A Report on the Intersection of the *Criminal Justice, Private Family Law* and *Public Law Child Care Processes* in Relation to Domestic and Sexual Violence

Prepared for the National Women's Council and the Department of Justice by Nuala Egan & Ellen O'Malley Dunlop. March 2023

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Executive Summary

One act or a series of acts of domestic or sexual violence can cause the activation of two and sometimes three distinct legal processes – the criminal justice process, the private family law process and the public law child care process – involving the same victim or victims and the same alleged perpetrator. While there is a very real factual overlap between all of those processes, legally these processes work more or less in isolation, despite the potential for real and beneficial liaison. Victims suffer as a result of this lack of collaboration between the various processes as vital information, which could serve to secure just outcomes, is sometimes lost in the 'gaps' between the three systems, never being brought to the attention of the judge deciding upon the particular issue at hand.

This report endeavours to consider how a more victim-centred, collaborative approach can be adopted between the various legal processes, while being all the time cognisant of the rights of the alleged perpetrator in the criminal and civil processes alike. The adoption of such an approach should serve to enhance not simply the victim's experience as she or he navigates the various processes, but also the outcomes at the conclusion of those same processes, in the sense that decisions will thereafter be based upon the best possible evidence.

This report was commissioned by the National Women's Council in conjunction with the Department of Justice. Throughout, the authors worked under the guidance of an Advisory Committee of experts in the areas under consideration. The final document is the result of a combination of desk research and interviews with victims, academics, Courts Service personnel, judges, civil servants, office holders and individuals from non-governmental organisations (NGOs) who are involved in the delivery of services and initiatives for victims of domestic and/or sexual violence. The names of the interviewees are set out in Appendix 1 to the report.

Terms of Reference

- The identification and outlining of the challenges facing, and impact on, adult and child victims of domestic and/or sexual violence when navigating the criminal, family and child protection justice systems.
- The identification and outlining of examples of emerging best practices that are victim-centred and can be applied in the Irish context.
- The making of recommendations as to how the different arms of the justice system can work in tandem to ensure that victims' rights are upheld and respected throughout the justice system.

Outline of Chapters

Chapter 1 sets out an introductory framework to the report.

Chapter 2 addresses the scope of the *in camera* rule in the three legal processes under consideration. This topic is addressed at this early part of the report as it impacts in such a fundamental way upon many of the issues subsequently discussed. While the impact of the rule upon given issues is addressed in the text of the report alongside the issues themselves, the impact of the rule upon research and policy formulation is dealt with in this chapter.

Chapter 3 addresses four experiences encountered by victims of domestic and/or sexual violence which appear to have a cross-sector attritional effect, in the sense that when one of those experiences is encountered by a victim of sexual and/or domestic violence while he or she is in one of the three legal processes, it prompts him or her not only to withdraw from the legal process in question, but from all of the legal processes at issue. Those four experiences are:

- Absence of comprehensive court and non-court support for victims of domestic and/or sexual violence.
- A systemic lack of understanding of the impact of domestic and/or sexual violence upon victims.
- Delay in the legal process or processes.
- The court-day experience.

Chapter 4 addresses differences of treatment encountered by adult victims of domestic or sexual violence in the various processes under consideration. The interviews conducted in preparation for this report pointed towards a generally positive experience at the hands of members of An Garda Síochána who have received appropriate training regarding relational violence and its impact (although certain minority groups referred to ongoing difficulties with the Gardaí). Overall, victims' experience with Gardaí tended to compare favourably with that encountered when engaging with the Child and Family Agency and the public child law process. In the context of the Child and Family Agency and the public law process in general, many adult victims felt blamed for their alleged failure to protect any children of the relationship from exposure to violence and also felt undermined in terms of their ongoing capacity to protect and care for their children. In the context of private family law processes, many interviewees relayed a sense of disbelief and doubt on the part of experts engaged to determine the wishes and best interests of any children involved, those experts often endorsing a 'parental alienation' model. Given the considerable weight often attached to the views of such experts in the private family law process, the impact of such an approach in private family law processes is most significant.

Chapter 5 considers how collaborative practices can be promoted within the three legal processes under consideration at both the evidence-gathering stages and in the courtroom itself. In that regard, consideration is given to:

- Inter-agency professional training and 'work-shadowing'.
- The joint-interviewing of children by personnel within the criminal and public child care law processes.
- Information-sharing between the Child and Family Agency and other agencies including An Garda Síochána in the context of child victims, plus information-sharing more generally in the context of adult victims.
- Documentation-sharing between the Child and Family Agency and An Garda Síochána.
- The provision by the judiciary of summary written Decisions in the context of applications pertaining to domestic and/or sexual violence.

- The introduction of a Domestic Violence Court Register for the purpose of ensuring that courts dealing with applications which touch upon matters of domestic and/or sexual violence, have all relevant and legally permissible information in relation to the alleged perpetrator.
- The potential in due course within the new Family Courts structure for Joint Case Management and Linked Directions Hearings.

Chapter 6 sets out in greater detail those recommendations alluded to in the body of the report. The following identifies the headings under which those recommendations fall.

Outline of Recommendations:

1. **Support persons**
    - The introduction of a properly resourced comprehensive system of both court and non-court supports whereby a small team of support persons with appropriate accredited training is assigned to an adult victim of domestic and/or sexual violence to assist them throughout the entire journey through the various legal processes. Further research will be needed into the appropriateness of such a support person/s for child victims.
    - Training to be provided to members of the judiciary, lawyers and Court Services personnel to explain and facilitate the role of such support persons in the various processes.
    - The insertion of an additional provision into the current *Family Courts Bill 2022* which permits court accompaniment for parties who allege domestic or sexual violence in those private family law proceedings to which the Bill refers, unless such accompaniment would be contrary to the interests of justice, and imposes an obligation upon a judge who refuses such permission to give reasons for that refusal.
    - The introduction of a practice direction providing guidance in relation to the attendance of support persons at civil court proceedings.

2. **Amendment of the *in camera* rule**
    - To permit victims to discuss, subject to appropriate safeguards, the content and outcome of court proceedings with support personnel and those providing therapeutic supports.
    - To facilitate qualitative and quantitative research by permitting, subject to appropriate safeguards, authorised persons to discuss the proceedings with parties.

3. **Training**
    - In-person training to ensure that all relevant professionals and personnel involved with victims of domestic and/or sexual violence acquire an in-depth understanding of the dynamics and impact of domestic and/or sexual violence. This recommendation extends to the judiciary, members of the legal profession and members of An Garda Síochána. Judges to be granted the leave necessary to avail of such training.

- In-person cultural competency training, anti-racism and equality training be provided to members of An Garda Síochána, the judiciary and legal professionals.
- All student social workers to undertake appropriate mandatory studies in relation to domestic and/or sexual violence and its impact on both adults and children. Qualified social workers to have ongoing training in this regard.
- All persons assigned to undertake expert reports in both private family and public child care proceedings to have accredited and ongoing training in the area. Such personnel to set out in all of their reports for court their training, qualifications and all organisations and bodies to which they are affiliated. The introduction of a practice direction regulating expert evidence in the context of proceedings involving children in which, amongst other things, courts are to ensure, prior to an expert's appointment, that he or she has the requisite qualifications for the task at hand.
- A list of suggested relevant competencies to be devised by both The Law Society and The Bar Council regarding the training and skills which practitioners representing clients in this area should have. Such training to be made available to practitioners.
- Adoption by the Legal Aid Board of a requirement that all barristers wishing to be placed on its Panel for Counsel and all solicitors wishing to be on its Private Practitioners Panel undertake such training.
- Comprehensive Inter-agency learning to be developed in particular between the Child and Family Agency and An Garda Síochána, such learning to include work-shadowing practices.

4. Avoidance of delay across the various processes

- The prioritisation of all cases involving domestic and/or sexual violence.
- Support the extension by the *Family Courts Bill 2022* of the 'no unreasonable delay' provision to public law child care proceedings and in Domestic Violence Act proceedings, thereby recognising that unreasonable delay is generally contrary to the best interests of the child.
- In the practice direction regulating expert evidence in the context of proceedings involving children, as mentioned above, provision to be made for the efficient regulation of expert involvement in proceedings.
- Support the envisaged ongoing increase in the number of judges, in particular at District Court level. In that regard, we recommend and anticipate the timely and comprehensive implementation of the proposed reforms regarding increased judicial numbers recommended by both the OECD and the Judicial Planning Working Group in their recent reports.

5. Collaborative practices at the evidence-gathering stage

- The adoption and implementation of a policy by An Garda Síochána regarding the prompt timing of its interviews with children and of a further joint policy by The Child and Family Agency and An Garda Síochána in relation to the prompt timing of jointly conducted interviews with children, with such interviews being scheduled as soon as a disclosure of violence is made by a child.
- The Child and Family Agency to review and adapt its practices in relation to the use by it of its power pursuant to Section 11 of the *Domestic Violence Act 2018* to apply for a Safety Order, Barring Order or an Emergency Barring Order on behalf of a victim or the parent/guardian of a child victim.
- The Child and Family Agency and An Garda Síochána to review and adapt their own practices to reflect their obligations in appropriate circumstances to give evidence in Domestic Violence Act applications and in access and custody applications in which there is underlying domestic and/or sexual violence. In doing so, An Garda Síochána must devise guidelines identifying how this practice may be promoted on a case-by-case basis without causing prejudice to a criminal investigation or prosecution.
- The prompt review and alteration of the Child and Family Agency's Child Abuse Substantiation Procedure (CASP) to provide for appropriate and timely co-operation between the Child and Family Agency and An Garda Síochána, to include co-operation prior to the conduct by the Child and Family Agency of any interview with the alleged perpetrator. Such an approach also to be reflected in a new version of *The Joint Protocol between Tusla and An Garda Síochána* to be implemented following the conclusion of the ongoing review of the Protocol and in Garda policy.

