorter period as the court may determine". If a shorter Care Order is made, the court can extend it when it expires if the circumstances leading to the child going into care have not changed. In addition, the Act provides for the making of Interim Care Orders, which must be renewed every 28 days if the parents do not consent to the order.

In addition, a child can be placed in voluntary care on the consent of his or her parents. This does not require a court order. It can be ended at any time by the parent or parents withdrawing their consent to voluntary care. A typical situation where voluntary care might arise is where the parent is parenting alone and suffering from illness or addiction and places her or his children in voluntary care while the parent receives treatment. If the situation does not improve, however, and the parent wants the child to come home, the HSE may then seek a Care Order or a Supervision Order from the District Court. In 2011, 2,797 children were in voluntary care, as against 3,358 in care on foot of court orders. Children in voluntary care are more likely to be in the care of relatives than children in care on foot of court orders.

The use of voluntary care raises a number of issues that are outside the scope of this project, as the children involved do not come before the courts. Because no court order is involved, voluntary care arrangements are not subject to the supervision of the courts. Therefore there is no court scrutiny of what services there are for children in such care, what care plans exist, if any, and who oversees them. Nor is it known what legal advice is available to the parents, especially if they suffer from an intellectual disability or literacy problems, and how their informed consent to voluntary care is arrived at. We do not know how long children may spend in voluntary care and what proportion go from voluntary care to court-ordered care. All of these issues could provide fruitful scope for further research.

If the court considers that a Care Order is not warranted, but it is desirable that the child is visited periodically in his or her home by the HSE, it may make a Supervision Order and this can include directions about medical and other assessments or treatments for the child. In addition, the HSE itself can seek a Supervision Order. The basis for making such an order, as outlined in the Act, is that there are *reasonable grounds for believing* that the conditions for seeking a Care Order exist, rather than that the court is *satisfied* that they exist. The Act also gives the HSE discretion to apply for a Supervision Order instead of a Care Order. Under the 1991 Act the HSE may visit the child to monitor his or her welfare. This is likely to include parenting advice. However, in some cases where Supervision Orders are granted the courts also direct the parents to engage in various treatments or desist from certain behaviour. It is not clear where this derives from in the legislation. There is no provision in the legislation for Supervision Orders to be monitored by the courts to ensure that the children are regularly visited and additional directions sought, if necessary.

All the orders can be appealed to the Circuit Court, though this is rare. The Act also provides for the discharge of all of these orders. While few applications are made to discharge them, some expire after coming to the end of their specified time, allowing the children to return to their families or to be free from HSE supervision. There is no record of the number of orders which expire, so we do not know how many children are reunited with their families after a period in care.

These statutory powers are considerable, and during the debate on the Children's Amendment concerns were expressed that they are oppressive of parents, especially vulnerable parents, who find it difficult to oppose the HSE when it moves to take their children into care. Parents are usually informed that they have the right to legal representation and the vast majority of the parents who are legally represented receive representation from solicitors from the Legal Aid Board, who sometimes also instruct counsel in complex cases.

Questions and concerns

There is no doubt that in some families children's rights to bodily integrity, to safety, even to life itself, are violated. Newspaper headlines in recent years are littered with examples. One need only recall the Roscommon abuse case, where the children were physically and sexually abused and neglected by both their parents, and the Monageer case, where two children and their mother were killed by their father who then killed himself, to name just two, to be reminded of how serious such risks to children are. Sexual and physical abuse, starvation and threats to the lives of children, are clear-cut examples of where they require immediate protection from the State.

However, in the majority of child care cases the primary reason children are taken into care is neglect, which can be, and often is, compounded by problems of drug and

alcohol abuse and mental illness. Neglect is defined in the HSE Practice Handbook as "an omission, where the child suffers significant harm or impairment of development by being deprived of food, clothing, warmth, hygiene, intellectual stimulation, supervision and safety, attachment to and affection from adults and/or medical care." Such a definition is not immediately accessible to a layperson and can be open to varied interpretations by professionals.

For example, is failure to use a stair gate a lack of supervision and safety? Is it neglect if a child is not brought to the doctor with a viral infection? Is allowing children to watch several hours of television every day a failure to provide intellectual stimulation? Is a diet of toast and tea for breakfast and chips for an evening meal deprivation of nourishing food? Parenting is not a science and there is no such person as an ideal parent. Different people may have different views on what is an adequate parent. Is there a danger that best practice in child-rearing may require levels of education and material resources lacking in some disadvantaged families, through no fault of theirs? What about families from immigrant communities, whose ideas about child-rearing may differ from ours?

On the other hand, are children being left in risky situation because of a lack of resources to support the family or take the children into care? Do the thresholds for intervention vary around the country?

The Child Care Law Reporting Project is seeking to demonstrate how some of these questions are dealt with daily in the courts. In Chapter 1 we outline the work we have done so far in setting up the project. In Chapter 2 we describe these issues as they are thrashed out in real cases. In Chapter 3 we describe the results of the analysis of the data we collected and in Chapter 4 we attempt to draw together some observations from the information we have collected so far and suggest a few immediate steps that might improve the experience of all the parties in child care proceedings.

Chapter 1: Setting up the Project

The Child Care Law Reporting Project was formally launched by the Minister for Children, Frances Fitzgerald, on November 5th 2012.

An Oversight Board made up of former Supreme Court judge Catherine McGuinness, former CEO of the Courts Service, P J Fitzpatrick, child law expert Dr Geoffrey Shannon, FLAC director general Noeline Blackwell and chief executive of the Children's Rights Alliance, Tanya Ward, had already been put in place. They were joined shortly afterwards by the head of the social work and social policy department in Trinity College, Dr Helen Buckley. They approved a Protocol for reporting child care law proceedings in a manner that would not lead to the identification of the children or their families (see website www.childlawproject.ie) and a data collection form.

The Courts Service, the judiciary and the HSE were informed that reporters from the project would be attending court proceedings. Ministerial approval for the reporters was obtained and the Regulations permitting attendance at court were signed on November 28th (S.I. No 467 of 2012). Reporting initially began in the Dublin Metropolitan District Court in Dolphin House, but as it became established there and reporters became familiar with proceedings it was extended to provincial cities and towns, beginning in February 2013. To date we have attended hearings in Cork, Waterford, Letterkenny, Westport, Limerick, Galway, Tralee, Listowel, Navan, Drogheda, Clonmel and Wexford. In a few of these cities and towns very lengthy and complex cases were heard, which consumed a lot of our time and resources.

In addition we attended a few High Court cases where "special care" cases are dealt with – they are the cases where the children are detained in special care units, sometimes in other jurisdictions. We also attended High Court cases and a Supreme Court case where there were challenges to District Court child care proceedings. The main issue so far arising in these challenges concerns English families who have travelled to Ireland to evade child care proceedings in the UK, and the question of which courts have jurisdiction to hear these proceedings is being decided.

A website was designed and set up on which we would publish reported cases and other relevant material. Before doing so we established that the project was Data Protection Act compliant. The website was launched on April 4th by the President of the District Court, Judge Rosemary Horgan. It published reports of almost 30 cases, statistics on child care proceedings compiled from Courts Service statistics, the Protocol, a set of FAQs explaining the project and information on its background. In its first week the website received over 8,000 hits. The reports, the speech of Judge

Horgan, Courts Service statistics on child care proceedings and other information are published on the website and available to the public.

The next volume of 35 reports was published on 9th June. A third volume will be published in October 2013 and a fourth before the end of the year, bringing to about 100 the total number of case reports published in our first year of operation.

As well as publishing case reports we collected data on cases attended, including those that are the subject of the published reports. By the end of July we had collected data on 333 cases, and the analysis of this data is published in chapter 3 below.

Methodology

The purpose of the project is two-fold: to report on the proceedings as they take place (this does not mean the reports are contemporaneous, they may be published weeks or months after they occur), with as much of the exchanges between the parties and the court as is practicable; and to collect data to provide statistics and identify trends relating to the children and families who come before the child care courts.

This requires the attendance at child care proceedings of reporters with the necessary knowledge of the law and skill in reporting to be able to report the proceedings clearly and accurately, as well as collect the relevant data. In addition to Dr Coulter, three other part-time reporters, two barristers and one children's rights researcher, were recruited to assist in this task.

The project examined the child care statistics from the Courts Service in order to select which courts would be attended and with what frequency, as we wished to report from a representative selection of courts and cases. When the project began the latest figures available were those for 2011, which formed the basis for the selection. While the figures were very useful, they reflected the number of court events that took place relating to child care, not to the number of children or families involved, or individual cases. Therefore they needed to be read with some caution, as they contained many repeat applications in the same cases. Despite these caveats, we decided they formed the only available statistics on which to plan court attendance in a representative way.

The Courts Service figures showed that over 40 per cent of all child-care matters were heard in Dublin, with a further 10 per cent heard in Cork. The provincial cities of Limerick and Waterford accounted for 11 per cent, with Galway, Letterkenny, Clonmel, Tralee, Drogheda and Wexford together accounting for another 20 per cent of applications heard. These cities and towns were therefore our priorities, and we set about ensuring we attended at least some of the HSE cases in all of them.

We encountered some practical difficulties in obtaining a sample of cases that was representative of the distribution of cases across the various District Courts districts in the State, of which there are 36. There are three courts hearing HSE applications in Dublin Metropolitan District Court, two of them five days a week and the other on two days a week. This means that attendance in Dublin District Court for three or four days a week ensures coverage of a substantial proportion of the cases that are heard there.

Outside of Dublin however, family law, including HSE cases, are often heard on the same day of the week or month in different District Courts, which meant that hearings clashed. Some courts had special HSE weeks, which we attended when possible, but these tended to be dominated by longer and more contentious cases, so they did not generate the volume of reported cases that attendance at the Dublin courts did. In other District Courts, however, child care cases were heard on general family law days, and sometimes made up only a small portion of all family law cases that day. In addition, we were not able to start reporting from outside Dublin until February. In two of the provincial District Courts two separate cases took up seven and 15 days respectively, taking up a lot of our time and resources, but only representing two cases in our statistics. This contrasts with days spent in Dublin and certain other courts, where eight or ten cases might be dealt with in a single day.

All of these factors mean that cases heard in Dublin are over-represented both in the reports published on the website and the statistics published in this report. We will seek to rectify this as the project continues, but it does mean that the number of cases either reported or noted from outside Dublin is too small, as yet, to provide meaningful comparisons between different courts. While we have noticed some differences in the treatment of child care matters in different courts, to which we refer in chapters 2 and 3 below, these are tentative observations rather than the identification of definite trends.

In order to collect data on the cases the project drew up a data collection sheet, to be filled in by the reporters from the cases they attended. This was done where sufficient information was given in evidence to provide the answers to the questions posed on the collection sheet. Some cases were adjourned without such information being given, and in some instances some but not all the questions could be answered, perhaps because the respondents were not in court and little information about them was available, or the case was in for mention and all the evidence had been given at an earlier stage. This is indicated in the table under “not recorded”. The analysis of the data collected is published in Chapter 3.

When the project began there were a number of instances where individuals whose children were the subject of child care proceedings or who otherwise had experience of the child care system approached us and offered us interviews or documents about

their experiences with a view to our publishing them. We explained that we could not do so, as, according to our understanding of the legislation, this is not covered by the Act under which we were set up, the Child Care (Amendment) Act 2007.

This states that nothing in previous legislation can act to prevent the preparation of a report of child care proceedings, provided the parties or children are not identified, and to this end a person specified in Regulations to be made by the Minister may "attend the proceedings". Our understanding of this legislation is that our reports are restricted to those based on attending the proceedings, where we may have access to all the evidence given in court and which forms the basis of the judge's decision.

The project is therefore restricted to covering child care proceedings as they unfold in court while we are present and reporting on the information given in court, subject to any directions the judge might give about the reports. We did not conduct interviews with HSE witnesses (usually social workers) or with the respondents (usually parents) or children. There is no doubt such interviews about the workings of the child care system would be extremely valuable, but this is work for another research project.

Anonymity and the public interest

The establishment of the project and its first nine months have been a learning experience for all working on it. The main lesson has been the extreme sensitivity surrounding child care cases: not only the parents of the children who are the subject of these proceedings, but often the children themselves, are acutely conscious of the difficulties that could arise for them in their communities, schools and wider society if their anonymity was breached. Children, even more than their parents, are comfortable users of the internet, so publications on the internet are very accessible to them.

However, we are also conscious that the purpose of the project, and of the legislation under which it was set up, is to provide information to the public and to all those involved in the child care system about how it is working through the courts. It is clearly in the public interest that this area of the administration of justice takes place in public to the greatest extent possible. We have sought, therefore, to balance the public interest in the dissemination of knowledge about the child care courts with the interests and welfare of children and their families in having their privacy protected.

As stated above, we are obliged to protect anonymity under the Child Care (Amendment) Act 2007, under which we were set up. We all abide by the Protocol we have drawn up to protect the children's anonymity, which is published on the website, and are also bound by the provision in the Act that allows the court to issue directions concerning publication. In addition, we exercise our discretion concerning any particular circumstances that might arise in a case that could make a particular child or his or her parents vulnerable to identification.

This does not mean, and cannot mean, that those intimately concerned with children or their families, including relatives and professionals, may not recognise the cases on the website. That could cause them distress. While we regret that this might arise it may sometimes be inevitable, and it is important to stress that this is not breaching the anonymity of the children or their families as it is not making information available to anyone who does not already have it. It is not exposing the children or their families to the publication of information about their circumstances to the public at large.

Occasionally we received representations from people on behalf of family-members or children who were concerned about their possible identification from the details published about their case. While we responded by emphasising that the project is grounded in law intended to bring transparency to child care proceedings, which may mean that people close to those involved could identify themselves, we also modified the published reports to take account of these concerns where there was a real possibility they could lead to identification by third parties. We also further modified the Protocol to try to ensure that details that could lead to the identification of a child would not be published, though this can never be guaranteed. We are particularly grateful of Dr Helen Buckley for her guidance in this regard.

We hope that our experience in this project can be of use to others who may report on such proceedings, especially in the light of recent legislative developments.

Chapter 2: Cases reported on the website

This chapter describes one of the two functions carried out by reporters from the Child Care Law Reporting Project: reporting hearings of cases as they took place in courts around the country, the majority of which were reported from Dublin. The primary purpose of the publication of these reports is to inform the public, participants in the child care system and policy-makers of what happens in child care proceedings. Therefore the focus of the reports has been, not just on outlining the nature of the application and the result, but on reporting as fully as possible the discussions between the witnesses on the part of the HSE, the parents and their witnesses, the *guardian ad litem*, and the judge.

While taking notes for these reports the reporters also filled in data sheets in order to collect some essential data on the application and the parties involved. The results are published in chapter 3 and they include the cases reported descriptively, so any observations in this chapter on the website-published cases must be read in conjunction with the results of the data analysis in chapter 3.

When the project began many of the cases we attended were of course already in the system. Therefore we often arrived at a stage in the proceedings when much of the evidence had already been heard, and an order was being renewed or the progress of the child was being reviewed, with little additional evidence being offered. In a few cases an order was being discharged as it was no longer felt necessary to maintain it in order to protect the child or children.