6. The development of collaborative processes in court

- The enactment of a statutory provision setting out an illustrative list of issues to which a court determining an application for disclosure in the context of proceedings pursuant to the *Child Care Act 1991* should have regard.
- Consideration to be given by An Garda Síochána and the Child and Family Agency to the joint commissioning of experts where appropriate.
- The establishment of formal channels between the Courts Service and An Garda Síochána and/or the Office of the Director of Public Prosecution in order to ensure the two-way transfer of information regarding bail and access orders and applications.
- The introduction of a statutory requirement that judges in District and Circuit civil matters in which domestic and/or sexual violence are in issue, other than those cases already covered by Section 17 of the *Domestic Violence Act 2018,* provide a brief reasoned outline of their Decision. Such Decision must be written in an anonymised manner such that no details identifying or tending to identify the parties or the children to the proceedings are included.

- The development of a National Domestic Violence Court Register, a register of previous civil orders and criminal convictions of relevance available to civil courts where appropriate and to criminal courts for sentencing purposes.
- Once the new Family Courts structure envisaged in the *Family Courts Bill 2022* is firmly established, consideration to be given to the introduction of joint case management hearings in parallel civil and criminal proceedings pertaining to domestic and/or sexual violence.

7. Physical environment

- The creation of a more victim-friendly physical court environment in all court buildings throughout the State.
- The adoption, on a piloted basis, of a listing system under which each case is assigned a certain time and date, with penalties for non-attendance without good reason, thereby reducing the numbers in the court building awaiting the conduct of their cases. The extension of this practice to other courts, if successful, and the provision of additional staffing and other resources to the Courts Service to facilitate this development.

8. Further research to be conducted

- The impact of GDPR and *The Data Protection Act 2018* on information-sharing practices between statutory and non-statutory agencies.
- The appropriate model of formal inter-agency co-operation and risk assessment to be adopted in this jurisdiction in the context of domestic or sexual violence.
- The role of expert assessors in the civil court processes under consideration.
- The experience of the child care process of parents who are themselves victims of domestic and/or sexual violence.
- An annual survey to be conducted into the experiences in the child care process of parents who are themselves victims of domestic and/or sexual violence.
- The treatment of adult victims in the private family law process in those cases in which allegations of domestic and/or sexual violence are made.
- The Courts Service to commission an annual survey of the experiences of parties in private family law processes in which allegations of domestic and/or sexual violence are made.
- If the above research into the adult victim's experience of the child care process and the outcome of the Departmental public consultation process into "parental alienation" point to disparate treatment of victims in the various legal processes under consideration in this report, we recommend the conduct of further research for the purpose of identifying fundamental common principles in relation to the treatment of victims of domestic and/or sexual violence in the three processes under consideration.

- The review in due course of the impact of the introduction by the *Criminal Procedure Act 2021* of a pre-trial hearing in criminal trials and the impact thereof upon the timely progression and conclusion of those trials to which it applies.
- The appropriateness of the application of the privilege against self-incrimination in proceedings pursuant to the Child Care Act, 1991.

1. Introduction

1.1. Background to the Research

1.1.1. Every day, victims of domestic and/or sexual violence come before the Irish courts. Adults, ordinarily of normal strength and resilience, often present as traumatised following the violence to which they have been subjected. Likewise, some of the traumatic impact upon a child victim of domestic and/or sexual violence may be apparent immediately, while yet other effects take years to reveal themselves. While it seems obvious that people in such a vulnerable state must be protected from further harm while navigating the court processes in which they find themselves, research in relation to the victim's experience in the criminal process has consistently shown that the court process, in forcing the victim to repeatedly revisit the violent events, causes secondary traumatisation, being sometimes described by the victims[1] themselves as worse than the violent ordeal.

1.1.2. Such research has, in more recent years, created an increasing awareness among policymakers across many jurisdictions of the detrimental impact upon victims of their experience in the criminal justice process and a consequent adoption of measures to minimise that impact. International legal instruments such as the Council of Europe's *Convention on the Prevention of Violence against Women and Domestic Violence*, better known as the Istanbul Convention, and the *Directive on the Rights of Victims of Crime*[2] (from here on *The Victims' Directive*) seek to protect victims from "secondary and repeat victimisation, from intimidation and from retaliation" and endeavour to ensure that they "receive appropriate support to facilitate their recovery and [b]e provided with sufficient access to justice"[3].

1.1.3. In this jurisdiction, effect has been given to the requirements of the Victims' Directive via the provisions of *The Criminal Justice (Victims of Crime) Act 2017* which imposes obligations upon the various institutional actors to offer varying forms of support and information to the victim during their journey through the criminal process. The Review of Protections for Vulnerable Witnesses in the Investigation and Prosecution of Sexual Offences 2020 (from here on the *O'Malley Report)* considered the criminal justice process from the perspective of a victim of sexual crime and made recommendations for reform. The Minister for Justice has committed in the Third National Strategy on Domestic, Sexual and Gender-Based Violence, to give effect to those recommendations and has recognised the need to protect and support such victims in *The Victims' Charter*.

1 Studies of the criminal justice system, especially as it pertains to sexual violence, have shown that there are serious problems related to the re-traumatisation of victims in the criminal justice process; see, for example, Charleton & Byrne, *Sexual Violence; Witnesses and Suspects – A Debating Document,* (2010), 1 Irish Journal of Legal Studies 1; Hanly et al., Rape and Justice in Ireland 2009. 2005). Recounting the detail of a traumatic event goes against characteristic aim of avoidance and can occasion an intense negative emotional reaction for complainants or witnesses experiencing PTSD. Some may experience flashbacks to the incident that cause significant disorientation and confusion, as well as acute fear and distress, whilst in the witness box; Mason F, Lodrick Z, *Psychological Consequences of Sexual Assault*, 2013). Likewise, see a rape victim's personal account of the criminal justice process in the very recently published Grace, S, Ash and Salt, 2022. The 2020 report by SafeLives in the UK showed that many survivors currently feel retraumatised by the court process. One survivor told researchers: *"The Family Court process has left me severely traumatised, worse than the DV (domestic violence) itself. I was belittled, undermined, exposed to my abusive ex repeatedly, my children were not listened to and it felt like father's rights trumped mine and negated his history of DV. I've never been more frightened and alone in my life."*

2 2012/29/EU.

3 Per Preamble to the Victims Directive.

1.1.4. Somewhat less consideration has, however, been given to date, in both this jurisdiction and internationally, to the impact of the *civil* legal processes upon a victim of sexual and/or domestic violence. And yet it must be remembered that such victims may find themselves in two, and sometimes even three, separate legal processes at more or less the same time:

- *The criminal justice process;* a victim, or the parents or guardians of a child victim, may report the act or acts of violence to An Garda Síochána, an action which may in time lead to the commencement of a criminal prosecution against the alleged perpetrator.
- *The public law child care process;* when a member of An Garda Síochána, to whom such a violent crime is reported, thereby becomes aware of a child welfare and protection concern which reaches the threshold of a mandated concern, he or she is under a duty imposed by the *Children First Act 2015* to formally report that issue to the Child and Family Agency. Then, the Child and Family Agency will engage in a preliminary 'screening' of the situation and conduct an assessment of the risks facing the child. If, following those steps, its concerns are such that it feels that the child's welfare cannot be protected within the family, the Child and Family Agency will commence proceedings pursuant to the *Child Care Act 1991* in which it applies to take the child into its care[4].
- *The private family law process;* a victim may also feel the need to apply for one or more of the orders available via the *Domestic Violence Act 2018:* i.e. a Barring order (including an Emergency or Interim Barring Order); a Safety Order; or a Protection Order. Likewise, they – or indeed the alleged perpetrator – may seek to regulate contact with the parties' children by means of an application to court regarding access and/or custody.

1.1.5. The impact of simultaneous involvement in such legal processes upon a person already struggling with the fallout of domestic and/or sexual violence cannot be overestimated. If being in one legal process causes secondary victimisation, bare logic suggests that it is even more harrowing to be in numerous simultaneous legal processes, each process adding to the number of times a victim must revisit the traumatic events in question. The question of how to best protect persons navigating multiple processes in the wake of domestic and/or sexual violence must be answered by policymakers. It is with this aim in mind that the current research was commissioned by the National Women's Council in conjunction with the Department of Justice. Third National Strategy on Domestic, Sexual and Gender-based Violence envisages that the recommendations of this report, in conjunction with those of the O'Malley Report and the new Strategy itself will "work to reduce attrition rates and enhance access to the legal system for individuals experiencing domestic sexual or gender-based violence".

4 An exception arises in relation to the potential use by the Child and Family Agency of its power pursuant to Section 11 of the *Domestic Violence Act, 2018* to apply on behalf of a victim for a Safety Order, Barring Order or an Emergency Barring Order; see Chapter 5.

1.2. Terms of Reference

1.2.1. The terms of reference of this research are to:

- Identify and outline the challenges and impact on adult and child victims of domestic and/or sexual violence of navigating the criminal, family and child protection justice systems;
- Identify and outline examples of emerging best practices that are victim-centred and can be applied in the Irish context;
- Make recommendations as to how the different arms of the justice system can work in tandem to ensure that victims' rights are upheld and respected throughout the justice system.