Where an order was being renewed and very little evidence was presented we did not report the case for publication on the website. However, in most of these cases we did record the essential data, and this makes up part of the data analysis in chapter 3. In a few cases the details of the case were such that they could lead to the identification of the child or children, or there were other exceptional circumstances where the judge directed that we not publish the case.

Where we were present when cases came into court at an early stage through an Emergency Care Order application or an application for an Interim Care Order we tried to follow it through subsequent hearings, sometimes ending as full Care Order applications for that child. This means that the same case can be the subject of two or three reports on the website. When this happens we refer in the later report to earlier accounts of the earlier hearings. As the project continues we will try to give readers a sense of what happens as cases wend their way through the child care system, by referring to earlier reports on the same cases which will be held in our Archive section.

Ninety-three cases were published in the first three volumes on the Publications page of the website, though not all were available for analysis for this chapter at the time of writing. A fourth volume will be published later in the year with a smaller number of cases, but these are long and complex cases which took up a number of days' hearings, and in our view illustrate some of the complex issues that can come before the courts in child care proceedings.

The cases in the first three volumes often share a number of themes, and illustrate the circumstances of material and emotional deprivation in which some children live, which impact on their development and therefore on their life chances. We outline some of these themes below.

Reporters from the project attended cases in Dublin, Cork, Waterford, Letterkenny, Westport, Limerick, Galway, Tralee, Listowel, Navan, Drogheda, Cavan, Clonmel and Wexford between December 2012 and July 2013, starting outside Dublin in February 2013. The cases that were written up and published were those where enough evidence was given to provide an insight into the issues involved. Thus only about 25 per cent of the cases mentioned in court in the presence of the project have resulted in reports being published. Those that were not reported had their essential data collected and are analysed in chapter 3.

Eighty-three case reports analysed

A total of 93 case-reports were published in Volumes 1, 2 and 3 of Publications on the website, though only 20 of Volume 3 were available for analysis at the time of writing. Sixty-three of the analysed cases were from Dublin and 20 outside Dublin. Five of the applications were for Emergency Care Orders, ten for Supervision Orders, eight for Interim Care orders, 16 for extensions of Interim Care Orders and 27 for full Care Orders. There were two discharges of Care Orders, and a number of varied applications, including Section 47 applications for specific directions from the court, two High Court applications concerning the transfer of cases involving English families to the UK, a review of an after-care plan and an application to lift the *in camera* rule in order to obtain documents sought by a parent suing the HSE. It is important to stress that many of the cases we have reported are still on-going and final decisions have not been reached.

In 37 cases the respondent parents consented to the order being sought, acknowledging they were not in a position to care for the children at that point in their lives. In 21 they opposed it. In the remainder either they were not present in court or the issue of consent did not arise for that particular part of the proceedings. Thus where the issue of consent did arise the parents consented to the order being sought in almost two-thirds of the cases reported.

The reasons for children being taken into care, or made the subject of Supervision Orders, were often multiple, though we attempted to record a primary cause. For example, the evidence given by the social worker on behalf of the HSE might include alcohol and drug abuse on the part of one or, if relevant, both parents, while the circumstances of the children showed neglect. Mental illness or intellectual disability might also be combined with alcohol or drug abuse or domestic violence. Homelessness linked to these issues might also feature. Therefore the primary reason noted for the application was rarely the only reason.

Principal reasons for application

We attempted to note what appeared to be the principal reason for the application according to the evidence given to the court. Inevitably, the categorisation is somewhat arbitrary, as often there is no single matter giving rise to HSE concerns, rather a continuum of inter-linked issues. Neglect may sometimes arise from a disability or an addiction on the part of the parent, though in other cases there is no such obvious cause for the neglect. The "principal reason" noted by our reporters, therefore, indicates what appeared from the evidence to give most cause for concern to the social workers involved.

Of the principal reasons noted for the application in the published reports, the largest single number, 15 (approximately 20 per cent) were because of the mental illness or mental disability of the parent, usually the mother. This was greater than the number noted in Chapter 3, which includes data from some shorter hearings where less evidence was given and therefore less noted. While the majority of these cases involved mental illness, the issue of cognitive impairment or intellectual disability also arose in a number of cases as a significant contributor to child neglect, something which must present a challenge both for the child protection services and the mental health services. It was also striking that mental illness or severe emotional or psychological distress were major issues for six of the children who were the subject of the applications, including a few who were in special units.

The next primary reason for the HSE application, as noted by our reporters, was neglect. For the lay-person, neglect may appear to be a nebulous concept and the definition can be broad. However, in the most severe cases there is no doubt of the negative impact of emotional and physical neglect on children, with young children found in filthy circumstances, unresponsive and clearly delayed in their development, as revealed in certain of the published reports. For example, in one a young child had been diagnosed with an intellectual disability when taken into care. This had disappeared after he had spent a year in foster care.

Drug and alcohol abuse each featured in eight cases. Often they involved abuse of both drugs and alcohol. It is not necessarily the case that people who abuse drugs or

alcohol cannot parent their children. However, in most of these cases either the parent involved was a lone parent, or both parents abused drugs or alcohol or both, to the extent that they were unable to care for their children adequately and the children showed signs of serious neglect. A feature of such cases was the lack of support for the parents from their extended family or the wider community.

Domestic violence was the major issue in six of the cases. This does not mean that it did not feature in others, but in the cases where we noted it as a major issue the impact of domestic violence on the children had brought them to the attention of the HSE. Sometimes this arose through children in school reporting to teachers their concerns for their mother's safety, or showing other signs of being disturbed.

Abuse was the main issue in five of the cases. Mainly this was physical abuse, but sexual abuse featured in two of the cases and was suspected in others.

In five of the cases the main issue before the court on that day was the action or in-action of the HSE, where a party, either a parent or the *guardian ad litem* for the child, brought short-comings on the part of the HSE to the attention of the court. Where this happened the judge in the case was often trenchant in his or her criticism of, for example, a lack of continuity of care for the child, or lack of appropriate support for foster carers or inadequate provision of services.

The majority of the cases reported involved the children of single parents, almost invariably a single mother. Sometimes the father of the children was in prison, more often the couple were separated, in a minority of cases the father or fathers were unknown or un-contactable. In some of these cases other family members, notably grandmothers, stepped in to attempt to parent the child or children. But this option is not always available to children whose parents cannot care for them and they are placed with non-relative foster parents. Sometimes they are so damaged they need special therapeutic care in special residential units.

The cases include three where African children were abandoned here by their parents, or trafficked here by people purporting to be their parents. These were older children and were grateful to end up in foster care.

Guardians ad litem

A feature of some of the cases, especially in Dublin, was the prominent role played by the *guardian ad litem* (GAL), who often argued for services the child needed and which were not being provided by the HSE. In other instances he or she prepared a report supplementing that of the HSE on the best interests and welfare of the child. This often, though not always, supported the position taken by the witnesses for the HSE.

However, outside of Dublin and other major cities the presence of GALs in cases was much more patchy. GALs had been appointed by the court in 42 of the 83 cases reported here, almost exactly 50 per cent. This contrasts with the data analysis in Chapter 3, which showed that GALs had been appointed in 70 per cent of the cases attended. This is probably explained by the fact that a far higher proportion of the cases analysed in Chapter 3 involved renewals of Interim Care Orders, where GALs had already been appointed.

In some of the reported cases – where a Supervision Order or an Emergency Care Order was being sought, for example – the appointment of a GAL was not appropriate at that stage. However, the criteria for the appointment of a GAL by the court were not always clear. They were sometimes appointed for very young children, and sometimes young children came into care without GALs. In other situations teenagers had GALs who represented their views in court, but in some cases involving older children no GAL was present and the social worker purported to represent their views. In a few instances the court ordered that an older child have his or her own legal representative.

It is too early to identify clear trends, but it did appear that GALs were more likely to be appointed by the courts in Dublin and other major cities, while they were appointed only rarely in rural towns, especially along the western seaboard. It is not clear why this is so.

Societal issues

Overall, the impression created by these reports is of the existence of a cohort of children who need protection and nurture if they are to grow and develop, and who are not getting this from their parents for various reasons. The parents often had not received adequate parenting themselves and they did not know how to respond to the needs of small children. In some cases the mothers abused drugs or alcohol while pregnant, thus creating health problems in their children, in more one or both parents continued to abuse drugs or alcohol or suffered from mental illness. The problems which prevented these parents from being competent parents, which often included illiteracy or cognitive problems, also prevented them from being useful employees, so the majority of the parents who appear in the child care courts are unemployed, thus compounding their existing emotional and personal problems with poverty and social isolation, all impacting negatively on the children.

Child care proceedings cannot answer all these problems. But by shining a light on them hopefully they can stimulate a debate on how to break the cycles of poverty, social exclusion, mental health problems and addictions that are affecting some of our children.

Failure to tackle these problems will not come without a social cost. One of the themes that emerges from these reports is the impact of neglect, domestic violence, abuse or disrupted care in early life on the children themselves. They are much more likely to suffer from learning disabilities and conditions like ADHD which make it difficult for them to settle into school. Some of them also exhibit behavioural problems, which make it more likely they will be excluded from school and condemned to a lifetime of unemployment, marginalisation and poverty – and likely to require some level of State support for most of their lives. In the most severe of these cases the behavioural problems are such that the children are clearly on a trajectory that will lead them into criminality and indeed some of them have already embarked on crime well before they reach their teens. In other cases the behavioural problems will develop into psychiatric illness. In both these circumstances the costs to the State will be high.

So, despite the very difficult and challenging issues posed by the fact that a small minority of children are abused and neglected in their families, and that the State has a legislative and constitutional duty to intervene, that targeted and adequate intervention requires the investment of resources that are scarce at the moment, failing to intervene will not only condemn some children to replicate the dysfunctional lives of their parents, it will impose a heavy cost on society which will have to deal with the long-term fall-out for these children and future generations.

Chapter 3: Data Analysis

In this chapter we analyse the results of the data we collected in the 333 cases where we were present in court during the eight months between December 2012 and July 2013. This is two-thirds of the legal year, which runs from October to July inclusive. They include cases reported on the website and analysed in Chapter 2.

In attempting to establish what proportion of all child care cases this represents we considered the Courts Service statistics for 2011, the last year for which figures were available when the project began, and figures from the HSE for the number of children in care following court orders. However, they are not directly comparable, as the Courts Service statistics for 2011 (showing 7,928 applications for various orders) record many repeat applications or renewals of existing orders, while the HSE figures for the same year report 839 children being taken into care, some of whom would have been members of same family and therefore the subjects of the same applications. HSE figures also show that there were a total of 3,358 children in care on foot of court orders (along with 2,797 voluntarily placed in care) at the end of 2011, including those who had entered the care system prior to 2011. These children were still under the supervision of the courts and could be the subject of court proceedings reported by the project.

Thus court applications and children in care are not directly comparable, and many of the applications we attended concerned more than one child, including a number already in care whose cases came back to the court for review or further applications. With these caveats it is reasonable to suggest that the 333 cases from which we collected data in the last eight month of the legal year represent more than 10 per cent of all children in care on foot of court orders.

Applications

The largest single number of cases (42 per cent) involved applications to extend Interim Care Orders (Figure 1.1.1). During the early part of the year this figure was inflated by a legal requirement that such orders be renewed every eight days, but a change in the legislation early in 2013 changed this to every 29 days, or monthly, and this reduced the need for repeat applications. Frequently such applications did not involve a significant amount of evidence and the cases did not take very much time. This means that such applications were under-represented in our reports on the website (discussed in Chapter 2) compared with the data analysis, though they involve a significant expenditure of resources by the HSE and the courts in terms of court time and court attendance.

Applications for full Care Orders, which provide for taking children into care until they are 18, represented the next category (12.6 per cent). However, some of the Care

Order applications are either sought for shorter periods (this is the case in certain areas where the HSE seeks short-term Care Orders rather than Interim Care Orders) or where the court refuses a long-term Care Order and makes one for one or two years instead, requiring the parties to come back to court to report on the progress made in resolving the family's problems.

Supervision Orders were sought in 8.4 per cent of the cases we attended and initial applications for Interim Care Orders accounted for 6.3 per cent. Both of these applications require the presentation of considerable amounts of evidence in order to demonstrate to the court that the threshold for making the order has been reached, and a higher proportion of these cases ended up as reports on the website.

Our statistics show that just under four per cent of the cases attended involved Emergency Care Orders, where children were found at immediate and serious risk, often by members of the Garda Siochana. These expire after eight days and either become Interim Care Order applications or the issue is resolved and they lapse.

Principal Reasons

The noting of "reasons" for the application is not exact, and there was rarely a single isolated reason, and the noting of a principal reason was based on the main emphasis in the social-worker's report. In addition, there could be an underlying cause, for example, drug or alcohol abuse or mental illness, for the abuse or neglect suffered by the child. So the figures for "principal reasons" should be taken as those receiving the main emphasis in what could be a continuum of social and psychological problems. In a few instances the principal reason is noted as "not recorded". Usually this is because the case had returned to court for review, or following a Section 47 application requiring measures to be taken for the child, and no evidence was given for the reason the child was in care in the first place.

The largest single category of immediate reason for the application is recorded as "neglect", which represented over one in five cases (Figure 2.1.2). However, almost the same number were recorded as "multiple", which meant that the HSE witnesses reported a number of issues, which could include neglect, abuse, domestic violence, alcohol and drug abuse and mental illness. These issues were sometimes individually recorded as the primary reason for seeking an order, but frequently other issues were also present. The third largest category was abuse, which could include sexual abuse or non-accidental injury to the child, as well as physical or, more rarely, emotional abuse. The fourth most common reason was parental disability, which almost always was a mental or intellectual disability. One of the most striking findings from our data analysis was the prevalence of mental illness as a reason for children coming into care.

Parents

In the majority of cases (57 per cent) two parents were cited as the respondents, though in 33.9 per cent the only respondent was the mother (Figure 1.3.1). In some of the cases there were multiple fathers, and in certain of these one might be in court while another (or others) were not. While two parents featured in the majority of cases, only 10.2 per cent were married, with another 11.4 per cent co-habiting. In 12.9 per cent of the case they were noted as separated, which included people who had previously cohabited as well as married couples. The largest single group of parents (over 41.1 per cent) were single. A small but significant group involved parents who were absent through imprisonment, hospitalisation, disappearance or death.

The majority of the parents were legally represented, usually by the solicitors from the Legal Aid Board (57.1 per cent) (Figure 1.3.2). In some of these cases a barrister was also briefed. In a small minority of cases (4.2 per cent) the respondents instructed a private solicitor and, even more rarely, also a barrister. Almost one in four respondents was not legally represented while we were present at their cases, but some may have acquired legal representation subsequently.

In more than a third of all cases the respondent was not present in court, or only one was present where two (and, occasionally, three where there was more than one father) respondents had been given notice of the proceedings Figure 1.3.5). However, some of these were represented by solicitors from the Legal Aid Board, even while they were not present, as evidenced by the fact that only 24.3 per cent were not represented at all, therefore about 10 per cent were represented but not present themselves through hospitalisation, disability or other difficulty. We observed that a parent might not be present for the renewal of an Interim Care Order, especially if it was on consent, but would attend court for a full Care Order hearing.

Unsurprisingly, the majority of the respondents (70 per cent) were Irish, including Irish Traveller (3.6 per cent), a figure that may be under-represented if issues specific to membership of the Traveller community did not feature in the evidence, as we had no way, other than by hearing the evidence, of noting ethnicity (Figure 1.3.4).

Ethnic background

What was very surprising was our finding of a relatively high proportion of African families involved in child care proceedings – 11.4 per cent of all respondents, all in Dublin (see regional breakdown, Figure 2.3.3). This is totally disproportionate to their presence in the population as a whole. According to the last (2011) Census, there were 17,642 Nigerians and 4,872 South Africans living in Ireland. Eight other African countries had less than 1,000 and more than 200 of their nationals living here.

Assuming an average of 500 per country, this would account for approximately another 4,000 people, giving a total figure for Africans in Ireland in the region of 22,524. This is approximately half of one per cent of the population. Thus, according to this data, African families are 20 times more likely to find themselves in the child care courts than other members of Irish society.

No easy explanations for this figure emerge from the statistics, though there are a few indicators. When the reasons for an order being sought was cross-referenced with ethnic background abuse, parental disability (which we have found generally to be mental illness or intellectual disability) and parental absence emerged as the main reasons for African children coming into care (Figure 3.1). In the cases we reported on the website the abuse was usually physical abuse, linked to excessive parental discipline of the children. This raises issues of cultural difference that need to be addressed more broadly, rather than through the child care courts.

In some of the cases we reported on the website African mothers were referred directly from direct provision hostels to psychiatric hospitals. It is not possible to state where the origin of their mental illness lay, but it is not unreasonable to speculate that the experiences which led them to seek asylum, combined with the experience of lengthy direct provision which has been analysed by FLAC (Report on Direct Provision, *One Size Doesn't Fit All*, March 2010), were major contributory factors. The number of African children whose parents were absent relates to children who were either trafficked into Ireland or were abandoned by those claiming to be their parents after arriving here.

Almost one in ten (8.4 per cent) of the respondents (where there were at least two notified) were of mixed origin, which could mean either Irish and another nationality, or two other categories, for example, other European and African or Asian. All the respondents noted as "European" in the data collection form came from the new EU member states, usually Poland, Latvia and Lithuania. They accounted for 3.3 per cent of all respondents. Approximately 200,000 people from Poland and other former East European states live in Ireland, representing 4.4 of the population, so they are slightly under-represented in the child care courts.

Children

The majority of applications made (188) involved one child, with 68 involving two (Figure 1.4.1). Therefore more than 76 per cent of all cases involved one or two children. The total number of children who were the subject of applications was 573, so the average number of children per application was just under two.

The largest group of children (186) were under four, with an almost equivalent number (181) over four and under the age of ten (Figure 1.4.2). Nonetheless, some

children entered the care system on the cusp of secondary school or as teenagers, while some of the cases attended involved reviews of the cases of children who had been in care for a number of years.

One of the most striking findings was the proportion of the children who had special needs. Almost one in five (112) were recorded as having special needs, and from our more detailed notes we know that these were almost invariably psychological or educational needs (Figure 1.4.3). The evidence given by psychologists, speech and language therapists and other specialists in some of the cases we attended showed how neglect and abuse had severe adverse effects on children's development, leading in some cases to diagnoses of learning disability and psychological disorders and producing severe behavioural problems.

The prevalence of children with special needs in the care system highlights the challenges facing the HSE in finding appropriate foster care. According to one very experienced *guardian ad litem* who gave evidence in one of the cases, his experience was that children in care with special needs are more likely to have their placement break down, with the consequent exacerbation of psychological and other problems. Therefore finding, training, supporting and keeping foster carers for children with special needs, as well as providing the therapeutic supports they need, is likely to pose a continuing challenge for the HSE.

Just over two-thirds (70 per cent) of children were represented by *guardians ad litem*, with 29 per cent not represented and no record in one per cent of cases (Figure 1.4.4). It was not always possible to note whether the GAL worked for the main organisation providing GALs for the courts, the children's charity Barnardos, or worked independently, but where this was recorded almost half, 45.7 per cent, worked for Barnardos (Figure 1.4.5). In the majority of cases the GAL was represented by a solicitor, and in 8.5 per cent of cases also by a barrister (Figure 1.4.6).

Foster carers make no appearance in court, as they are contracted by the HSE to provide a service and have no legal status in the proceedings. Therefore it was not always possible to discover information about the care the child was receiving. However, our data shows that in more than 80 per cent of cases the children were in foster care (Figure 1.5.1). In 17.7 per cent of these cases the foster carers were relatives. About 10 per cent of the children were in residential units, mainly in Ireland, though six were abroad (Figure 1.5.2).

Proceedings

In almost 40 per cent of cases the parent or parents consented to the order being sought (Figure 1.6.3). In 30 per cent it was granted following opposition from one or both parents. In over five per cent of cases the order was granted, but either not in the

form originally sought or with conditions. In 17.4 per cent of cases the matter was adjourned, though the case would have resumed after we collected the data. In only in a handful of cases (1.2 per cent) was the order refused.

The vast majority of cases (74.2 per cent) were over or adjourned in less than an hour (Figure 1.6.1). This reflects the fact that 42.3 per cent of all cases were applications to extend existing Interim Care Orders, a further 17.4 per cent were adjourned and 11.1 per cent were reviews of Care Orders, together accounting for over 70 per cent of all cases. This does not mean that a whole case was disposed of in under an hour – often a case would go through several renewals of Interim Care Orders before being the subject of a full Care Order application, which could take a lot longer. 17.4 per cent of cases took between one and three hours, 2.7 per cent took between three and five hours and just under one per cent took a full day. Only four per cent of cases (a total of 21 cases) took more than a day, but this figure includes two cases that took seven days and one that took more than 10. Long-running cases, particularly if they include multiple adjournments, are a very great strain for all concerned.

In the vast majority of cases (88.6 per cent) the only witnesses were the HSE social workers. Where there were other witnesses, they included psychiatrists, psychologists, counsellors, paediatricians and other doctors, teachers and members of the Garda Siochana (Figure 1.6.2).

Regional analysis

For the reasons outlined above, Dublin accounted for 80.2 per cent of the data we collected, Cork for 2.4 per cent and the rest of the country 17.4 per cent (Figure 2.7). Therefore, as stated before, the data collected from outside Dublin is not yet sufficiently comprehensive to provide a basis for definitive comparisons. However, some trends are beginning to emerge.

For example, extensions of Interim Care Orders made up almost half (45.7 per cent) of all applications in Dublin, but they did not feature in the eight cases we attended in Cork (Figure 2.1.1), though we know such applications are made in Cork. They accounted for almost a third of the cases in the rest of the country. In Cork half the applications were for Care Orders. However, as the reports from Cork show, these Care Orders were rarely until the child was 18, but for a more limited period, typically one or two years. As we generally attended long-running cases in Cork which were also reported on the website, the statistics collected from them are few and not very useful for comparison with the rest of the country.

Care Order applications were also more common elsewhere outside Dublin, where they accounted for 31 per cent of all cases, almost one in three. Care Order applications only accounted for 7.5 per cent of all the applications we attended in

Dublin. Supervision Order applications accounted for almost eight per cent of all applications in Dublin and 8.6 per cent of the applications outside Dublin (except Cork). Two of the eight Cork applications we attended were for Supervision Orders.

The respondents were marginally more likely to be married (13.8 per cent) outside Dublin than in Dublin (9.7 per cent), though a greater number were also recorded as single (48.3 per cent compared with 39.7 per cent in Dublin) (Figure 2.3.1). This is accounted for by the fact that a higher number did not have their status recorded in Dublin.

The regional analysis also reveals that the high proportion of African families in the child care courts is especially marked in Dublin (Figure 2.3.3). All 38 of the cases we attended where African children were involved were in Dublin, representing 14.2 per cent of all Dublin cases. The proportion of "European" cases was higher outside Dublin than in the capital, where they represented 8.6 per cent and 2.2 per cent of the cases respectively.

Single children were more likely to come to the attention of the HSE in Dublin than elsewhere (Figure 2.4.1). Sixty per cent of the Dublin cases concerned one child, compared with 37.5 per cent in Cork and 41.4 per cent elsewhere. Families with three children made up 24.1 per cent of the cases outside Dublin, compared with only 8.2 per cent in Dublin. There also appears to be a difference in practice between Dublin and elsewhere in the use of *guardians ad litem* (Figure 2.4.3). They are present in 75.3 per cent of all cases in Dublin, but in only half (51.5 per cent) of the cases elsewhere. GALs were appointed in 62.5 per cent of the Cork cases.

Relative foster carers are more common outside Dublin than in the capital, making up 24.1 per cent of cases compared with 16.5 per cent in Dublin (Figure 2.5.1). There was no significant variation in the length of hearings between Dublin and other courts. There was a slightly higher proportion of cases where the orders were made with the respondents' consent outside Dublin than in the capital (Figure 2.6.2), while Cork registered a higher proportion than elsewhere of orders granted with conditions.

When the reasons for seeking an order was examined in conjunction with respondents' ethnic background and status the figures showed that abuse features most among people of African origin and those who are married (Figures 3.1 and 3.2). Neglect and "multiple" reasons feature very strongly among Irish respondents. When it comes to respondents' status, neglect is followed by parental disability as a reason for care proceedings where parents are single or otherwise parenting alone.

As stated above, these are emerging trends and are likely to be modified as we collect more data outside Dublin.

Chapter 4: Interim observations

As stated above, it is too early in the life of the project to come to any conclusions about how child care proceedings are dealt with by the courts. However, from the hundreds of cases we attended, we can make certain tentative observations and draw the attention of the public to issues relating to child protection and the child care system of which they may not be aware. Many of the issues require solutions that lie outside the remit of the courts or, indeed, of any single Government department or agency, but will need a society-wide approach.

Length of cases

Our first observation was that cases can spend a long time before the courts. Typically a case might begin with an Emergency Care Order, proceed within a week to an Interim Care Order, which might be renewed on a number of occasions before a full Care Order application is made. This could include one or more adjournments. These proceedings could take many months.

Even after a Care Order is made, the case can come back before the courts for review, or either a parent or a *guardian ad litem* can make an application for specific directions concerning the care the child is receiving. Thus the cases of some children in care – a small minority - are before the courts for years. In some very contentious cases the proceedings can become very adversarial, with the behaviour of the parents subject to extremely detailed and intensive scrutiny and examination in court. In other cases the disputes concern differing opinions from the HSE and the *guardian ad litem* on the needs and welfare of the child.

It is very important that the exceptional power of the State to remove children from their families is subject to the stringent oversight of the courts. However, ways of reducing the adversarial nature of the proceedings and seeking a consensus on the best outcome for the children need to be explored. One of the solutions that has been suggested is the use of alternative dispute resolution, including mediation, in child care proceedings. This may be suitable where specific issues, for example, disputes about access, are involved, but it is unlikely to be a panacea. Mediation is not suitable in all cases, particularly where there is a serious imbalance in power, resources and experience of the legal process between the parties, and where the available alternatives are stark – taking or not taking a child into care. It is important to ensure that whatever method of resolving disputes about the welfare of child is used, the rights of parents, especially those likely to be marginalised and vulnerable, are protected.

It should also be pointed out that in over half the cases where the issue was the granting or extension of an order, and where the matter was decided by the court rather than adjourned, the parents consented to the order.

Prevalence of mental illness

A few themes have emerged among the cases looked at by the project so far. A striking feature of the cases is the prevalence of mental illness or intellectual disability among those whose children are likely to be taken into care, or be the subject of care orders. They accounted for 12 per cent of all the cases where we collected data, and 20 per cent of the cases reported on the website. Sometimes this was combined with alcohol or drug abuse.

Of course, mental illness alone is not a reason why a person cannot parent their child or children, especially if they have support from other family members. It is significant here that almost half of all respondents were single, and even more were parenting alone as a result of separation or a partner's incarceration or death. In these cases mental illness or intellectual disability led to neglect, either emotional or physical. Emotional neglect could include unpredictable, erratic and irrational behaviour, lack of emotional availability to the child or lack of understanding of the child's needs, all of which have a negative impact on a child's development. Physical neglect was often associated with depressive illness, with the mother unable to care for herself or her children, resulting in children being dirty, undernourished, inadequately clothed and often missing a lot of school.

The cases that rarely come before the child care courts are those where children die, and it is a sad fact that at least ten children have died at the hands of their parents in the past six years. In almost all the cases mental illness or mental disability was implicated, though generally the families had not previously come to the attention of the child protection services. Una Butler, who lost her entire immediate family when her husband John killed their two little girls and then himself, has bravely and movingly spoken publicly of the need to assess the risks people with mental illness might pose to their children. This case, combined with the prevalence of mental illness among the respondents in child care cases, raises issues about the treatment and supports available for those suffering from mental illness and their families. These issues should form part of the discussion about the role of the new Child and Family Support Agency, so that there can be a clear bridge between it and both adult and children's mental health services.

Neglect

The most common reason for HSE applications was neglect, accounting for more than one in five of all cases and implicated in many more. It was often combined with other

factors, for example addiction or mental illness. What constitutes neglect may be one of the areas least understood by the public, yet its adverse impact on children's development is very well documented in the academic literature on the subject, and some of the cases we have reported record evidence of speech and language deficits, development delay and behavioural problems.

Yet neglect can be difficult to quantify. Infants left alone or found hungry and in dirty nappies clearly require urgent intervention. But what kind of intervention should be made where a 13-year-old is left with a younger sibling while a desperate single mother goes out to work? If children are dirty and poorly clad, but well-fed and apparently happy, does this meet the threshold for neglect requiring care proceedings? What supports are available to such families? Hopefully these questions can form part of a discussion of a "proportionate" response to children's needs when – and if – the Children's Amendment becomes law.

Abuse

Abuse also featured frequently in the cases examined, ranging from severe sexual abuse and emotional abuse to physical chastisement. It included a small number of cases where the child suffered an injury while in the care of his or her parents or care-givers, described as non-accidental injuries. These can be extremely difficult cases. Where the child is very young the evidence that the parent or parents were responsible for the injury can only come from medical experts and social workers and may be strongly contested. A number of high-profile cases in other jurisdictions have highlighted the controversies that have accompanied some of the evidence in such cases.

These are all issues about which there are likely to be conflicting views among the public, and they should be discussed if the child protection and welfare system is to maintain public confidence. This will include a public discussion on what resources should be put into early intervention and supporting vulnerable families, which is beyond the remit of this project, as well as a discussion on what should be the thresholds for taking children into care, how consistency in thresholds is achieved and what should trigger Supervision Orders.

Supervision Orders

Given the constitutional protection for the family and the statutory assumption that children are best reared in their own families, it is surprising that Supervision Orders, enabling children's welfare to be monitored within their families, were not more widely used. They were sought in only 8.1 per cent of cases. This may be because the constitutional protection of the family only extends to the married family, and only 10 per cent of the children coming before the child care courts are from married families.