1.2.2. In view of these terms of reference, it is not our function to address issues pertaining to the criminal justice process nor to either of the relevant civil legal processes *per se*. Our assigned task is a narrower one; our purpose being to view, from the victim's perspective, how the three legal processes work alongside each other and to identify points - current or potential – of intersection of the three processes in question. In other words, to what extent do they work or not work together in a collaborative manner and in victim-focussed ways. We must then identify the changes, if any, that must be made in order to better protect victims.

1.2.3. Concurrent proceedings involving criminal, family and child care law issues involve not only different areas of jurisdiction but also different parties, different standards of proof, often different court buildings, and different tiers of court. Vitally, it also often involves different teams of lawyers acting on behalf of the parties to the litigation. There may, however, often be potential for overlap between proceedings, and strong grounds for creating and maintaining liaison between them. In examining this collaborative potential, we will, as best we can, observe the experience through the eyes of a victim, both adult and child.

1.3. Societal Context

1.3.1. The Preamble to the Istanbul Convention provides a helpful insight into the overall societal context in which domestic and/or sexual violence occurs. It starts by condemning "all forms of violence against women and domestic violence", and then continues by "Recognising that the realisation of *de jure* and *de facto* equality between women and men is a key element in the prevention of *violence* against women" and:

> "Recognising that violence against women is a manifestation of historically unequal power relations between women and men, which have led to domination over, and discrimination against, women by men and to the prevention of the full advancement of women".

1.3.2. On 1 August 2014, the Istanbul Convention entered into force. It was ratified in Ireland in 2019. The provisions of this Convention which embody best practice standards in relation to the prevention and combating of such violence, regard acts of violence against women – whether physical violence, sexual abuse, the forcing of girls into unwanted marriages or female genital mutilation –

as neither random misfortunes nor isolated crimes. They are treated as part of a societal mechanism which permits or tolerates discrimination against women. Building on the approach originally set out in the Convention on the Elimination of all forms of Discrimination against Women, the Convention identifies the 'due diligence' obligations of States as the obligation to "prevent, investigate, punish and provide reparation for acts of violence perpetrated by non-state actors"[5].

1.3.3. The Istanbul Convention also, importantly, affords special protection to migrant women. Sensitive to the problems faced by migrant women who are trapped in abusive relationships, the Istanbul Convention introduced a number of protective measures, including the option of granting such women an autonomous residence permit, independent of that of their abusive spouse or partner.

1.3.4. To recognise that many of these forms of violence are essentially gender-based is not to deny that men also experience such violence. Indeed, the terms of the Convention itself, despite its gender-specific title, apply equally to male victims of such crimes. But it is beyond doubt that domestic violence affects women disproportionately, with women considerably more likely than men to experience repeated and severe forms of abuse, including sexual violence. In 2021, the UN reported that one in three women worldwide experience physical or sexual violence. Some years earlier, in 2015, the UN stated that fewer than 40% of the women who experience violence seek help of any sort. In this country, Women's Aid reported in 2020 that one in five young women in Ireland have been subjected to intimate relationship abuse and 51% of those affected experienced the abuse under the age of 18[6]. The recent Covid-19 pandemic has served to highlight the high rates of domestic and/or sexual violence against women throughout the world. In that regard, the UN has noted how the combination of the restrictions on movement and the economic and social stresses exacerbated by the pandemic dramatically increased the number of women and girls facing abuse in almost all countries[7].

1.3.5. As far as the child victim of domestic or sexual violence is concerned, it was noted by the Child and Family Agency in 2015 that in more than 40% of cases, children who live with domestic violence abuse are also themselves directly abused, either physically or sexually[8]. In 2020, there were 5,948 incidents of child abuse disclosed to Women's Aid[9]. These worrying statistics refer to what we will call the 'direct victim' – a child to whom violence is directed. We must not, however, disregard that 'indirect victim' – a child who, though not themselves the focus of a perpetrator's violence, is nonetheless fundamentally

5 The Convention requires states to offer a comprehensive response to such violence, through the "4 Ps approach: Prevention of violence through sustained measures that address its root causes and aim at changing attitudes, gender roles and stereotypes that make violence against women acceptable; Protection of women and girls who are known to be at risk and setting up specialist support services for victims and their children (shelters, round-the clock telephone helplines, rape crisis or sexual violence referral centres);Prosecution of the perpetrators, including enabling criminal investigations and proceedings to continue, even if the victim withdraws the complaint; and the adoption and implementation of state-wide "integrated policies" that are effective, co-ordinated and comprehensive, in that they encompass all relevant measures to prevent and combat all forms of violence against women.

6 Women's Aid Annual Report 2020.

7 United Nations Comprehensive Response on Covid-19 -*The Impact on Women.*

8 Tusla – Child and Family Agency Annual Report 2015.

9 Women's Aid Annual Report 2020.

affected by it by virtue of living in a home in which violence is directed at a parent or sibling. In that regard, in a European context, it has been noted that 73% of women who have experienced physical or sexual violence by a current or a previous partner indicate that their children have become aware of the violence[10].

1.3.6. While law and policy have to date addressed the violence directly endured by children in their homes, less attention has been afforded to date to the indirect child victim. The Istanbul Convention does recognise this child when it notes in its Preamble that "children are victims of domestic violence, including as witnesses of violence in the family". We note also that the Third National Strategy on Domestic, Sexual and Gender-Based Violence has, for the first time in such documents, explicitly referred to the impact of violence within a family upon the 'child observer'. Throughout our research we will of course regard both 'categories' of children as victims. In all of this, we cannot forget that in some cases, children are themselves the alleged perpetrators of domestic and/or sexual violence. Research shows, in fact, an increasing level of reporting of sexual violence by child perpetrators[11] and special considerations arise in such instances.

1.4. Definitions

1.4.1. The Third National Strategy on Domestic, Sexual and Gender-Based Violence refers to the following definition of 'domestic violence' employed in the Istanbul Convention: "all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim[12]".

1.4.2. 'Sexual violence' is defined in the Istanbul Convention as "any sexual act performed on the victim without consent"[13].

1.4.3. Neither domestic violence nor sexual violence are crimes in themselves but both terms embrace a broad range of offences. As far as domestic violence is concerned, it includes offences such as assault, harassment, false imprisonment, criminal damage or making a threat to kill. The *Domestic Violence Act 2018* criminalised 'coercive control' for the first time in this jurisdiction. The

10 EU Fundamental Rights Agency Survey: *Violence against Women: an EU-wide survey.* Main Results published 2014.

11 The Irish Times, *Children were confirmed or suspected perpetrators of 20% pf sex crimes last year,* May 15 2020; see also Judge John O'Connor, Reflections on the Justice and Welfare Debate for Children in the Irish Criminal Justice System, 1 Irish Judicial Studies Journal 1 (2019).

12 Article 3 (b). In the Barnardos 2021 Report *A Shared Understanding of Childhood Domestic Violence and Abuse,* children and young people described their experience of domestic violence in the following terms " It is shouting, name calling, crying, shattered glass and sometimes punches, bruises and blood. It gets louder and louder, they don't think we can hear it, but we can hear it in our rooms, when we are in bed even if it is in the last corner of the house. It's like a fighting match and we are worried that mam might get killed. When he texts and rings he only asks about mam …It's a really bad feeling in our heart, and it feels like it's broken. We feel very, very angry, afraid, frustrated, worried, scared, confused, nervous and sad… Sometimes we feel it in our bodies too, we might get weak, our eyes might go black, we get a pain in our belly, our bones start to hurt and sometimes we don't feel like eating a lot. Sometimes we feel like hurting ourselves to make all our problems go away."

13 European Institute for Gender Equality (EIGE) (2017). Glossary of definitions of rape, femicide and intimate partner violence.

introduction of this new offence[14] represents an important step forward as patterns of coercive control over key aspects of the victim's life are often at the core of domestic violence within a relationship, and occur in tandem with more familiar criminal acts. Coercive control can involve, for example: isolation from friends, family and other potential sources of support; threats to 'significant others' including children; control over access to money, personal items, food, transportation and telephone. Abuse of this nature is not a once-off occurrence, but involves a persistent pattern of behaviour designed to control and instil fear into the victim. The *Domestic Violence Act 2018*, like its 1996 predecessor, also provides that it is a summary criminal offence to breach any of the orders granted under the Act.

1.4.4. It is commonly recognised that sexual violence within the confines of a relationship often occurs alongside domestic violence[15] and indeed is a form of domestic violence in and of itself and we will bear that considerable overlap in mind when using the term 'domestic violence' in our research. The term 'sexual violence' is understood to encompass, by way of example, the criminal offences of rape; aggravated sexual assault; sexual assault; defilement of a child; the production, distribution and possession of child pornography; the sexual exploitation of a child; child trafficking and taking a child for purposes of sexual exploitation; soliciting, importuning or meeting a child for the purpose of sexual exploitation; incest and indecent exposure. Attempts to commit any of the foregoing are in themselves criminal acts.

1.5. Methodology

1.5.1. In preparing this report, we conducted both interviews and desk research. In that regard, we conducted interviews with a range of people with both personal and career experience of the various processes with which we are concerned. We listened to how they have experienced, observed or studied the victim's journey through those various systems. Many noted the potential benefits to victims of collaborative and co-ordinated work among the systems and made suggestions about how the victim's experience at the points of intersection could be improved. We trust that the voices of our interviewees will be heard throughout this Report.