However, we did not notice any distinction being made in the courts between married and unmarried families. It may also be that the monitoring involved in Supervision Orders is very resource-intensive at a time when resources are limited. However, the requirement in the recent constitutional amendment on children that any intervention must be "proportionate" to the risk will surely mean that Supervision Orders will play a central role in child protection in future.

African families

One of the most striking findings from the statistics we collected was the high proportion of African families who came before the child care courts. They accounted for 11.4 per cent of all respondents nationally, and over 14 per cent in Dublin, where they were concentrated (though we learned of African cases that had been in provincial courts when we were not present). This compares with an African representation of approximately 0.5 per cent in the overall Irish population. When we examined ethnic background along with the main reason for an application three main reasons emerged. The first was abuse, which accounted for almost a third of all the cases. The next was mental disability (which includes both mental illness and intellectual disability), followed closely by neglect and parental absence.

To take the last first, in the cases we reported more extensively in Chapter 2 parental absence usually meant a child or children had been abandoned in Ireland by their parents or trafficked into Ireland. These were usually teenage children who often came to the attention of the HSE through schools. The evidence of their *guardians ad litem* was that they were usually grateful and relieved to be taken into foster care.

Mental illness featured significantly in the African cases, and in a number of these cases the mother (often parenting alone) was referred from a direct provision centre for asylum seekers to psychiatric services, and her children were then taken into care. We had no way of knowing whether, in the other African cases where mental illness sparked care proceedings the mother had previously been in a direct provision centre, though it is probable this was so in some cases. If it proves to be the case that a significant number of African mothers are diagnosed with mental illness following asylum applications and lengthy periods in direct provision, with a likely impact on their mental health, and if this is leading to an increased number of children ending up in the care system, it is a problem that needs to be addressed from a children's rights perspective. This raises policy issues outside the scope of the courts or the HSE.

The largest single reason cited for African children becoming the subject of care proceedings was "abuse". Most of the cases we reported in detail concerned physical abuse, related to excessive parental discipline. Some of this was severe, involving the use of implements. Typically the children who are the subject of the proceedings come

to the attention of teachers because they have bruises, are afraid to go home after school or report that they are being beaten at home.

Such physical abuse is unacceptable and is a breach of the child's right not to be subjected to ill-treatment (Art 17, European Social Charter). However, the fact that it is leading to child care proceedings being taken raises questions about integration policy relating to immigrants, especially those from very different cultures, about the training social workers receive in dealing with cultural difference and about the availability of cultural mediators. That is not to say that "cultural norms" can be used as an excuse not to intervene when children are at risk, a policy that has had tragic results in the UK. Again, these are issues that require public discussion and a response from a variety of agencies.

Guardians ad litem

Another issue that emerged from our work was the use and role of *guardians ad litem* (GALs). They were much more likely to be appointed by the court in Dublin, where they featured in 75 per cent of cases, than in provincial Ireland, where this figure was 50 per cent. This reflects the vagueness of the law relating to the appointment of *guardians ad litem.* Section 26 of the Child Care Act permits the court to appoint a *guardian ad litem* if this is in the interests of the child and in the interests of justice, which essentially leaves the matter up to the discretion of the individual judge. It does not provide any further guidance as to the role of the *guardian ad litem*, or what his or her qualifications should be.

In fact their role is ambiguous. On the one hand they represent the interests of the child, and they normally speak to a wide variety of people, including the parents, in ascertaining what these are. But they also represent the views of the child, where the child is of an age to express them. The child's views may not, in the opinion of the *guardian*, be in his or her own best interests and a GAL may tell the court what the child's views are and then recommend a different course, or say little at all about the views of the child. In fulfilling their role, the GAL is not a party to the proceedings, but is assisting the court and the role is therefore more analogous to that of an expert witness. Yet the GAL is present throughout all of the proceedings and generally (though not always) has legal representation. The basis for this is also unclear.

The Act also makes provision for the court to appoint a legal representative for the child. This happens rarely, though it does appear to be a practice in some courts which do not appoint *guardians ad litem* and where older children are the subject of an application.

The role of GALs also begs the question – whose interests do the HSE represent, if not those of the child, given that it has a statutory obligation to make the welfare of the

child the primary consideration in all child care proceedings? Of course, the HSE is a very large organisation, with responsibilities and statutory obligations in many areas, not least in the control of its budget. The interests of an individual child could well get lost in all these considerations. There is no doubt that having a *guardian ad litem* who argues for the specific welfare and interests of an individual child is a useful resource for the court in coming to its decisions.

The voice of the child

There is a growing emphasis in international law regarding children on the principle that their voices must be heard in proceedings concerning them. The obligation to hear the voice of the child, which was part of the Children's Amendment to the Constitution, will impose a specific duty on the court to hear the voice of the child. At the moment there is no consistency in the courts about whether and how the voice of the child is heard, or at what age it is appropriate to seek the views of the child. Some judges do hear the views of children in their chambers. There was at least one application to a court for the children to give direct evidence. In other courts their voices are not sought or it is assumed they are represented by a GAL. Ensuring they are heard will require mechanisms whereby children can bring their voices to the court, in accordance with their age and maturity. It will focus attention on a more precise definition of the role of *guardians ad litem* in child care and other proceedings, and clarify whether they are representing the interests or the views of the child.

Meanwhile, children's right to the services of a *guardian ad litem* in child care proceedings appear to vary depending on where they live. There should be more clarity in the courts about the circumstances in which GALs should be appointed, and what the courts require of them.

Children with special needs

One area where the role of a GAL is especially important is where a child has special needs. One of the most striking findings in our statistics was that almost one in five children who were the subject of applications had special needs, almost always psychological or educational. Sometimes they were congenital, but more often the special needs – developmental delay and consequent cognitive impairment, ADHD, behavioural problems arising out of psychological disturbance – were the result of abuse and neglect.

Finding appropriate foster care and educational and therapeutic supports for such children pose a challenge for the HSE, especially in a time of straitened resources. In such cases the GAL will often argue robustly for specific interventions for the child, and the HSE may argue that such interventions are not possible or not necessary, or may be the responsibility of the Department of Education rather than the HSE. It is

questionable whether requiring the courts to adjudicate on such matters, in proceedings that can take many hours if not days and consume the time of social workers and legal practitioners, is the best use of the resources available for vulnerable children. There should be a better way of resolving differences of opinion about the best supports for children in care with special needs and disputes about which State agency should provide them, as well as better coordination between the State agencies supplying these supports.

Access

One of the most contentious issues to emerge in many of the cases was not the making of the order itself, which was often accepted, even if reluctantly, by the parents, but that of access, or contact between the parents and children. Access was often highly restricted and/or supervised for reasons that were not always clear or convincing. In a small minority of cases where severe abuse is involved access, other than highly supervised, may not be in the interests of the child, but such cases are rare. In a few cases the social workers admitted frankly they did not have the resources to provide more extensive access, or provide it in a more sympathetic environment. It also appeared that some parents had a perception of reductions or restrictions in access being applied as punishment for them showing hostility towards or non-compliance with the HSE. Of course, in some instances parents did not avail of arranged access.

Given the importance of access in a child maintaining a relationship with his or her parents and siblings, and the importance of this for the child's sense of identity and future mental health, the facilitation of meaningful and rewarding access between children in care and their family members should be a priority for the HSE. Strained relations between parents and social workers should not be a reason, even an unconscious one, for reducing or restricting access.

Regional variations

As stated above, we do not have sufficient data from outside Dublin to make meaningful comparisons between different District Court areas. However, we did observe some differences in practice, though we cannot saw how widespread they were. For example, in one rural town the judge granted a large number of extensions of Interim Care Orders without hearing any evidence, where the respondents consented. However, in Dublin a judge refused an Interim Care Order, also where the parents consented, saying: "This court is not a rubber stamp office."

In one provincial city there are relatively few Interim Care Orders. Instead short-term Care Orders are granted, which are reviewed regularly. This permits more extensive work with the family before the case comes back to court. Here too there appears to be a collaborative culture between lawyers for the HSE lawyers and the Legal Aid Board

acting for the families, who seek to involve the parents in the child's care plan with a view to family reunification. In another provincial city short-term Care Orders are sought as an apparent alternative to Interim Care Orders, thereby avoiding the need to come back to court seeking a renewal of the order and presenting evidence until the Care Order expires.

In another rural area the judge generally does not make Care Orders for longer than two years, emphasising the need for the HSE to work with the family in helping it to overcome the problems which led to the application and bring about family reunification. The project has not yet been able to establish what happens in this area when the family fails to overcome its problems. In other areas the HSE seeks and obtains Care Orders until the child or children are 18 and argues that this gives certainly and stability to the children which are unavailable with short orders.

We cannot say, however, how prevalent these different practices are and to what extent they flow from the policy of the HSE locally or from the practices of the judges in the different courts, or indeed if some of the policy of the HSE locally is driven by the orders it knows it can and cannot obtain in the courts. We must also bear in mind that social problems can differ around the country. They are often more complex in Dublin, with multi-generational drug abuse, neglect and abuse.

Jurisdiction of District Court

Other issues of which we became aware included the implications of the jurisdiction of the District Courts for child care cases. The District Court is defined by law as a court "of local and limited jurisdiction". Apart from Emergency Care Order applications, a case can only be heard in a specific District Court if the child resides within that district. In one case involving a large family four of the children lived in one District Court area but another, because he was in hospital, lived in another, so two different judges in two different courts had to make orders concerning children in the same family where the same evidence was involved. In addition there is no symmetry between the jurisdiction of the various District Courts and HSE areas. The restricted jurisdiction of the District Courts can also mean that if children move even a few miles away they can come under another court's jurisdiction and the court file does not travel with the child.

This also means that busy courts, which also have to deal with high volumes of criminal matters, can find it difficult to accommodate all the child care cases coming before them, but they cannot go to neighbouring courts, which may be under less pressure, because of the jurisdictional issue. This issue can only be dealt with by legislation, and it is likely that the proposed new family court structure will address it.

Pressure on courts

Both in Dublin and outside it there is severe pressure on the courts hearing child care cases. Up to a dozen cases can be listed for any one day or part of a day. It is not unusual for courts to sit late into the evening and in one lengthy case that had a number of adjournments the hearings began at 9.30 am. Clearly there is not enough capacity in the system to give every case the time and attention it needs. While the District Court is defined as a court of "summary" jurisdiction, no-one can describe the taking of a child away from his or her family as a "summary" matter.

This pressure is exacerbated by the length of time that very contested cases can take, especially if they go beyond their anticipated time. The District Court is the court of first instance, so all the evidence, as well as legal argument, has to be heard, though much of it is based on written reports. It is necessary to prove that the threshold requiring an order to be made has been reached, and this is an adversarial process if the parents seek to refute the evidence.

However, it is questionable that any useful purpose is served by witnesses going through in detail reports that everyone has read. Instead the contested aspects of the reports could be isolated and be the subject of cross-examination. This would require the reports being available to the respondents well in advance so they could focus on the contested issues. In some contested cases there can be a lot of expert evidence. A way should be found to establish in advance of the hearing which elements of the expert evidence are agreed, so that the court can focus on what is not agreed. Again, it should not be necessary then to go through all of the expert reports in court.

As the project continues and we collect more data we hope to be able to examine some of these issues in more details, answer some of the questions and provide a more comprehensive picture of the child care system as it is moderated by the courts. In particular, we will be able to follow specific cases through the system and see the role of the courts in reviewing the orders they make. Above all, we hope that this interim report will stimulate discussion among all the stake-holders in the child care system and the public at large, and we welcome any feed-back.

Appendix 1: Glossary

Access: Meetings between a child and members of his or her family, usually parents and siblings, when the child or children is in care. Access may be supervised when contact with the parents is considered to be a risk to the child's welfare.

ADHD: Attention Deficit Hyperactivity Disorder is a neurodevelopmental disorder where the child has significant problems of attention, is hyperactive and acts impulsively. It can be associated with neglect and abuse in childhood and often results in problems in school.

Alternative dispute resolution: This is a term used to describe ways of resolving disputes outside of court, and includes mediation, conciliation, arbitration and the use of collaborative law.

Attachment disorder: This is a disorder arising in children who have had very disrupted care in their infancy, where they have been unable to form a secure attachment to a parent figures, affecting their emotional development and ability to form relationships. It usually leads to psychological and behavioural problems.

Brussels II: This is an EU Convention which seeks to regulate family law where two or more EU member states are involved, for example if two people in dispute live in different countries.

Care Order: This is an order made by the courts permitting the State to take a child into care where the court decides the child is in need of care and protection

Case conference: These are conferences concerning children and families involved with the HSE where the various professionals can co-ordinate their approach and make recommendations. Parents are not entitled to attend, but may be invited to, especially when their cooperation is required with a care plan

Children First guidelines: *Children First: National Guidance for the Protection and Welfare of Children* outlines how child protection should be at the centre of all organisations working with children, including educational and recreational organisations

Emergency Care Order: This is an order made taking a child into care where he or she is considered to be at immediate and serious risk. Unlike in other care applications, the application can be made *ex parte* (without notifying the parents) if the safety of the child requires it

Foster care: The great majority of children in State care are in the care of foster parents, who are contracted by the HSE to take the children into their homes and provide for their welfare

Guardian ad litem: Section 26 of the 1991 Child Care Act allows the court to appoint a *guardian ad litem* for a child in child care proceedings where it is necessary in the interests of the child and in the interests of justice. No criteria are laid down for who can act as a *guardian ad litem*, though in practice they are usually qualified social workers.

High Support Units: These are residential units for children in need of special care and protection who are unlikely to receive it in a foster care placement or a residential unit. The District court can order a child to be placed in a High Support Unit. The child is not detained there, however, and can leave, unlike when he or she is detained by order of the High Court in a Special Care Unit.

In camera rule: This is the rule which prohibited any reporting of family law or child care law proceedings. It was modified in 2004 and 2007 to permit named organisations nominate individuals or bodies who could attend and make reports, and in 2013 further modified to permit the media attend. All reports are subject to protecting the anonymity of the parties and children.

Non-accidental injury: This is the term used to describe injuries sustained by a child while in the care of his or her parents, and which cannot be explained by an accident. They are usually inflicted deliberately or through negligence concerning the danger posed by actions of the parent towards the child.

Placement (of child): This refers to the placement of a child in foster care or residential institution.

Risk assessment: Risk assessment involves assessing the probability of a particular adverse event happening to a child within a specific period or in specific circumstances, and requires evaluating the circumstances known to create such a risk.

Section 47 application: This section of the Child Care Act enables the District Court, on its own motion (own initiative) or on the application of any person, give directions or make orders affecting the welfare of the child. It is often used by *guardians ad litem* or parents to obtain specific services or change aspects of the child's care.

Seisin (of a case): A court is "seised" of a case when documents are lodged with that court. If different judges sit in a particular court, sometimes a specific judge will be "seised" of a particular case, meaning he or she, and not one of the other sitting judges, will hear it. The issue of "seisin" is also often discussed in the context of the Brussels II Regulation, when the jurisdiction of different courts is in dispute.

Special Care Units: These are units where children with severe emotional and behavioural problems may be detained for therapeutic purposes. Children can only be detained in them by order of the High Court.

Summary jurisdiction: Describes short court proceedings free from the complexities of a full trial

Supervision Order: This is an order made by the District Court under Section 19 of the Child Care Act where the court has reason to believe that a child's health, development or welfare are at risk, and authorises the HSE to visit the child in his or her home to ensure the child's welfare is being promoted.

Unaccompanied minor: These are children under the age of 18 who are found entering Ireland or in Ireland without a responsible adult.

Welfare of the child: This is not defined in the 1991 Act, though the courts have defined it to include health and well-being, physical and emotional welfare and moral and religious welfare, as well as being materially provided for. The "best interests of the child" is often used in the same context.

Appendix 2: Tables

1 Overview – July 2013

2 Regional Analysis – July 2013

3 Reasons for Court Orders

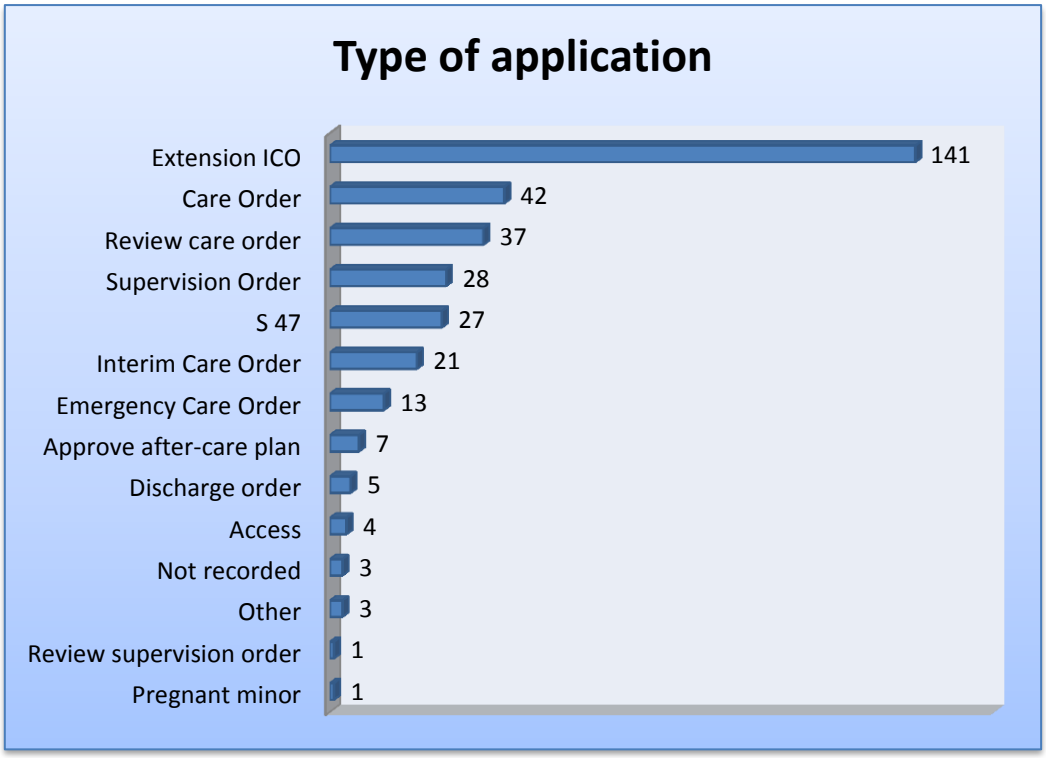
1 Overview – July 2013

1.1 Court Order Applications

1.1.1 Type of application

- Where an order is granted, it may be for a Care Order for a limited period, typically one or two years. If the problems in the family are resolved in that time, the order lapses and does not feature in the statistics as a discharged order. "Other" includes applications under Section 47 of the Act dealing with specific issues, for example, the education or provision of services to a child. In a few cases the respondent may have given no instructions to his or her solicitor

Court Order	Number	% of all applications
Extension ICO	141	42.3
Care Order	42	12.6
Review care order	37	11.1
Supervision Order	28	8.4
S 47	27	8.1
Interim Care Order	21	6.3
Emergency Care Order	13	3.9
Approve after-care plan	7	2.1
Discharge order	5	1.5
Access	4	1.2
Other	3	0.9
Not recorded	3	0.9
Pregnant minor	1	0.3
Review supervision order	1	0.3
Total	**333**	**100.0**



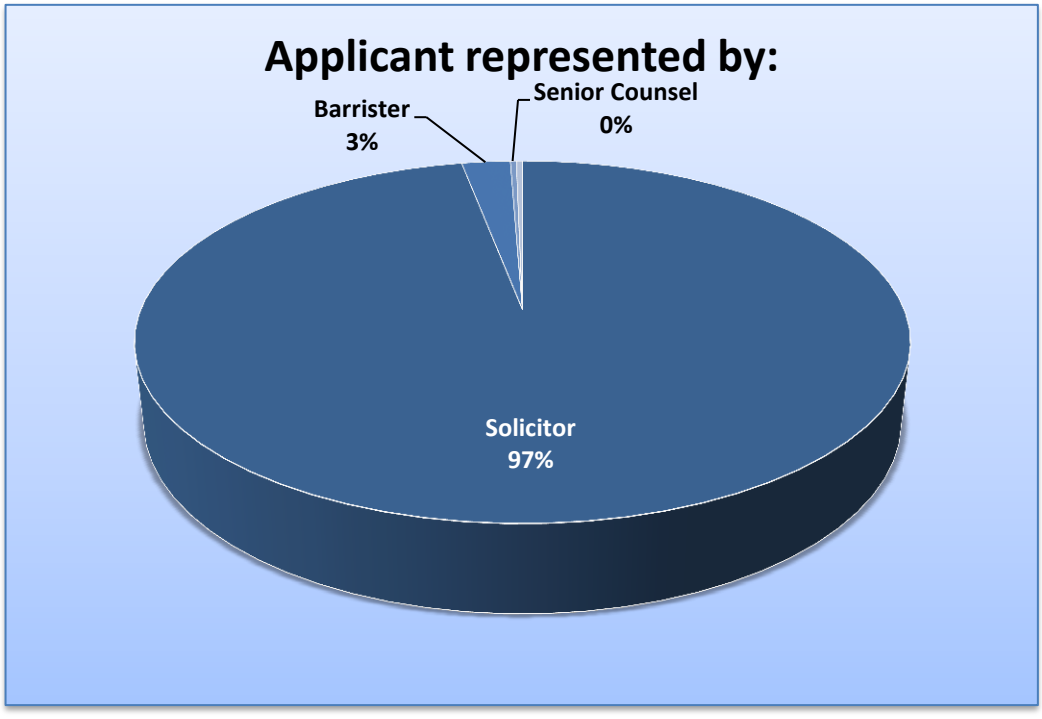
1.1.2 Reason for seeking order

Reasons	Number	% of all applications
Neglect	72	21.6
Multiple	59	17.7
Abuse	44	13.2
Parental disability (intellectual, mental, physical)	40	12.0
Parental drug abuse	38	11.4
Parental alcohol abuse	24	7.2
Parent absent/deceased	20	6.0
Not recorded	11	3.3
Other	9	2.7
Domestic Violence	6	1.8
Childs risk taking	6	1.8
Not applicable	4	1.2
Total	**333**	**100.0**

1.2 The Applicant

1.2.1. Applicant represented by

Representation	Applications	% of all applications
Solicitor	323	97.0
Barrister	8	2.4
Senior Counsel	1	.3
Not applicable	1	.3
Total	**333**	**100.0**

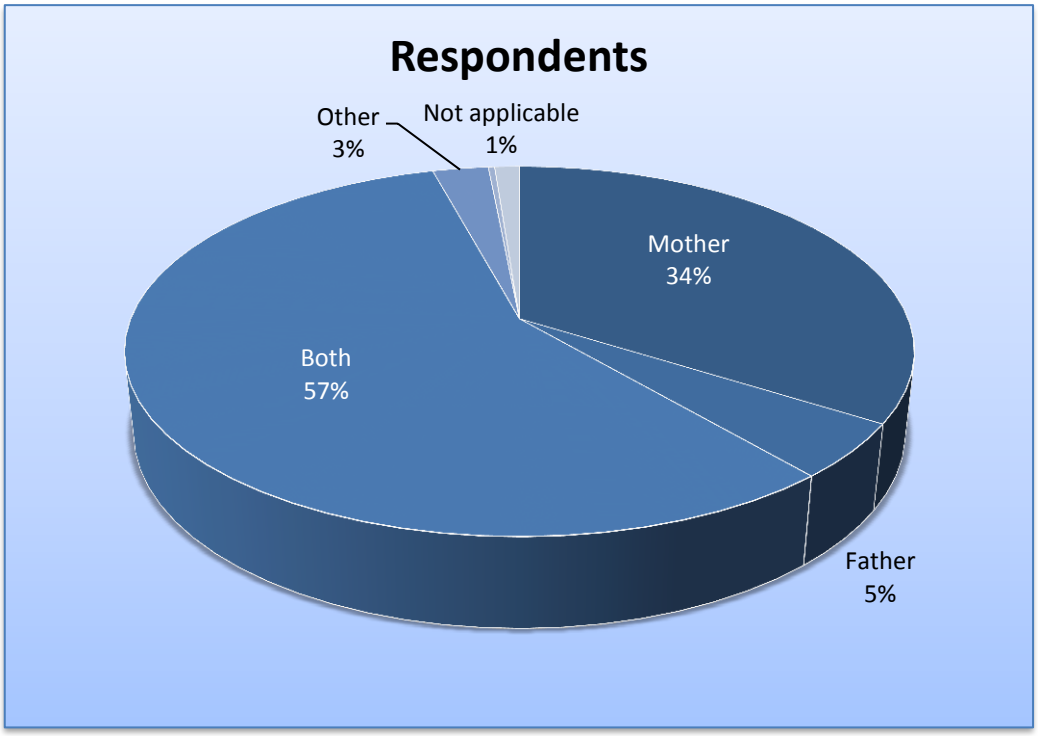


Note: Pie chart has rounded the percentage of Senior Counsel representation down to 0% because it is less than half a percentage.

1.3 The Respondent

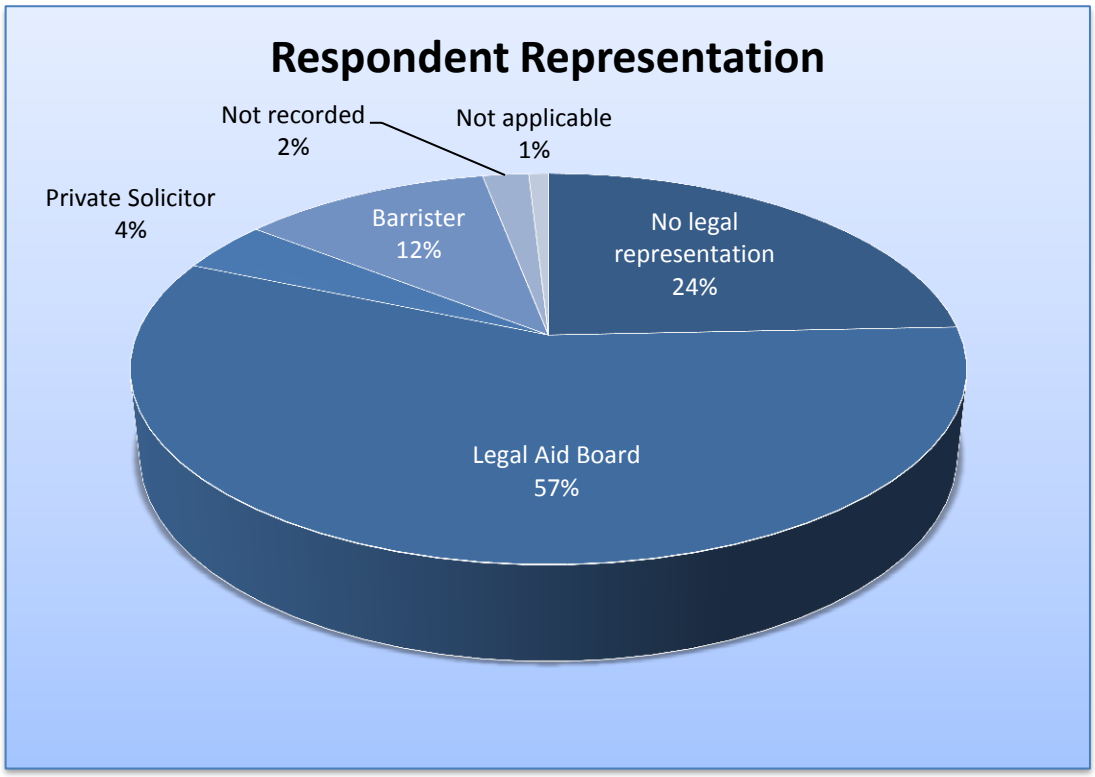
1.3.1 Respondents

Respondents	Number	% of all respondents
Both	190	57.1
Mother	113	33.9
Father	16	4.8
Other	9	2.7
Not applicable	4	1.2
Not recorded	1	.3
Total	**333**	**100.0**



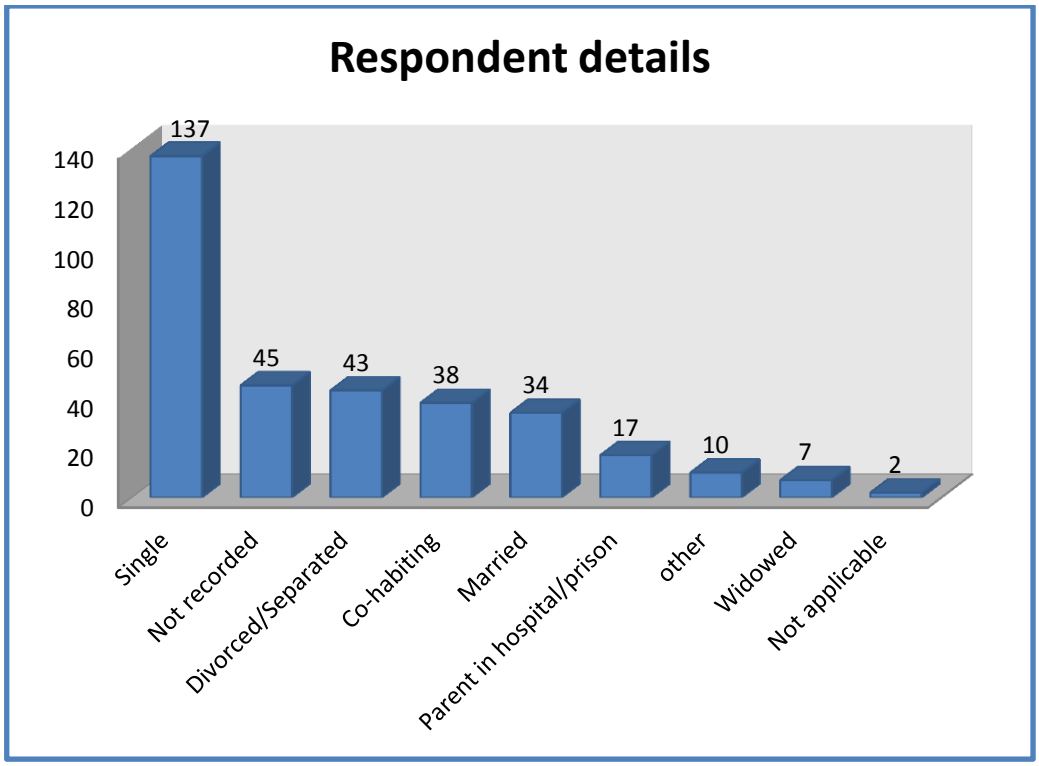
1.3.2 Respondent representation

Representation	Number	% of all respondents
Legal Aid Board	190	57.1
No legal representation	81	24.3
Barrister	38	11.4
Private Solicitor	14	4.2
Not recorded	7	2.1
Not applicable	3	.9
Total	**333**	**100.0**