1.5.2. All of our interviews were conducted and recorded in accordance with the various formulations of the *in camera* rule at play in the relevant systems under consideration. To that end, while discussion took place in the course of some interviews about the overall legal process, there was no discussion about what took place in the court nor about the content of documentation prepared for court. We also devised and implemented a policy for ensuring compliance at all times with the requirements of GDPR and the *Data Protection Act 2018*. It is to be noted, furthermore, that we do not attribute any comments to anybody nor provide any means by which the source of any particular comment may be identified.

14 In Section 39 of the *Domestic Violence Act 2018*, the offence of coercive control is described in the following terms: (1) A person commits an offence where he or she knowingly and persistently engages in behaviour that (a) is controlling or coercive, (b) has a serious effect on a relevant person and (c) a reasonable person would consider likely to have a serious effect on a relevant person. (2) For the purposes of subsection (1), a person's behaviour has a serious effect on a relevant person if the behaviour causes the relevant person – (a) to fear that violence will be used against him or her, or (b) serious alarm or distress that has a substantial adverse impact on his or her usual day-to-day activities.

15 Women's Aid Report – *Unheard and Uncounted* – Women, Domestic Abuse and the Irish Criminal Justice System- 2019.

1.5.3. We have worked under the guidance of an Advisory Committee with whom we have consulted throughout the research process. That Committee was appointed by the National Women's Council in collaboration with the Department of Justice and comprised of people with expertise in the fields under consideration.

1.6. Relevant Human Rights Standards

1.6.1. In our research, we have at all times borne the fundamental principles underlying our legal system in mind, having due regard not only to the rights of the victim but to the rights of the alleged perpetrator and, indeed, to any overall 'interests of justice' in a given situation.

1.6.2. Both adult and child victims of domestic or sexual abuse have constitutional rights in and outside of the courtroom. The violence which prompted or compelled a victim to engage with a legal process may violate some if not all of their rights to dignity, bodily integrity, identity and self-determination, as protected under Article 40.3 of the Constitution. The State's overarching obligation to protect and vindicate those rights must ensure that its legal processes do not further violate rights already grossly violated by the acts of a private individual.

1.6.3. In civil legal processes, the victim – like the alleged perpetrator – has a constitutional right to a fair hearing and to have the benefit of fair procedures, guaranteed once again by Article 40.3. In the context of criminal proceedings, the alleged perpetrator has a constitutional right to a fair trial guaranteed by Article 38.1 of the Constitution, while as a complainant in the criminal process and a witness in the trial, the victim has a constitutional right to dignity.

1.6.4. Violations of various rights guaranteed by the European Convention on Human Rights – such as the right to life guaranteed under Article 2, the right to be free from torture and from inhuman or degrading treatment protected under Article 3[16]; the right to respect for private and family life guaranteed under Article 8; and the prohibition of discrimination provided for under Article 14 – have all been found in cases involving domestic and/or sexual violence that have come before the European Court of Human Rights. That Court has provided guidance in its judgments regarding the nature of the obligations which those various Articles impose upon States Parties to the Convention.

1.6.5. The *European Convention on Human Rights Act 2003* imposes obligations on organs of State such as An Garda Síochána and the Child and Family Agency, to perform their functions in a manner that is compatible with the Convention. Any failure in that regard on the part of an organ of State can be raised in Irish courts and, furthermore, policies should be drafted by those organs with its ECHR obligations in mind[17]. Consideration will be given throughout the Report to the extent to which relevant practices of organs of State meet their obligations to act in accordance with the requirements of the Convention, as imposed by the Act of 2003.

16 See, for example, *Bevacqua and S. v. Bulgaria,* App no 71127/01 (ECtHR, 12 June 2008); *Kalucza v. Hungary,* ECtHR, 24th April 2012.

17 A detailed analysis of child protection obligations imposed by the European Convention on Human Rights is found in O'Mahony, *Child Protection and the ECHR: Making Sense of Positive and Procedural Obligations* (2019) 27 International Journal of Children's Rights 660. 37 and in the Annual Report of the Special Rapporteur on Child Protection 2020.

1.7. Concluding Comments

1.7.1. Benefits to victims can accrue by the use of approaches that reduce the trauma to victims *as they pass through* the various processes. They can also accrue *after the proceedings are over* by more just conclusions reached in those legal processes. While the latter type of improvement does not reduce the re-traumatisation that a victim suffers while they navigate the processes in which they have become bound up, they are nonetheless a central part of our research as they aid the longer-term recovery of the victim. Thus, while Chapters 3 and 4 address issues that impact negatively upon the victim's experiences while they are in the process/processes, Chapter 5 relates to procedural issues that will have a longer-term impact upon the victim in the sense that they will facilitate the creation of better systems and processes. One exception relates to the joint interviewing of child victims by the Child and Family Agency and An Garda Síochána, as that can both reduce the re-traumatisation brought about by having to repeatedly relay accounts of the violence in question *and* improve outcomes. We have addressed that issue in Chapter 5.

1.7.2. As our focus is on the actual experiences of victims as they navigate the various processes, we will consider not just the legislation and espoused practices among the various institutional actors that victims encounter along the way, but also to look at how the legislation and practices are actually implemented. We will also look at how other countries have tried to deal with the problems that emerge when systems intersect and will consider whether those practices can be transposed into our own legal system. Once a given topic is considered, we will make recommendations for reform, where appropriate, and will collate all of those recommendations into our Recommendations chapter.

1.7.3. We are conscious at all times that there is no identikit picture of either a victim of domestic and/or sexual violence nor of their experience in the various processes. A range of factors are at play, not least of which is geography. It is common knowledge that the ease of access to a range of support services in many aspects of life is dependent upon the part of the country in which a person resides and this may be the case in relation to this study also. We are also extremely aware that certain groups of victims, such as migrants, Travellers, people with disabilities and members of the LGBTQI community – often already facing additional burdens in ensuring the vindication of their general rights – can be particularly vulnerable and isolated in these legal processes.

1.7.4. Finally, this research will represent the state of play at a particular point in time as far as the development of policies and practices to protect the victim of domestic and/or sexual violence is concerned. Practices and policies are in flux and ever-evolving in this vital area. This research was conducted over a short period of time – from the end of January to April 2022. As we were finalising the first draft of our report, the Association of Garda Sergeants and Inspectors made public its demand for in-person victim-centred inter-agency training for all members of An Garda Síochána in order to enable them to respond appropriately when they encounter domestic violence issues. The *Irish Traveller's Access to Justice* Report was then published in June 2022, detailing the experience of Traveller victims of domestic violence of the criminal justice process. The Child and Family Agency's new Child Abuse

Substantiation Procedure came into force in July of 2022. The first review of the 2017 Joint Working Protocol between an Garda Síochána and the Child and Family Agency is being prepared and while initially due to be concluded before the end of 2022 is yet, as of March 2023, to be published . Also due for publication by the end of 2022 was a Data-Sharing Agreement between an Garda Síochána and the Child and Family Agency, yet we understand that too remains to be completed. The Family Justice Strategy 2022-2025, published in November 2022, was developed by a Family Justice Oversight Group chaired by the Department of Justice and made up of representatives across the family justice system. The Group's recommendations, which seek to promote the establishment of a "coordinated, consistent and user-friendly family justice system", were informed both by the involvement of NGOs and academics and also by a consultation process to which relevant stakeholders, including children and young people, contributed. The Strategy, which overlaps in a number of respects with the issues considered in this report, provides that it aims to support the proposed legislative changes set out in the *Family Court Bill 2022*. This Bill, which in early March 2023 is at the Second Stage in the Seanad, provides for a large-scale overhaul of the family justice - both private and public law – systems. Finally, the *OECD Report: Modernising Staffing and Court Management Practices in Ireland: Towards a More Responsive and Resilient Justice System*, finalised in December 2022, and the Judicial Planning Working Group report which followed in early 2023 both identify major areas of reform of the justice system which and when are implemented, should have a very real impact upon victims' experiences as they travel through and emerge from the civil court processes.

2. The Application of the *In Camera* Rule in the Three Court Processes

2.1. Introduction

2.1.1. Before proceeding to the substance of the report, it is necessary to discuss in outline the *in camera* rule as it is a rule which will appear over and again when addressing the issues that require our attention. Restrictions apply upon the attendance of the public at court hearings in all three of the systems under consideration, based upon a desire to protect the privacy of adult and child litigants in these most sensitive and difficult parts of their lives. When legislating to provide for the exclusion of the public from the courtroom during these proceedings, the Oireachtas has chosen to depart from the principle articulated in Article 34.1 of the Constitution to the effect that, save where otherwise provided by law, justice shall be administered in public.

2.1.2. There are, however, considerable differences between criminal proceedings and civil proceedings as far as the nature of those restrictions are concerned. In criminal proceedings involving alleged offences pertaining to sexual violence, the various governing statutes provide that the public *may* be excluded from the courtroom during the conduct of the proceedings. Exceptions are made for *bona fide* members of the press and the right of certain persons, such as parents, relatives, support workers and so forth to remain in court[18]. It is an offence to publish any material which would identify a victim, although an adult victim may waive his or her right to anonymity. Although the statutes in question are drafted in permissive terms, it has become a well-developed practice for courts to exclude the public from such trials and the O'Malley Report endorsed the view that the public should indeed be so excluded.

2.1.3. A considerably more rigorous form of the *in camera* rule is found in the two civil law systems in question which are regulated by statutes providing that the court processes shall be conducted 'otherwise than in public'[19]. It is a contempt of court to disclose what went on in court although, as we will see below, certain statutory exceptions have now been created.