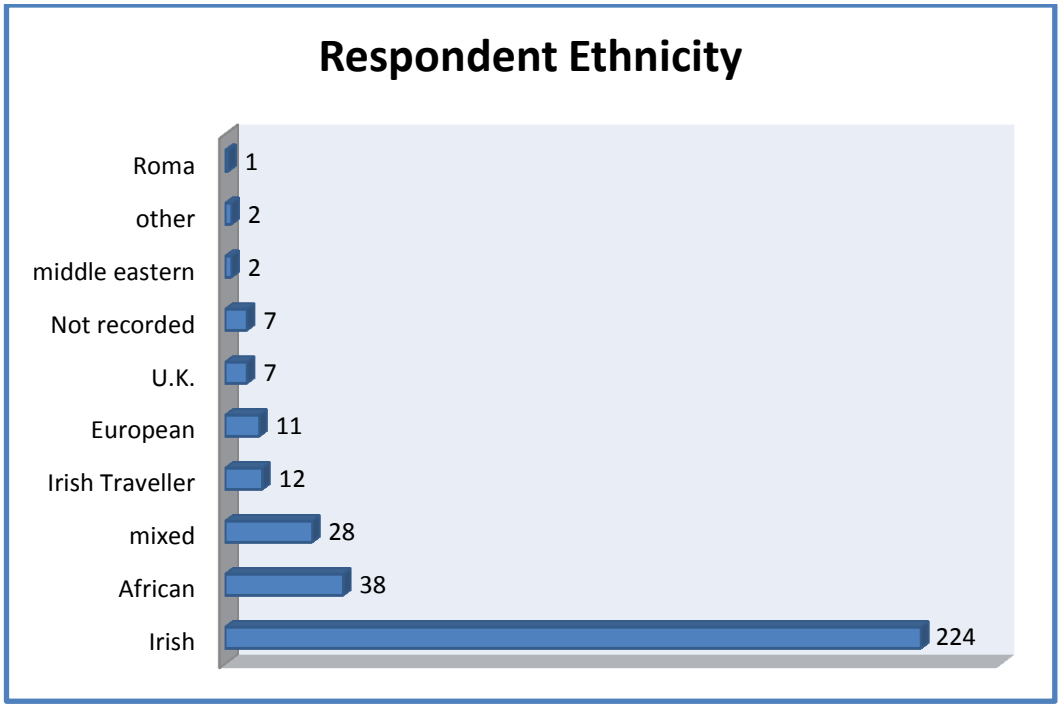
1.3.3 Respondent details

Respondents	Number	% of all respondents
Single	137	41.1
Not recorded	45	13.5
Divorced/Separated	43	12.9
Co-habiting	38	11.4
Married	34	10.2
Parent in hospital/prison	17	5.1
Other	10	3.0
Widowed	7	2.1
Not applicable	2	.6
Total	**333**	**100.0**



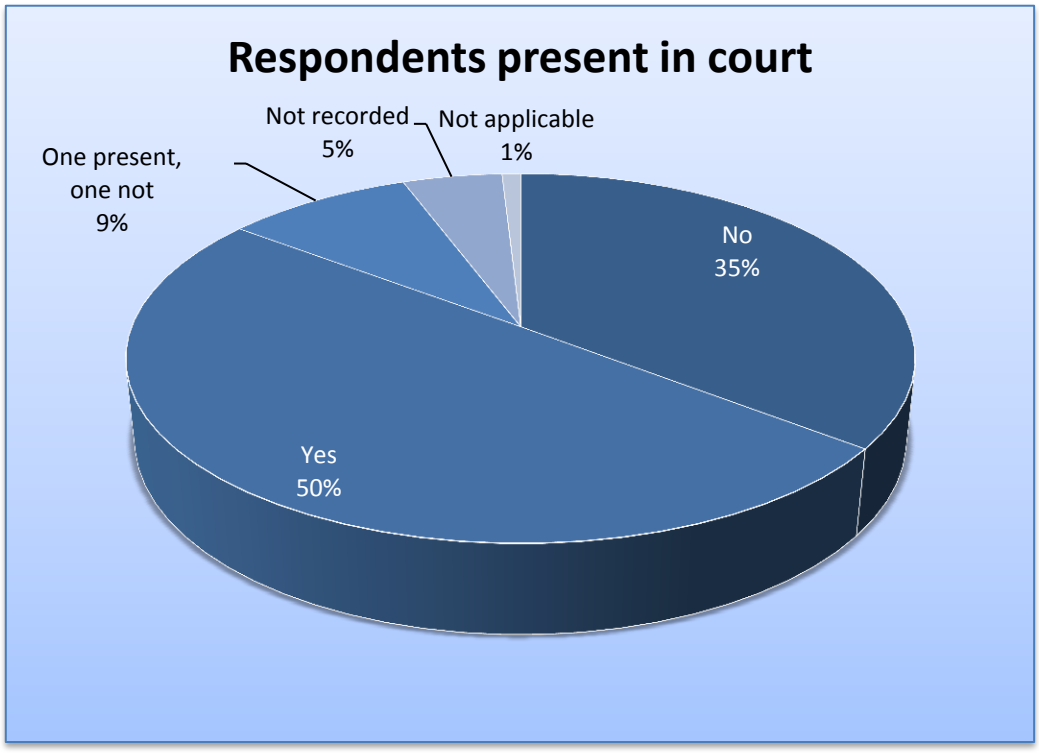
1.3.4 Respondent Ethnicity

Respondent ethnicity	Number	% of all respondents
Irish	224	67.3
African	38	11.4
Mixed	28	8.4
Irish Traveller	12	3.6
European	11	3.3
U.K.	7	2.1
Not recorded	7	2.1
Middle Eastern	2	.6
Other	2	.6
Roma	1	.3
Not applicable	1	.3
Total	**333**	**100.0**



1.3.5 Respondents present in court

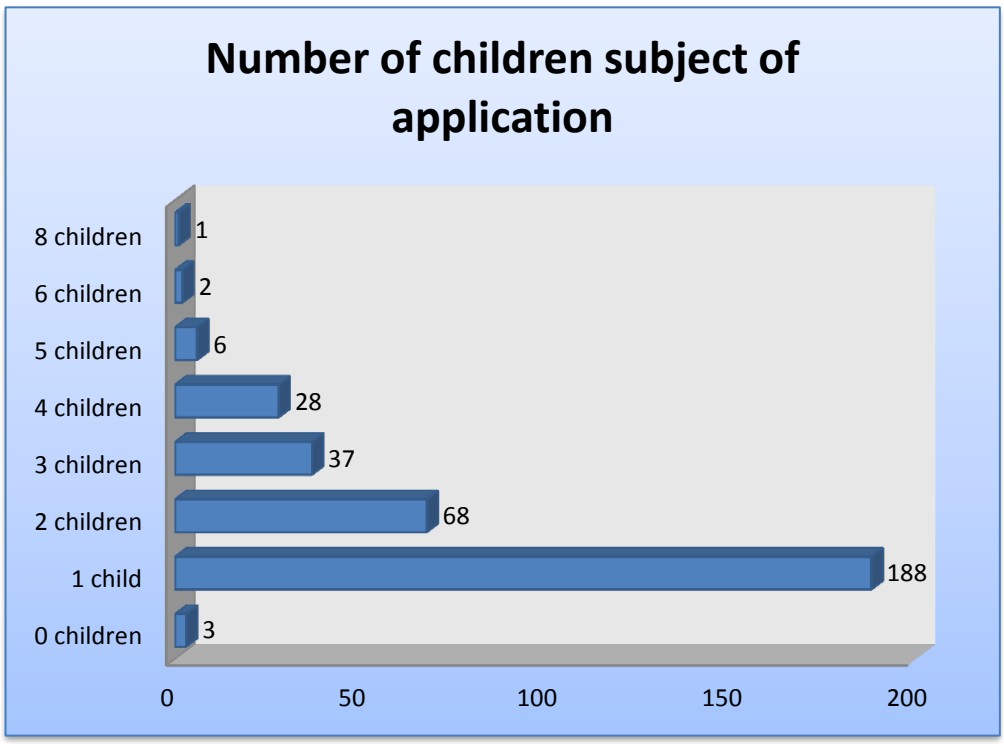
Present	Number	% of all respondent
Yes	166	49.8
No	118	35.4
One present, one not	30	9.0
Not recorded	16	4.8
Not applicable	3	.9
Total	**333**	**100.0**



1.4 The Children

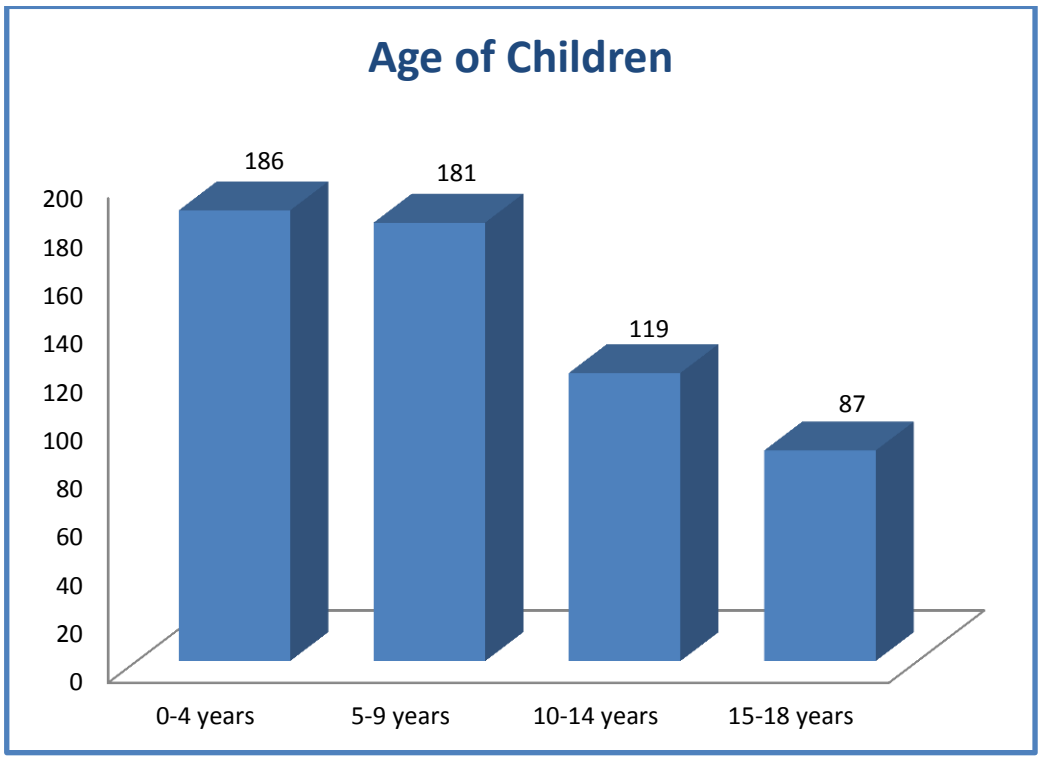
1.4.1 Number of children subject of application (children per respondent)

Number of children	Applications	% of all applications
0 children	3	.9
1 child	188	56.5
2 children	68	20.4
3 children	37	11.1
4 children	28	8.4
5 children	6	1.8
6 children	2	.6
8 children	1	.3
Total	**333**	**100.0**



1.4.2 Age of Children

Age of children	Number of children
0-4 years	186
5-9 years	181
10-14 years	119
15-18 years	87
Total children	**573**



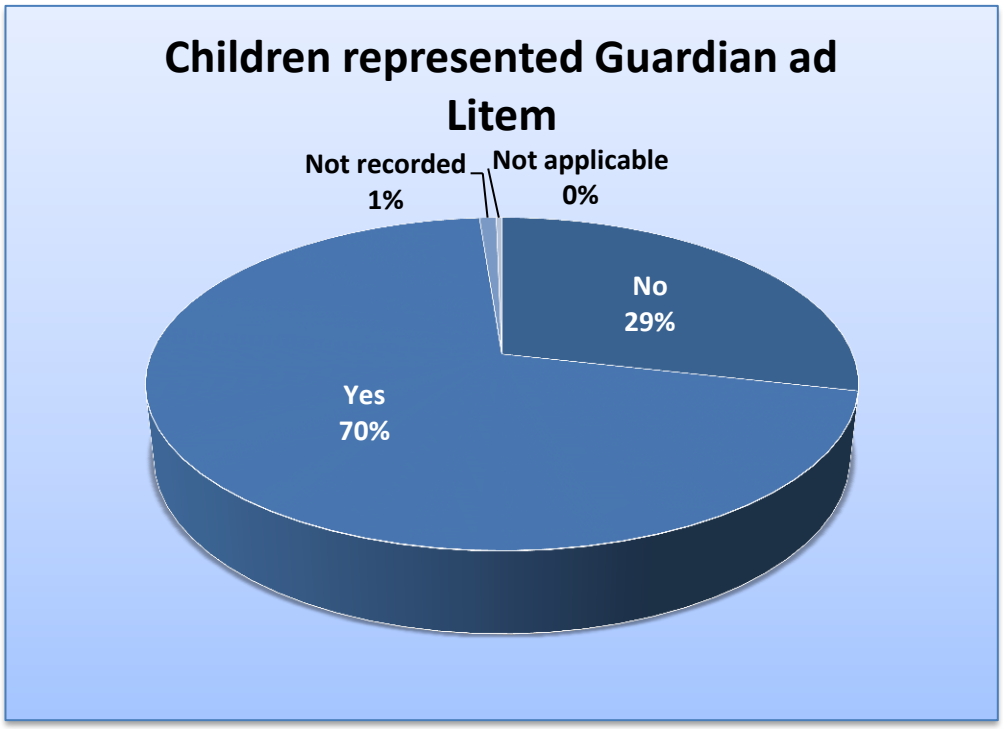
1.4.3 Children with Special Needs

- In total, 91 out of the 333 cases included in the study involved one child or more with special needs, referred to in court.
- 15 of the cases involved a child with physical special needs, two of which had two children with special needs accounting for 17 children in total.
- 83 of the 91 cases had one or more children with psychological needs, including one case that involved five children with psychological needs. In total 112 children with psychological needs are included in this report.
- 7 of the cases involved children with both physical and psychological needs.

Number of children	Physical needs	Psychological needs
1 child	13	64
2 children	2	12
3 children	0	5
4 children	0	1
5 children	0	1
Total children with special needs	**17**	**112**

1.4.4 Were the children represented by a Guardian ad Litem?

- Yes (234), No (95), Not recorded (3), Not applicable (1)



1.4.5 Guardian ad Litem employed by:

- Of the 234 cases were the child/children were represented by Guardian ad Litem, almost 46% of these were employed by Barnardos. Roughly 35% were independent.

Guardian ad Litem employed by:	Number of cases	% of cases were children were represented by GaL
Barnardos	107	45.7
Independent	83	35.5
Not recorded	44	18.8
Total cases with GaL employed	**234**	**100.0**

1.4.6 Guardian ad Litem represented by:

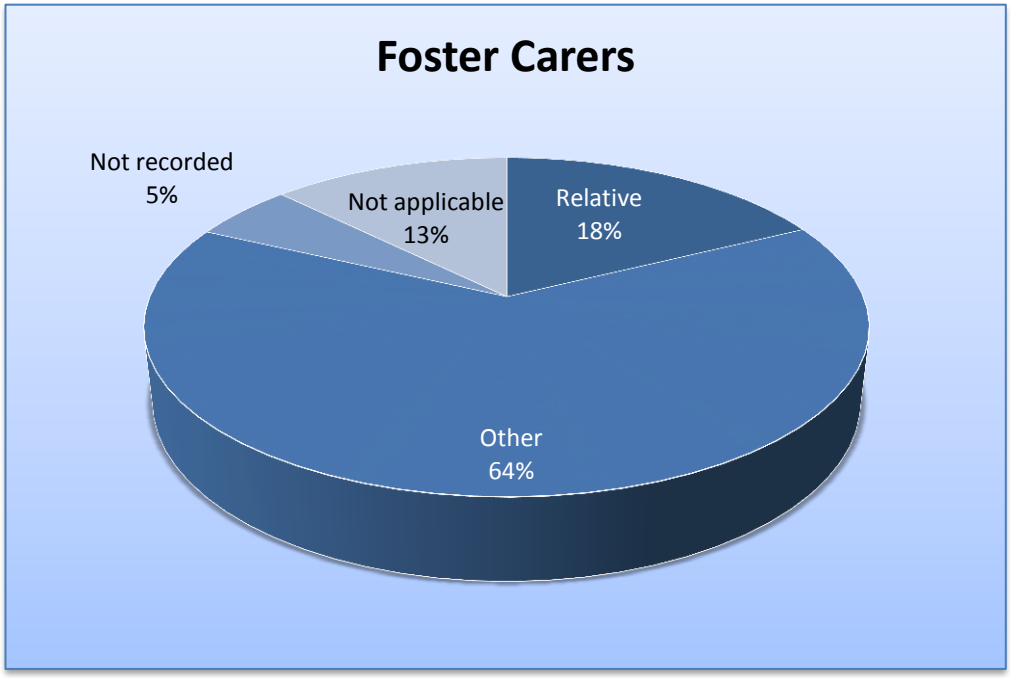
- Of the 234 cases where the child/children were represented by Guardian ad Litem, over 80% of these Guardian ad Litem were represented by a private solicitor, with less than 9% represented by a barrister. The cases where a barrister was involved were usually the longer and more complex cases.

Guardian ad Litem represented by:	Number of cases	% of cases where GaL were represented
Private solicitor	188	80.3
Barrister	20	8.5
Not recorded	26	11.1
Total cases with GaL employed	**234**	**100.0**

1.5 The Foster Carers

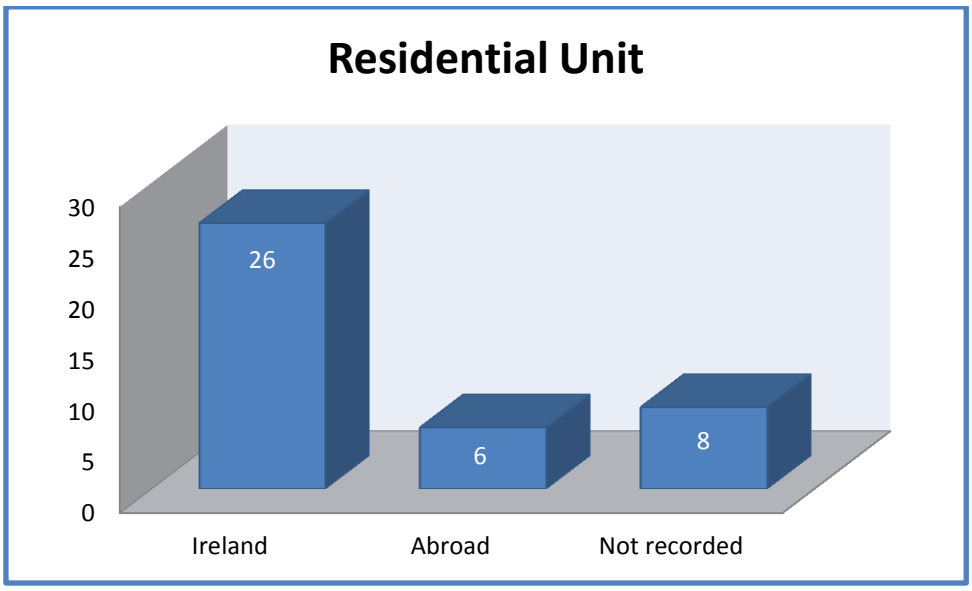
1.5.1 Foster Carers

Foster carers are:	Cases	% of cases
Relative	59	17.7
Non-relative	214	64.3
Not recorded	18	5.4
Not applicable	42	12.6
Total	**233**	**100.0**



1.5.2 Residential unit location

Residential Unit	Cases	% of all cases
Ireland	26	7.8
Abroad	6	1.8
Not recorded	8	2.4
Not applicable	293	88.0
Total	**233**	**100.0**

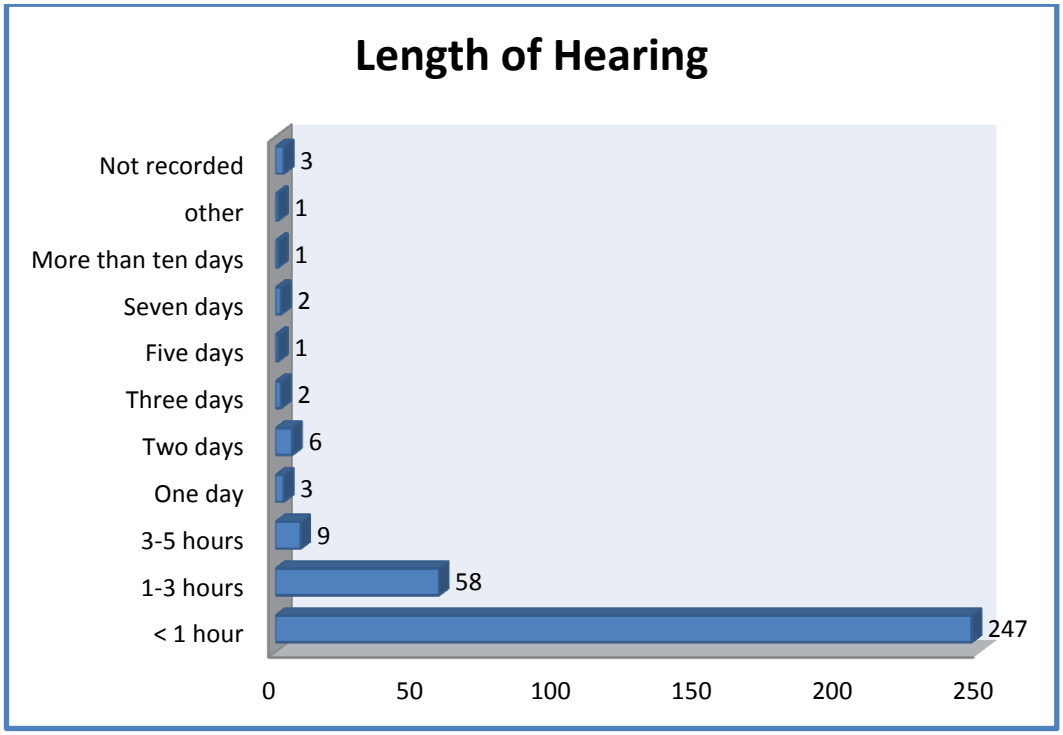


1.6 The Court Hearing

1.6.1 Length of Hearing

- While many of the applications were short, as they involved a renewal of an existing order, 13 took two days or more.

Length of court hearing	Cases	% of all cases
Less than 1 hour	247	74.2
1-3 hours	58	17.4
3-5 hours	9	2.7
One day	3	.9
Two days	6	1.8
Three days	2	.6
Five days	1	.3
Seven days	2	.6
More than ten days	1	.3
Other	1	.3
Not recorded	3	.9
Total	**333**	**100.0**



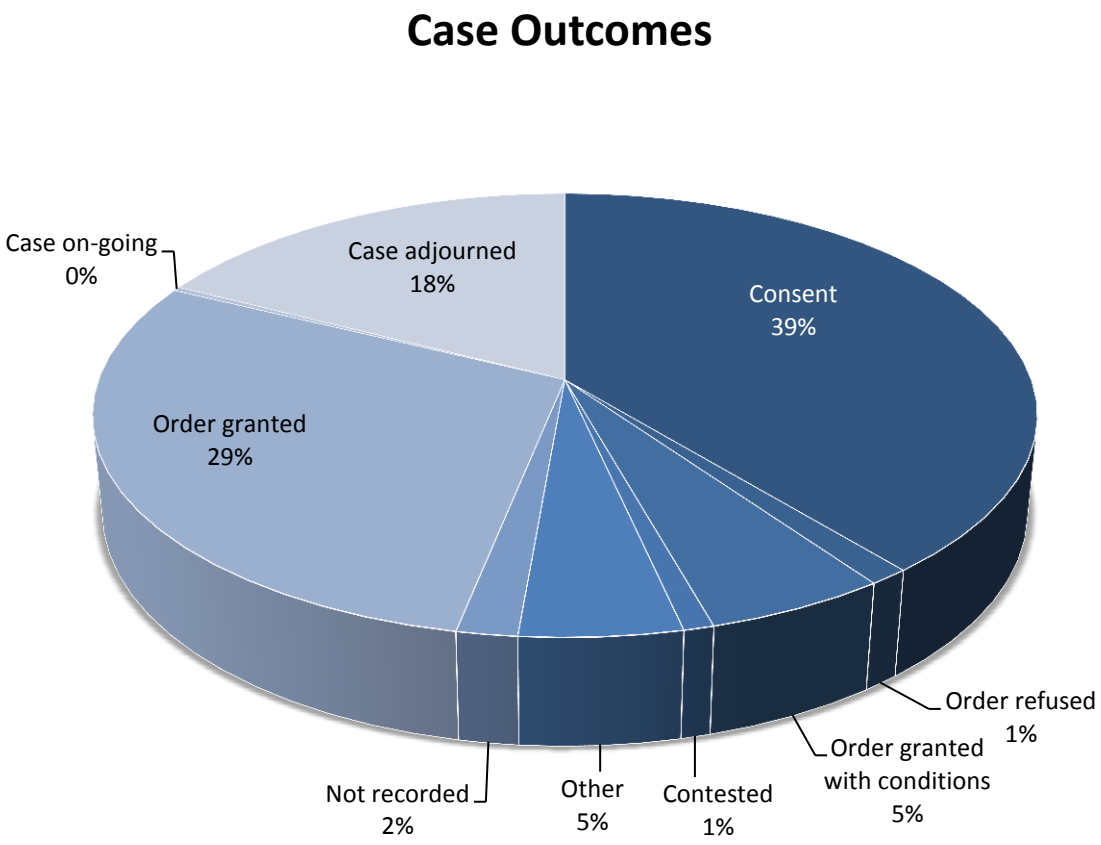
1.6.2 Witnesses

Witnesses	Cases	% of cases
Social workers only	295	88.6
Psychiatrist/Counsellor	15	4.5
Other	7	2.1
Teacher	5	1.5
Paediatrician	1	.3
Garda	4	1.2
Multiple	2	.6
Not recorded	2	.6
Not applicable	2	.6
Total	**333**	**100.0**

1.6.3 Outcome of case

- In almost 40 per cent of cases the respondents consented to the order being sought. In some where both father and mother were respondents one might consent and the other contest the order. Where it is stated the order was granted this followed some objection by a respondent.

Outcome	Cases	% of cases
Consent	130	39.0
Order granted	100	30.0
Case adjourned	58	17.4
Order granted with conditions	18	5.4
Other	16	4.8
Order refused	4	1.2
Not recorded	3	.9
Not applicable	3	.9
Case on-going	1	.3
Total	**333**	**100.0**


Case Outcomes
Case on-going
0%
Case adjourned
18%
Consent
39%
Order granted
29%
Order refused
1%
Order granted
with conditions
5%
Not recorded
2%
Other
5%
Contested
1%

1.6.4 Outcomes by application type

Application type	Outcome	Cases	% of cases
Supervision Order	Consent	12	42.9
	Order granted	10	35.7
	Case adjourned	3	10.7
	Order granted with conditions	2	7.1
	Other	1	3.6
	Total	**28**	**100.0**
Emergency Care Order	Order granted	5	38.5
	Consent	2	15.4
	Order granted with conditions	2	15.4
	Case adjourned	2	15.4
	Order refused	1	7.7
	Other	1	7.7
	Total	**13**	**100.0**
Interim Care Order	Consent	8	38.1
	Order granted	8	38.1
	Order refused	2	9.5
	Order granted with conditions	1	4.8
	Case adjourned	1	4.8
	Not recorded	1	4.8
	Total	**21**	**100.0**
Care Order	Consent	14	33.3
	Order granted	14	33.3
	Order granted with conditions	7	16.7
	Case adjourned	5	11.9
	Contested	1	2.4
	Not recorded	1	2.4
	Total	**42**	**100.0**
Other	Case adjourned	43	48.9
	Consent	13	14.8
	Order granted	11	12.5
	Order granted with conditions	3	3.4
	Order refused	1	1.1
	Other	14	15.9
	Not applicable	3	3.4
	Total	**88**	**100.0**
Extension ICO	Consent	81	57.4
	Order granted	49	34.8
	Case adjourned	4	2.8
	Order granted with conditions	3	2.1
	Contested	2	1.4
	Not recorded	1	.7
	On-going	1	.7
	Total	**141**	**100.0**

1.6.5 Ruling

- In making their ruling, the judge in the case usually stated simply that he or she found that the threshold for making the order had been met. However, in 16 of the 333 cases, almost 5 per cent, the judge made a lengthy ruling, sometimes in writing, spelling out the reasons for making the order.