2.1.4. All documents, whether pleadings or professional reports, prepared for the purposes of these civil proceedings are themselves subject to the application of the rule, although in the context of private family law proceedings, an exception has been created permitting documents presented or prepared in anticipation of private family law proceedings, and information or evidence given in those proceedings, to be disclosed to a member of an Garda Síochána for the purposes of the conduct of an investigation[20]. However, no such documentation, information or evidence prepared or used in child care proceedings can be so disclosed in this manner, unless, as discussed in Chapter 5, an Order for Discovery is made giving permission for documents to be disclosed to persons not involved in those proceedings for use in other proceedings. In criminal proceedings, however, no comparable restrictions appear to apply. Thus, Gardaí can, without the approval of the criminal court, let documents be given, for example, to the Child and Family Agency for use in child care proceedings. Whether and when the Gardaí choose to do so, however, is discussed in Chapter 5.

18 For a more detailed discussion on this topic, see Chapter 4 of the O'Malley Report.

19 Although the terms "in camera" and "otherwise than in public" are both use in statute and are generally understood to mean the same thing, it has been argued that somewhat different meanings attach to each term; see Craven-Barry. C., Transparency in Family and Child Law, 3 Irish Judicial Studies Journal 1, 2019. We use the term here in an interchangeable manner.

20 Section 40(6) and (7) of the *Civil Liability and Courts Act, 2004*. This approach is followed in the *Family Courts Bill 2022*.

2.1.5. The *Civil Liability and Courts Act 2004 as amended and the Child Care (Amendment) Act 2007 as amended* permit the attendance at family law and child care proceedings of certain authorised persons, such as personnel from the Family Law Reporting Project and the Child Care Reporting Project, on the basis that nothing that would tend to identify the parties or any child will be published in the reports produced on foot of such court attendance. Those two Acts also permit representatives of designated authorities such as the ESRI, the Law Reform Commission, academic institutions etc. to attend and report on the same conditions as outlined above. The *Courts and Civil Law (Miscellaneous Provisions) Act 2013 as amended* enables *bona fide* members of the press to attend family law proceedings and to publish reports, subject to certain conditions designed to ensure the anonymity of the parties. Finally, the *in camera* rule has also been modified to permit persons to share publicly the nature of the order made by a court at the conclusion of a hearing. Those provisions of the *Family Courts Bill 2022* which regulate *in camera* proceedings largely re-instate the relevant provisions of the above Acts[21].

2.1.6. While the rationale underlying the *in camera* rule – that of protecting the victim's privacy in the context of these most difficult processes – is clearly a worthy one, the application of the rule has given rise to many problems including a feared lack of consistency in decision-making, and the area is in need of comprehensive review and reform. For the purposes of this report, however, we confine ourselves to those aspects of the rule which impact upon the experience of victims as they navigate their way through the various overlapping legal processes and those which impact upon the conclusions reached within those processes. As the issues arise in the course of the Report, we will consider at that juncture whether or not the application of the rule impacts negatively upon the victim's experiences in the various legal processes. One separate and distinct issue does arise, however, for consideration here, as it will not arise for consideration again at any later point – that is the impact of the rule upon research into, and policy formulation regarding, the victim's experience in the various court processes.

21 Sections 96-98 of the *Family Courts Bill as initiated.*

2.2. The Impact of the Rule upon Research and Policy formulation

2.2.1. Both the Istanbul Convention and the 2007 Council of Europe *Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse* (from here on referred to as the Lanzarote Convention)[22], impose obligations upon State Parties to ensure the collection of relevant data in relation to violence against women and the sexual abuse of children respectively. Ireland has ratified both of those instruments and has likewise ratified the *United Nations Convention on the Rights of the Child* which has been interpreted by the Committee monitoring its implementation as requiring both data collection and the conduct of relevant research. Those obligations stem, in essence, from an awareness that data should be a strategic asset in the attempt to reduce the prevalence of domestic and/or sexual violence and to assist in victim recovery when it does occur. In observing, evaluating and, ultimately, understanding the many facets of the problem, both quantitative and quantitative data can assist in the formulation of appropriate policy and legislative responses to the issues.

2.2.2. Unfortunately, the *in camera* rule has had a very negative impact upon the development of a body of data and of research in relation to many vital details of the civil court experience in domestic and/or sexual violence cases. In its *2019 Report on Reform of the Family Law System*, the Oireachtas Committee on Justice and Equality, having heard from a range of interested stakeholders noted that: "It has been largely accepted that there is a need for greater transparency in the family courts system, particularly with regard to the dissemination of information to the public, the ability to perform research and report on proceedings and the gathering and collating of data in relation to cases."

2.2.3. As far as the conduct of research regarding the court experiences of victims of domestic and/or sexual violence is concerned, it was hoped that the enactment of the *Civil Liability and Courts Act 2004,* the *Child Care (Amendment) Act 2007* and the *Courts and Civil Law (Miscellaneous Provisions) Act 2013, a*s described above, would facilitate the development of a comprehensive body of research and data in relation to domestic and sexual violence. This potential has not materialised save for the important work done to date by the Family Law and the Child Law Reporting Projects. The reluctance to engage in court-focussed research in these areas stems, in large part, from a lack of clarity about the parameters of the rule; it not being possible to discern with the necessary degree of certainty what is permissible under the rule and what is not. As Dr, Kenneth Burns of UCC indicated to the Oireachtas Committee on Justice and Equality, prior to the publication of its 2019 Report, the above Acts provide permission to attend at, and report upon, these proceedings, but do not appear to cover research with participants *outside* of the court room. Dr Burns outlined that the precise parameters of what is prohibited are not clear, and stated that:

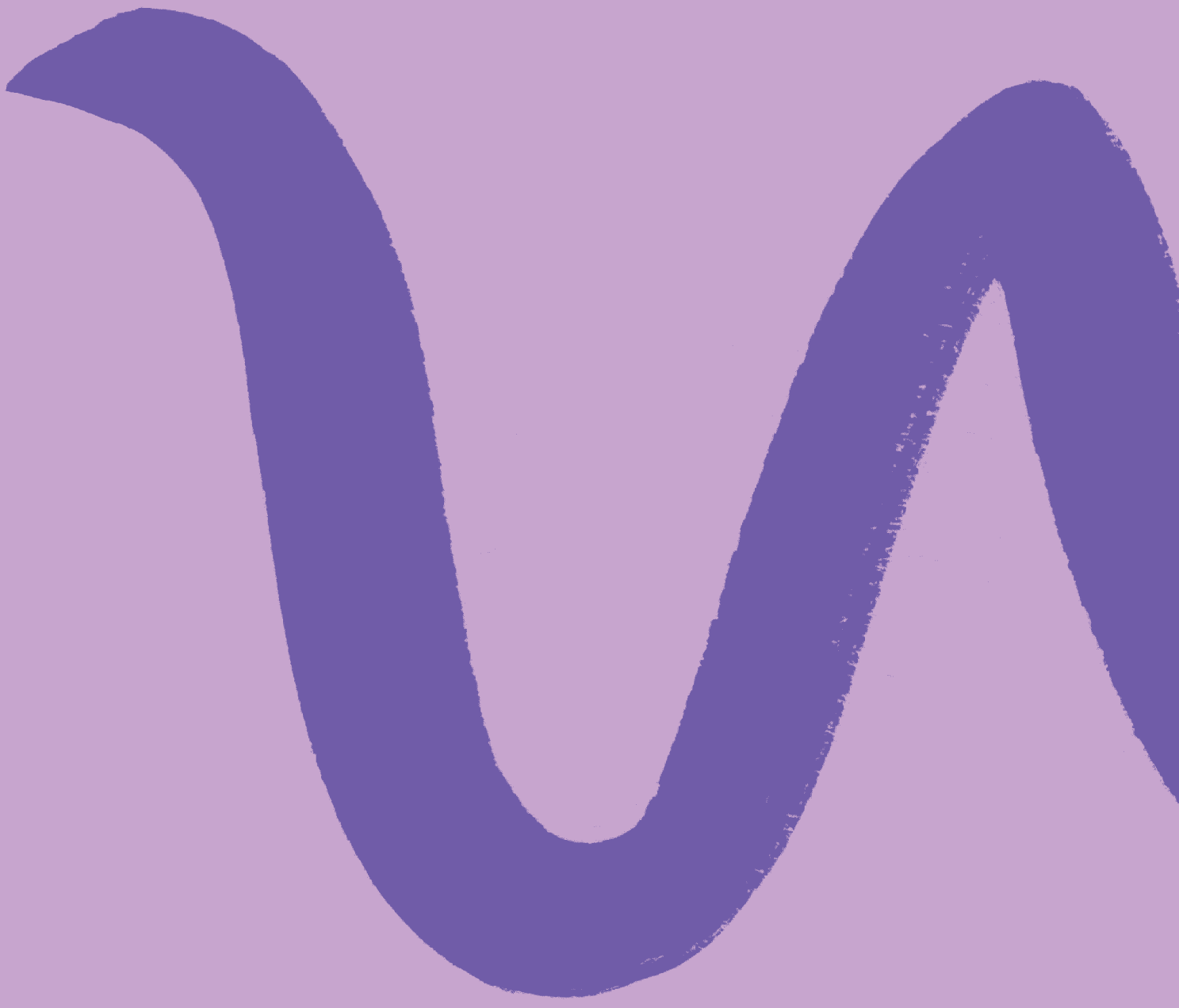
22 This Convention, ratified by Ireland in 2020, requires state parties to take the necessary measures to ensure the co-ordination on a national or local level between different agencies dealing with protection of children from sexual exploitation and sexual abuse.

> "Whether any particular conversation about a set of in camera proceedings would breach the rule largely comes down to the subjective opinion of individual judges. In essence, any person involved in in camera proceedings in the field of child protection, private family law or elsewhere risks being held in contempt of court every time he or she discusses the proceedings with anyone other than his or her legal representative or the other parties to the proceedings. The law neither clearly allows nor prohibits interviews with children, young people and their parents. In the absence of clarity, researchers, children, young people and parents are at risk of being held in contempt of court. The in camera rule has therefore had a chilling effect on research, thereby silencing the voices of children, young people and parents who are most impacted by proceedings."

2.2.4. We therefore recommend that the 2004, 2007 and 2013 legislation be amended in order to enable the authorised persons identified in the 2004 and 2007 Acts, and *bona fide* members of the press, to conduct pertinent discussions with parties to the proceedings once the proceedings are concluded. Any publication arising from such engagement must be subject to the existing restrictions in relation to the removal of all details which would identify or tend to identify the parties or any children involved. The Minister for Justice may, by statutory instrument, add to the list of persons authorised to conduct research.

2.2.5. As noted above, in the remaining chapters of this report, we will return to consider the impact of the *in camera* rule on a topic by topic basis and will at each such point address the need, if any, for reform of the rule in relation to each topic.

3. The Knock-on Effect of Certain Causes of Attrition



3.1. Introduction

3.1.1. In this chapter, we wish to consider four specific matters which emerged from the interviews with victims and their support persons as issues which affected victims to such an extent that it caused them to seek to pull out from *all* of the court processes in which they were simultaneously involved:

1. The absence of comprehensive court and non-court support for victims.
2. A systemic lack of understanding of victims' realities.
3. The effect of delay on victims.
4. The environment of the court.

Inessence, those experiences were so traumatising that the adult victim wished to retreat from each of the court processes in order to protect themselves. This is surely the very epitome of a response to secondary victimisation. While none of these issues are new – all have been written about before at some length – the additional, possibly novel, feature emerging from the conversations we had with interviewees is that a distressing experience in one set of proceedings prompted a desire to withdraw not just from that set of proceedings but from all of the proceedings in which the victim was at that time involved. In other words, these four examples emerged as cross-system attritional factors, showing that certain negative experiences in one system can have a knock-on effect upon the victim's willingness to continue engaging in another simultaneous court process. While other issues within each system caused distress to other victims, the four issues involved below had the contagious effect just described.

3.1.2. While the sample of interviews that we conducted with victims may in one respect be said to be small, each of the professionals whom we encountered has worked with many victims and so, through those professionals, we obtained insights into the experiences of a considerable number of victims.

3.1.3. We should also note that, in the case of some victims, it was made clear to us that they had wished to pull out of all of the systems when they encountered a difficulty of the nature described below but ultimately did not do so, because of the fact that they had the guidance and assistance of a support person to help them to move past their traumatic reaction. It is therefore fitting that the first cross-system attritional factor relates to the absence of such support on a comprehensive basis.

3.2. The Absence of Comprehensive Court and Non-Court Support for Victims of Domestic and/or Sexual Violence

3.2.1. The O'Malley Report acknowledges that court accompaniment support is one of the most commonly used and helpful procedures in sexual offence trials, in other criminal trials, and in civil proceedings in respect of orders granted under the *Domestic Violence Act 2018*, whether such accompaniment be provided by a close friend, family member or a trained professional. The Report continues that:

> "Support from court accompaniment can greatly lower stress and uncertainty for victims and other witnesses from as early as the reporting stage through to the conclusion of a case. This has been recognised in both the Criminal Justice (Victims of Crime) Act 2017 and the Domestic

Violence Bill 2018 which provide for court accompaniment by a person of the victim's choice, including by a support worker from a victim support organisation."

3.2.2. The O'Malley Report then acknowledges the very real support that is provided to victims of sexual crime in courts around the country by personnel from certain non-governmental organisations dedicated to the support of victims. Many of those organisations also provide support to victims of sexual violence when in the civil law processes and to victims of domestic violence in civil and criminal processes. We understand that such services are provided to victims when attending court as witnesses in criminal proceedings in approximately two thirds of the court houses around the State but, although no figure is available to identify the percentage of courthouses in which support in civil actions is available, it is generally acknowledged that it is a lower figure. Research has consistently shown that where court accompaniment services are available to victims, there "are fewer withdrawals of civil applications and fewer refusals to make complaints or withdrawal of complaints"[23]. Indeed, in its June 2020 Report, *Understanding Court Support for Victims of Domestic Abuse*, the Domestic Abuse Commissioner of England and Wales concluded that "the single most commonly cited intervention that improved survivors' experience of going through the courts was dedicated court domestic abuse support".

3.2.3. When we conducted interviews with victims and the court support personnel who accompanied them, we listened to the account of victims who found all of the unfamiliar court processes "frightening", "terrifying", "intimidating" and "chaotic". They found themselves thrust into a court system that employs its own technical language and which invokes procedures of which lay people often have little grasp. Bearing in mind that many of the victims are still suffering trauma from the violence in question, it is understandable that victims who are involved in two or more simultaneous parallel processes can be unclear at times which process a given court appearance relates to or, more commonly yet, which process the assessment or meeting that they are obliged to attend stems from. Many to whom we spoke felt that they would not have been able to proceed with the court process without the support of a person who provided, in the words of one interviewee, a "steadying presence" in the chaotic court experience.

3.2.4. All of the support-personnel with whom we spoke were involved with NGOs engaged in the provision of support to victims of domestic and/or sexual violence or sometimes both. Some of those people were working in a voluntary capacity, others were employed on a part-time basis due to the limited level of funding that their organisation received, while a smaller number represented organisations with sufficient funding to employ some full-time staff. All appeared to be hugely dedicated to the provision of the supports but spoke about not being able to accompany many of the people that sought to be accompanied through the court processes, indicating that they often have to decide which process to attend by identifying which of them is causing the greatest distress to a particular victim at a given time. Some interviewees said that very occasionally their organisation was able to assign the same person

23 1 See Reid, 1995 and Reid, 1997, both considered in the Women's Aid *Safety and Sanctions Executive Summary 1997.*

to a victim for both the civil and criminal processes for at least part of those processes, but this was, unfortunately, the exception and not the norm. Many indicated that they could not guarantee attendance at every court appearance for their assigned victim and, while they endeavoured to assign one person to one victim, this was not always achievable, given staffing restraints. A clear picture emerged from the interviews of a support system that is straining under the volume of help that is needed. That workload was unsustainable before the Covid-19 pandemic, but the situation has worsened considerably now. We heard how increasingly the staff are compelled by lack of staffing resources to leave victims, already traumatised by what has happened, to face the ordeal of court alone.

3.2.5. The provision of consistent and comprehensive court support to all victims of domestic and/or sexual violence as they navigate *all* of the legal processes is an important step in the development of a court system that properly respects the dignity of victims[24]. In the course of discussions with interviewees, it became clear that their preferred option was one which provided this continuum of support, with ideally one small team of the same support persons assigned to a victim for all of the court processes, meetings and assessments with which the victim must engage. That team of persons would also provide certain non-court supports and, as different issues and needs emerge at different points in time, identify in a timely way the nature of any specialist support needed for the victim. As the Victims' Directive provides in the context of criminal proceedings,[25] the main non-court support task will be "to inform victims about the rights set out in this Directive so that they can take decisions in a supportive environment that treats them with dignity, respect and sensitivity. The Directive also makes it clear that non-court victim support services are not required to provide extensive specialist and professional expertise *themselves*, adding that "if necessary, victim support services should assist victims in calling on existing professional support, such as psychologists". These roles are already being undertaken on behalf of victims by many NGOs but, once again, all of the comments made about the limitations of the services on offer in relation to court support due to shortage of funding apply also in this regard.

3.2.6 The Family Justice Strategy recommends the conduct of research into the potential role of a Court Liaison Officer to help guide families through the family justice system. From the interviews that we conducted, the understanding gleaned is that victims of domestic and/or sexual violence felt comforted by the notion of having a compact assigned *team* of support throughout the entire life of the many court processes, viewing the continuum of support that such a team approach would entail as the best means of providing the necessary assurance in the intimidating environment in which they have found themselves. When properly resourced, such support personnel can engage early on with the victim, in order to provide a real chance of developing strong

24 The need for such court-support services is recognised in the Directive on Victims' Rights which pertains to the criminal process and which provides, at paragraph 37, that:"Support should be available from the moment the competent authorities are aware of the victim and throughout criminal proceedings and for an appropriate time after such proceedings in accordance with the needs of the victim and the rights set out in this Directive. Support should be provided through a variety of means, without excessive formalities and through a sufficient geographical distribution across the Member State to allow all victims the opportunity to access such services. Victims who have suffered considerable harm due to the severity of the crime could require specialist support services."

25 Paragraph 38.

relationships with a victim as an individual, promoting the trust and confidence critical for the successful navigation of these complex and daunting processes. It appears that the system of support at present relies upon the dedication and commitment of an over-stretched cohort of staff and volunteers who can neither offer that continuum of support to those who do get the benefit of their services nor, indeed, can provide any real service to many victims at all. It also appears that there is a real geographical disparity in terms of the service with support services too stretched to cover some courts in certain areas at all.