Ruling	Cases	% of cases
No	311	93.4
Yes	16	4.8
Not recorded	4	1.2
Not applicable	2	.6
Total	**333**	**100.0**

2. Regional Analysis – July 2013

2.1 Court Order Applications

2.1.1 Type of application

Region	Type of application	Cases	% of cases
Dublin	*Extension ICO*	*122*	*45.7*
	Supervision Order	21	7.9
	Care Order	20	7.5
	Interim Care Order	18	6.7
	Emergency Care Order	10	3.7
	Other	76	28.5
	Total	**267**	**100.0**
Cork	Care Order	4	50.0
	Supervision Order	2	25.0
	Interim Care Order	1	12.5
	Other	1	12.5
	Total	**8**	**100.0**
Rest of country	*Extension ICO*	*19*	*32.8*
	Care Order	18	31.0
	Other	11	19.0
	Supervision Order	5	8.6
	Emergency Care Order	3	5.2
	Interim Care Order	2	3.4
	Total	**58**	**100.0**

2.2 The Applicant

2.2.1 Applicant represented by

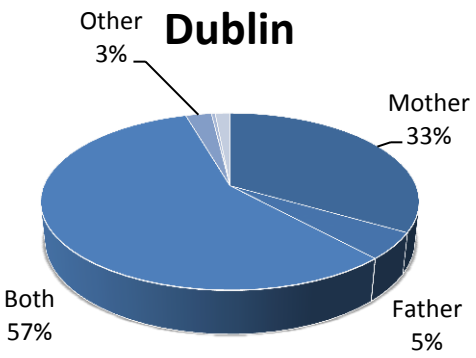
- In Dublin, the applicant was represented by a solicitor in 96% of the cases, in 3% by a barrister and in less than 1% by senior counsel
- In Cork the applicant was represented by a solicitor in all cases.
- In the rest of the country the applicant was represented by a solicitor almost always, except for s small minority of less than 2% of cases where it was represented by a barrister.

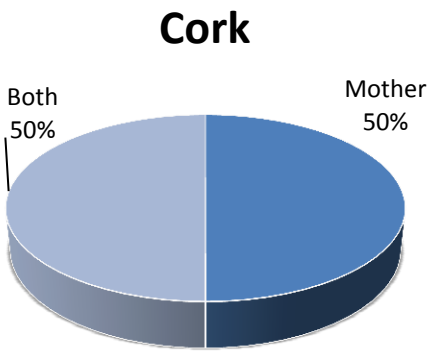
Region	Applicant represented by	Cases	% of cases
Dublin	Solicitor	258	96.6
	Barrister	7	2.6
	Senior Counsel	1	.4
	Not applicable	1	.4
	Total	**267**	**100.0**
Cork	Solicitor	8	100.0
	Total	**8**	**100.0**
Rest of country	Solicitor	57	98.3
	Barrister	1	1.7
	Total	**58**	**100.0**

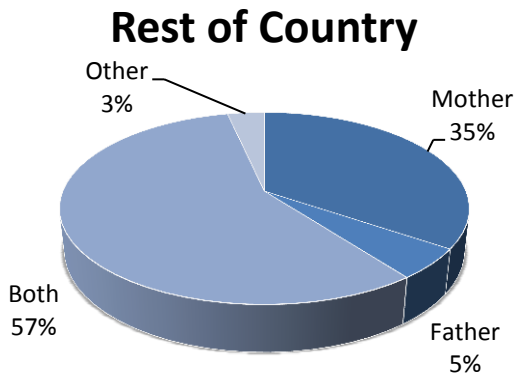
2.3 The Respondent

2.3.1 Respondents

Region		Cases	% of cases
Dublin	Mother	89	33.3
	Father	13	4.9
	Both	153	57.3
	Other	7	2.6
	Not recorded	1	.4
	Not applicable	4	1.5
	Total	**267**	**100.0**
Cork	Mother	4	50.0
	Both	4	50.0
	Total	**8**	**100.0**
Rest of country	Mother	20	34.5
	Father	3	5.2
	Both	33	56.9
	Other	2	3.4
	Total	**58**	**100.0**







2.3.2 Respondent Details

Respondent	Dublin		Cork		Rest of Country	
	Cases	%	Cases	%	Cases	%
Single	106	39.7	3	37.5	28	48.3
Divorced/Separated	33	12.4	2	25.0	8	13.8
Co-habiting	29	10.9	1	12.5	8	13.8
Married	26	9.7	0	0.0	8	13.8
Parent in hospital/prison	15	5.6	0	0.0	2	3.4
Widowed	5	1.9	1	12.5	1	1.7
Other	10	3.7	0	0.0	0	0.0
Not recorded	41	15.4	1	12.5	3	5.2
Not applicable	2	0.7	0	0.0	0	0.0
Total	**267**	**100.0**	**8**	**100.0**	**58**	**100.0**

2.3.3 Respondent representation

Where the respondent has no legal representation, this is often because they have not yet sought it and will do so. In a minority of cases the respondent is not present in court and has no legal representation.

Region	Respondent represented by	Cases	% of cases
Dublin	Legal Aid Board	147	55.1
	No legal representation	67	25.1
	Barrister	35	13.1
	Private Solicitor	10	3.7
	Not recorded	5	1.9
	Not applicable	3	1.1
	Total	**267**	**100.0**
Cork	Legal Aid Board	7	87.5
	Barrister	1	12.5
	Total	**8**	**100.0**
Rest of country	Legal Aid Board	36	62.1
	No legal representation	14	24.1
	Private Solicitor	4	6.9
	Barrister	2	3.4
	Not recorded	2	3.4
	Total	**58**	**100.0**

2.3.4 Respondent Ethnicity

Dublin

Respondent Ethnicity	Cases	%
Irish	182	68.2
African	38	14.2
Mixed	17	6.4
Irish Traveller	10	3.7
European	6	2.2
U.K.	4	1.5
Middle eastern	2	.7
Roma	1	.4
Other	2	.7
Not recorded	4	1.5
Not applicable	1	.4
Total	**267**	**100.0**

Cork

Respondent Ethnicity	Cases	%
Irish	8	100.0
Total	**8**	**100.0**

Rest of country

Respondent Ethnicity	Cases	%
Irish	34	58.6
Mixed	11	19.0
European	5	8.6
U.K.	3	5.2
Irish Traveller	2	3.4
Not recorded	3	5.2
Total	**58**	**100.0**

2.3.5 Present in Court

Region	Both present		One present		Neither present		Not recorded	
	Cases	%	Cases	%	Cases	%	Cases	%
Dublin	124	46.4	25	9.4	102	38.2	16	6.0
Cork	5	62.5	0	0	2	25.0	1	12.5
Rest of country	37	63.8	5	8.6	14	24.1	2	3.4

2.4 The Children

2.4.1 Number of children subject of application (children per respondent)

Region	Number of children	Cases	% of cases
Dublin	0 children	3	1.1
	1 child	161	60.3
	2 children	53	19.9
	3 children	22	8.2
	4 children	24	9.0
	5 children	3	1.1
	8 children	1	.4
	Total	**267**	**100.0**
Cork	1 child	3	37.5
	2 children	3	37.5
	3 children	1	12.5
	5 children	1	12.5
	Total	**8**	**100.0**
Rest of country	1 child	24	41.4
	2 children	12	20.7
	3 children	14	24.1
	4 children	4	6.9
	5 children	2	3.4
	6 children	2	3.4
	Total	**58**	**100.0**

2.4.2 *Children with special needs*

Region	Physical		Psychological	
	children	cases	children	cases
Dublin	9	8	91	70
Cork	2	1	7	3
Rest of country	6	6	14	10

2.4.3 *Children represented by Guardian ad Litem*

Region	Represented by GaL	Cases	% of cases
Dublin	Yes	201	75.3
	No	63	23.6
	Not recorded	2	.7
	Not applicable	1	.4
	Total	**267**	**100.0**
Cork	No	5	62.5
	Yes	3	37.5
	Total	**8**	**100.0**
Rest of country	Yes	30	51.7
	No	27	46.6
	Not recorded	1	1.7
	Total	**58**	**100.0**

2.4.4 Guardian ad Litem employment

Region	GaL employed by	Cases	% of cases
Dublin	Barnardos	96	36.0
	Independent	68	25.5
	Not recorded	39	14.6
	Not applicable	64	24.0
	Total	**267**	**100.0**
Cork	Barnardos	3	37.5
	Not applicable	5	62.5
	Total	**8**	**100.0**
Rest of country	Independent	15	25.9
	Barnardos	8	13.8
	Not recorded	6	10.3
	Not applicable	29	50.0
	Total	**58**	**100.0**

2.4.5 Guardian ad Litem representation

- Guardians ad litem are usually, though not always, represented by a solicitor. Where they are recorded as not being represented it is often because they have just been allocated to the case and have not yet had obtained representation.

Region	GAL represented by:	Cases	% of cases
Dublin	Private solicitor	166	62.2
	Barrister	18	6.7
	Not recorded	14	5.2
	Not applicable	68	25.5
	Total	**267**	**100.0**
Cork	Private solicitor	2	25.0
	Not applicable	5	62.5
	Not recorded	1	12.5
	Total	**8**	**100.0**
Rest of country	Private solicitor	20	34.5
	Barrister	2	3.4
	Not recorded	7	12.1
	Not applicable	29	50.0
	Total	**58**	**100.0**

2.5 The Foster Carers

2.5.1 Foster Carers

Region	Foster carer:	Cases	% of cases
Dublin	Relative	44	16.5
	Non-relative	173	64.8
	Not recorded	17	6.4
	Not applicable	33	12.4
	Total	**267**	**100.0**
Cork	Relative	1	12.5
	Non-relative	4	50.0
	Total	**8**	**100.0**
Rest of country	Relative	14	24.1
	Non-relative	37	63.8
	Not recorded	1	1.7
	Not applicable	6	10.3
	Total	**58**	**100.0**

2.5.2 Residential location unit

Region	Residential unit in:	Cases	% of cases
Dublin	Ireland	22	8.2
	Abroad	6	2.2
	Not recorded	8	3.0
	Not applicable	231	86.5
	Total	**267**	**100.0**
Cork	Ireland	2	25.0
	Not applicable	6	75.0
	Total	**8**	**100.0**
Rest of country	Ireland	2	3.4
	Not applicable	56	96.6
	Total	**58**	**100.0**

2.6 The Court Hearing

2.6.1 Length of Hearing

Region	Length of hearing	Cases	% of cases
Dublin	< 1 hour	198	74.2
	1-3 hours	49	18.4
	3-5 hours	7	2.6
	One day	1	.4
	Two days	5	1.9
	Three days	1	.4
	Five days	1	.4
	Seven days	1	.4
	other	1	.4
	Not recorded	3	1.1
	Total	**267**	**100.0**
Cork	< 1 hour	5	62.5
	One day	2	25.0
	Seven days	1	12.5
	Total	**8**	**100.0**
Rest of country	< 1 hour	44	75.9
	1-3 hours	9	15.5
	3-5 hours	2	3.4
	Two days	1	1.7
	Three days	1	1.7
	More than ten days	1	1.7
	Total	**58**	**100.0**

2.6.2 Witnesses

Region	Witness:	Cases	% of cases
Dublin	Social workers only	238	89.1
	Psychiatrist/Counsellor	10	3.7
	Other	6	2.2
	Teacher	5	1.9
	Garda	3	1.1
	Paediatrician	1	.4
	Not recorded	2	.7
	Not applicable	2	.7
	Total	**267**	**100.0**
Cork	Social workers only	6	75.0
	Multiple	2	25.0
	Total	**8**	**100.0**
Rest of country	Social workers only	51	87.9
	Psychiatrist/Counsellor	5	8.6
	Other	1	1.7
	Garda	1	1.7
	Total	**58**	**100.0**

2.6.3 Outcomes

Region	Outcome	Cases	% of cases
Dublin	Consent	104	39.0
	Order granted	82	30.7
	Case adjourned	52	19.5
	Other	15	5.6
	Order granted with conditions	7	2.6
	Order refused	3	1.1
	Not recorded	3	1.1
	Not applicable	1	.4
	Total	**267**	**100.0**
Cork	Order granted with conditions	3	37.5
	Case adjourned	2	25.0
	Order granted	1	12.5
	Consent	1	12.5
	Not applicable	1	12.5
	Total	**8**	**100.0**
Rest of country	Consent	25	43.1
	Order granted	17	29.5
	Order granted with conditions	8	13.8
	Case adjourned	4	6.9
	Order refused	1	1.7
	Other	1	1.7
	Not recorded	2	3.4
	Total	**58**	**100.0**

2.7 Regional Analysis

- While Dublin has been disproportionately represented at this stage in the work of the Project, figures also reflect the fact that a number of long cases were attended outside Dublin. This is shown by the fact that a greater number of Care Order applications were reported on outside Dublin.

Regions	Cases	% of cases
Dublin	267	80.2
Cork	8	2.4
Rest of country	58	17.4
Total	**333**	**100.0**

3 Reasons for Seeking Order

3.1 Reason for seeking order/Respondents ethnic background

Reason for seeking order	Respondent ethnic background									Total
	Irish	Irish Traveller	U.K.	European	Roma	African	middle eastern	mixed	other	
Neglect	54	3	1	1	0	6	0	6	0	71
Multiple	47	2	0	1	0	4	0	3	1	58
Abuse	20	0	4	2	0	11	0	4	1	42
Parental disability (intellectual, mental, physical)	26	0	1	2	0	7	0	3	0	39
Parental drug abuse	27	4	0	1	0	0	0	5	0	37
Parental alcohol abuse	15	1	1	3	0	1	0	3	0	24
Parent absent/deceased	11	2	0	0	0	6	0	0	0	19
Other	7	0	0	0	0	2	0	0	0	9
Domestic Violence	1	0	0	0	1	0	2	2	0	6
Childs risk taking	5	0	0	0	0	0	0	0	0	5
Total	213	12	7	10	1	37	2	26	2	**310***

*Total 310 due to missing data for either reasons or ethnic background in 23 cases

3.2 Reason for seeking order / Respondents status

Reason for seeking order	Respondent details							Total
	Single	Married	Divorced/ Separated	Co-habiting	Parent in hospital/ prison	Widowed	other	
Neglect	34	2	9	8	2	1	3	59
Multiple	16	7	15	4	5	3	1	51
Abuse	7	12	8	8	0	0	1	36
Parental disability (intellectual, mental, physical)	26	3	4	1	1	1	0	36
Parental drug abuse	16	2	0	11	5	1	0	35
Parental alcohol abuse	16	3	2	1	1	0	0	23
Parent absent/deceased	9	1	1	0	1	1	3	16
Other	5	0	0	0	1	0	2	8
Domestic Violence	1	1	1	2	0	0	0	5
Childs risk taking	3	1	1	0	0	0	0	5
Total	133	32	41	35	16	7	10	**274***

*Total equals 274 due to missing data for reasons or respondent details in 59 cases

Published by the

Child Care Law Reporting Project,
Second Floor, St Stephen's Green House, Dublin 2

www.childlawproject.ie