3.2.7. The envisaged support team should be led by a support leader who will assign different roles to the other team members in order to ensure that all necessary roles – court and non-court based alike – are fulfilled. We believe that the non-court role played by members of the team corresponds with the "case management/key worker advocacy approach across each sector for all victims/survivors" role alluded to in the Third National Strategy on Domestic, Sexual and Gender-Based Violence. Of course, this overall proposal requires that adequate resourcing be provided to ensure that this comprehensive network of support operates in an effective way to best meet victims' needs.

3.2.8. In light of all of the above, we recommend that the State provide or commission the provision of properly resourced needs-based support teams, led by a support leader for victims of domestic and/or sexual violence, from the commencement of their engagement with the first legal process until a reasonable period of time after the conclusion of the final process, to each victim who so wishes.

3.2.9. All such support persons in Ireland should obtain accredited evidence-based and best practice ongoing training, including training necessary to address any particular issues that arise when providing support to victims from certain groups in society – such as migrant victims, Travellers, people with a disability and members of the LGBTQI community. Appointment of support personnel from those communities should be encouraged in order to enhance the level of engagement of people from such communities who may have specific concerns and fears. It is envisaged and hoped that many of the committed people working in the sector would continue to provide their assistance under the new recommended support regime.

3.2.10. We also recommend that training be provided to members of the judiciary, lawyers and Courts Service personnel to explain and promote the role of such support persons in the various processes. The role should also be recognised, explained and promoted in Courts Service guides.

3.2.11. The question also arises as to whether or not a victim can discuss with a support person, whether for clarification purposes or otherwise, what has transpired in the court room in a civil law process. In circumstances where we have been told on many occasions that victims have not fully comprehended what has transpired in court, it is contended that it is both unreasonable and contrary to a right to effective access to justice to prevent such discussions. We therefore recommend that all relevant legislative provisions regarding the in camera rule in civil law applications be amended to permit parties to discuss the content and outcome of proceedings with support personnel, who will remain bound by confidentiality obligations at all times in relation to those discussions. Such provisions must, however, specify that when a victim has entered the witness

box and has commenced but not concluded cross-examination, then he or she may not discuss the proceedings with a support person.

3.2.12. More generally, it is noted that discussion of court events with persons engaged in the provision of therapeutic support may form a necessary part of the recovery process and so we recommend that all relevant legislative provisions regarding the in camera rule in civil law applications be amended to permit parties to discuss the content and outcome of proceedings with support personnel, who will remain bound by confidentiality obligations at all times in relation to those discussions. Such provisions must, however, specify that when a victim has entered the witness box and has commenced but not concluded cross-examination, then he or she may not discuss the proceedings with a support person.

3.2.13. In the course of these interviews, we also learnt that problems persist even when a court-support person is assigned to accompany a victim to court, at least in the context of civil court applications. On numerous occasions, we heard of court-support persons being refused without reason permission to enter the courtroom when applications pursuant to the *Domestic Violence Act 2018* and other private family law applications were being heard. Sometimes they indicated that they were refused entry by the Courts Service staff, legal representatives (sometimes the victim's own lawyer) or the presiding judge, even though a party to proceedings under Section 26 of the *Domestic Violence Act 2018* has a statutory right to have a support person with them unless that would be contrary to the interests of justice, a matter which must be determined by the court on a case-by-case basis with reasons being provided by the court if it refuses to grant such permission[26]. In the context of other private family law applications, Section 40(5) of the *Civil Liability and Courts Act 2004 as amended* provides that the *in camera* rule[27] shall not prohibit a party to such proceedings from being accompanied by another person in court, subject to the approval of the court and any directions that it may give in that regard and the relevant provision of *The Family Courts Bill 2022* corresponds very closely with Section 40(5).[28] In the absence of quantitative data on the extent to which support persons are denied entry into court in this jurisdiction, we refer to the concerning statistic set out by the Domestic Abuse Commissioner for England and Wales in her 2020 Report that 21% of the court-accompaniment personnel in that jurisdiction say that they have been blocked from entering court, despite there being a statutory basis for their attendance.

3.2.14. In our opinion, the stronger language employed in Section 26 of the *Domestic Violence Act 2018* is preferable to that adopted in Section 40(5) of the *Civil Liability and Courts Act 2004* and indeed in the current *Family Courts Bill 2022*. We therefore recommend the insertion of an additional provision into the current *Family Courts Bill 2022* which permits accompaniment for parties who allege domestic and/or sexual violence in those private family law proceedings to which the Bill refers, unless such accompaniment would be contrary to the interests of justice, and imposes an obligation upon a judge who refuses such permission to give reasons for that refusal.

26 Section 26(2).

27 Section 40(5) provides that "Nothing contained in a relevant enactment shall operate to prohibit a party to proceedings to which the enactment relates from being accompanied, in such proceedings, in court by another person subject to the approval of the court and any directions it may give in that behalf."

28 Section 97(5).

3.2.15. In light, furthermore, of our understanding that support persons continue to be refused entry to courts on an unreasoned basis, and given the importance of this supportive presence, we recommend the adoption of a practice direction clarifying the position in relation to the attendance in court of persons accompanying parties to in camera civil proceedings.

3.2.16. It is hoped that the combined effect of the adoption of the above recommendations will be to avoid a situation whereby some support persons are permitted to support some clients through the court process, while others are not so permitted without valid reason.

3.2.17. Many different considerations arise when trying to determine the merits of appointing a support person for child victims of domestic or sexual abuse than those which arise in the context of adult victims. If such adult victims are unclear about and daunted by many of the things that take place in the various legal processes, it is to be expected that a child's response to those processes will be one of even greater distress and discomfort. If a support person – as opposed to a support team – role were to be extended to child victims, it is clear that she or he would have different functions to those of an adult's support person, as the child's interactions with the court processes are themselves markedly different to those of an adult. The child generally makes limited appearances in court – mainly appearing as a victim in criminal courts for the purposes of cross-examination – for which a child's support person could prepare him or her. The support person could attend assessments and interviews with experts with the child, along with parents or guardians as appropriate. It is clear that, save in exceptional circumstances, the consent of that parent or guardian to the involvement of such a support person would need to be garnered and so, if the role were adopted, it would be imperative that that person engage with them at the outset and facilitate, if possible, the development of a relationship of trust there too.

3.2.18. It is clear, however, that whenever a child is forced into these legal processes, there are quite a number of professionals coming in and out of their lives and we recognise that adding another professional adult to an already saturated situation may not seem advisable to some. Yet perhaps that is one of the very real attractions behind such a role – a child's support person could be a constant presence to whom a child could turn, as other professionals come and go once their particular role is completed. The role of a child's support person would need to be clearly defined in order to ensure that it would not encroach upon any others, in particular the child's social worker and any *Guardian ad Litem* appointed in the context of child care proceedings. It could be hoped that this support person could be the closest thing that the child will have to a continuous supportive presence for the duration of all of the processes. In this regard, we note the following submission of The Children Living with Domestic and/or Sexual Violence Group to the Family Justice Oversight Group when devising the Family Justice Strategy "[i]t would be very helpful for children to have one safe point of contact/advocate who would help them feel safe when they come forward, support them to be heard in all systems, explain the proceedings being honest and clear about what is possible to achieve, and provides ongoing case management and outcomes monitoring in [the legal processes in which the child is involved]".

3.2.19. We recommend the conduct of comprehensive research in relation to this issue, in which the input of all stakeholders, including children and aged-out child victims is secured, addressing the ways, if any, in which such a support person could benefit a child going through legal processes and the parameters of such a person's role, if recommended. Furthermore, if the development of such a role is recommended, consideration should be given to the nature of the training and qualifications needed.

3.2.20. In that regard, we note the similarities between this recommendation and the recommendation made in the Family Justice Strategy that research ought to be conducted into "the potential role of a Child Liaison Officer to help guide children through the family justice system", save of course that the parameters of the research which we recommend extends to include support for children while in the criminal justice system.

3.2.21. As children are rarely in the court room in person, the issue of what, if anything, can be explained to them about what happened there is fraught with sensitivity from many perspectives, not least of which is compliance with the *in camera* rule. We therefore recommend that the work alluded to in Paragraph 3.2.30 address the role, if any, of such a support person in the provision of information to a child regarding the outcome of court proceedings.

3.3. A Systemic Lack of Understanding of a Victims' Realities

3.3.1. The second identified cause of attrition which, we heard, impacts upon victims to such an extent that it can make them seek to disengage from all of the legal processes in which they have become involved, is a lack of understanding on the part of the professionals with whom they come into contact of both domestic and/or sexual violence and the impact of such violence. We heard of people feeling "belittled", "stupid" and "guilty" for staying for so long in a home in which domestic and/or sexual violence was taking place and so being responsible for letting that situation persist, being made to feel that they were responsible for exposing their children to such an environment by not reporting it immediately, packing their bags and taking the children out of the house the first time that the violence occurred. The questions asked by numerous professionals failed, we heard, to even begin to grasp the insidious nature of the coercive control that often underlies domestic and/or sexual violence in the home. Having taken steps to inform a professional of the violence that they were experiencing, only to hear such questions which they experienced as accusations levelled against them, triggered a shut-down response in many victims and a desire to disengage from all of the processes in which they found themselves. The Domestic Abuse Commissioner for England and Wales in her 2021 Report found that a "lack of understanding of domestic abuse and the attitudes of court professionals was the most common answer given by those going through the family court when asked what had a negative impact on their experience".

3.3.2. In order to address this situation, many have recognised the need to ensure that all persons involved in the chain of intervention, from a first responder to a judge determining the final issue, have an understanding of the dynamics underlying relational violence and of its traumatic impact upon both adults and children, in the expectation that the questions posed by such persons will alter

fundamentally and that their responses to the victim's answers will likewise change. We heard of such a sea-change on the part of trained Gardaí in the Protective Services Unit and how that has enhanced many victims' experiences considerably in the criminal process. We also learnt how that experience can still be markedly different to that encountered at the hands of Gardaí without such appropriate training. We also learnt from some interviewees of the positive impact of trauma-informed training provided to all staff at Dolphin House in Dublin, where many private family law applications brought in the wake of domestic violence are heard. The fact that every staff member in the building had an understanding of the impact of that violence helped, we were told, to reduce significantly the stress levels of victims. However, the need for an ongoing training and review structure was highlighted by the fact that others have on occasion continued to encounter unsupportive attitudes from personnel in that building.

3.3.3. For many years, the Austrian response to the problem of domestic violence was acknowledged as a most progressive one. Several sources note that the success of the Austrian system relies on the ongoing training of all law enforcement personnel. Systematic, wide-scale, top-down training was organised for police officers after legislation introducing certain new offences such as coercive control was adopted and before it entered into force. The issue of violence against women became an integral part of police training. Likewise, the prevention of gender-based violence, and issues regarding inter-agency co-operation for the purposes of enhanced victim protection are covered in the exams taken by candidates for judicial office. Such candidate judges must also attend practical training at a victim protection and welfare institution. In the family law context, an evaluation conducted there in 1999 pointed out that the "application of the Protection from Domestic Violence Act depends on the persons involved in the intervention process, on their commitment and on their attitudes" and so in-depth training was made available for all family court personnel, including court-appointed experts[29].

3.3.4. In the context of the professionals with whom children engage in these processes, we refer to research conducted in England and Wales which alluded to a general but inaccurate assumption that student social workers learn about domestic violence – its underlying dynamic, its impact upon family and child, and the appropriate means of responding to it[30]. Such an inaccurate assumption was also found in relation to experts commissioned to undertake the reports setting out the welfare needs, or the wishes, of the child, and it was noted that

29 See *Estimating the costs of gender-based violence in the European Union.* Luxembourg: Publications Office of the European Union. 17 See for example: Rosa Logar (2005) The Austrian model of intervention in domestic violence cases; Expert paper prepared for the Expert group meeting "Violence against women: Good practices in combating and eliminating violence against women", organised by the UN Division for the Advancement of Women in collaboration with: UN Office on Drugs and Crime 17 to 20 May 2005 Vienna, Austria. Available at http://www.un.org/womenwatch/daw/egm/vaw-gp-2005/docs/experts/logar.dv.pdf 18 See: Birgit Haller: The Austrian Legislation against Domestic Violence. Available at: http://www.ikf.ac.at/english/austrian_legislation_against_domestic_violence.pdf 19 Sources: Logar, Rosa (2005) The Austrian model of intervention in domestic violence. Paper prepared for the Expert Group Meeting: "Violence against women: Good practices in combating and eliminating violence against women", organised by the UN Division for the Advancement of Women and Logar, Rosa (2014) Mapping the Legislation and Assessing the Impact of Protection Orders in the European member States (POEMS), National report Austria. European Institute for Gender Equality EIGE (2014) Eliminating Violence against Women in Europe -Intersectoral Approaches and Actions. Conference report, Vienna, 25- 26 November, 2013. 3

30 Ministry of Justice (June 2020), *Assessing Risk of Harm to Children and Parents in Private Law Children Cases.*

the absence of such training can and has led to inappropriate conclusions about the risks to, and needs of, child victims being reached. Likewise, in this jurisdiction, the study of domestic violence and its impact is not a mandatory part of the curriculum for student social workers, and while some students may opt to undertake some training of this nature, this is purely optional and we understand that most social workers do not do so. Similarly, there is no requirement here that those undertaking expert reports which so often inform court decisions on access or custody in situations of familial violence, have specialist training in the area. While much is made, rightly, of the lack of uniform relevant training amongst the judiciary, the fact that professionals who make decisions which impact upon the lives of children in such a pivotal way do so without a proper understanding of such violence and its impact is a very real cause for concern. We recommend that the syllabus for all social workers include mandatory studies in relation to domestic and sexual violence of both adults and children and of the impact of such violence. We also recommend that, post-qualification, practising social workers undertake ongoing training to keep their knowledge up-to-date and in line with best practice.

3.3.5 We recommend, furthermore, that all persons assigned to undertake expert reports in both private family and public child care proceedings have completed accredited and ongoing training in the area which they purport to have an expertise. In view of the considerable importance attributed in many courts to the views of such experts, it is also imperative that the basis for their expertise be made known to the court and to all parties to the civil proceedings in which they are engaged and, thus, that training, qualifications and affiliations to bodies and organisations be set out in their reports for court. We therefore recommend the adoption of a practice direction requiring courts to ensure the production of sufficient information and documentation regarding the expertise of all experts whom it is proposed to appoint in the context of all applications pertaining to children. In that regard, courts should require evidence of all relevant training, qualifications and affiliations to bodies and organisations, and should satisfy themselves, prior to making the appointment, that all purported experts have the necessary expertise. In the context of experts chosen in private family law proceedings by the parties themselves without recourse to the court, the court shall, before accepting the expert's evidence, require the production of sufficient evidence of the person's training, qualifications and of the organisations and bodies to which they are affiliated.

3.3.6. The problem is compounded, both in relation to child and adult victims, by the lack of appropriate training of lawyers practising in the areas and, traditionally, of judges dealing with such cases, although progress is being made in the context of the judiciary via the training provided by the Judicial Studies Committee of the Judicial Council. We also note that the *Family Courts Bill 2022* provides that all members of the specialised family courts proposed under the Bill shall be required to take such training and/or education as may be required of them by the Principal Judge of the court in which they sit[31]. We also understand, however, having particular regard to the expanding workload with which members of the judiciary have to deal, that it can be difficult to secure the time to attend such training. Thus we recommend that further and ongoing training is provided to members of the judiciary on issues pertaining to domestic and/or sexual violence, and further recommend that adequate

31 Section 59.

leave is given to members of the judiciary to attend such training.

3.3.7. In many continental European countries, both judges and lawyers are required to have specialist training[32] in order to work in this area. In 2017, the Bar Standards Board of England and Wales published a list of competencies which every barrister should have from the outset in order to act in matters relating to children in youth court proceedings. Similar training should be provided in this jurisdiction to lawyers whose practice touches upon such areas and a list of relevant competencies devised and published by both the Law Society and the Bar Council. We also recommend that the Legal Aid Board require that both, barristers who wish to be placed on its Panel for Counsel in private family and child care courts, and solicitors working on their Private Practitioner Panel, undertake such training.

3.3.8. Much has already been written about the need for, and the desired nature of, training in this area and so we will limit our commentary to saying that, in our opinion, all professionals should undertake ongoing evidence-based training regarding the dynamics of abusive relationships and the impact of relational domestic and/or sexual violence upon adults and children, thus including but in no way limited to 'trauma-informed' training. It must have due regard to best practice standards and, overall, its aim is to ensure a depth of understanding by all personnel engaged with victims throughout the criminal, private family and public law child care processes. The training for social workers must be mandatory and provided at both student and in-service/professional level. It should be provided by qualified and experienced training staff and with the involvement of non-governmental and civil society organisations working in the field. Finally, it should be regularly monitored by external experts to ensure that it conforms with best international practice.

3.3.9. If such training is provided, it is hoped that it will serve to mitigate the trauma experienced by victims and to ensure that the risk posed by offenders is fully recognised.

3.4. The Effect of Delay on Victims

3.4.1. The negative impact on victims of delay in the various court processes was also referred to commonly in interviews and was identified as one of those factors with a cross-process attritional effect. We heard of victims' lives being 'on hold' until they were finished in the courts; that they were unable to move on or to focus on trying to begin rebuilding their lives or the lives of their children in the way that they needed to until all court matters were behind them[33]. Some spoke of making a decision to simply pull out and not proceed to conclusion

32 In France, child protection cases are heard by highly specialised judges trained in child welfare. In Belgium, there is a high level of training and specialisation for lawyers in this area. Members of the Flemish Bar Association and its Youth Lawyer Commission must undertake a two-year course to train as a "youth lawyer". The course has training on children's rights, and trainee lawyers study child psychology as well as methods of communicating with children. In England and Wales, the Bar Standards Board published in February 2017 a list of competencies which every barrister is expected to have from the outset in order to act in Youth Court Proceedings, and they must now be registered.

33 Furthermore, in the context of applications relating to children such as access, custody and maintenance, no real finality is obtainable as such matters can be re-opened by the other parent and indeed it is acknowledged that perpetrators use this entitlement to revisit such matters as a further means of abusing and controlling the other parent.

with any of the cases in which they were involved because of the unbearable emotional toll of such seemingly unending processes.

3.4.2. The issue of delay in bringing court processes to a conclusion, particularly in the context of sexual offences, and its traumatic impact upon victims has attracted much public attention in recent years. In that regard, a 2021 Report entitled *The Realities of Rape Trials in Ireland; Perspectives from Practice*, by Dr. Susan Leahy in partnership with Dublin Rape Crisis Centre, drew on interviews with legal professionals and court accompaniment personnel and concluded that:

> "[B]eyond the discussion of specific legal reforms, the concern most raised by legal professionals and court accompaniment workers alike was delay, with this issue specifically highlighted by a majority of the legal professionals–and all of the court accompaniment workers who were interviewed for the study."

3.4.3. Participants in Dr. Leahy's research spoke of the challenges caused by adjournments, when complainants who have prepared themselves, both emotionally and practically, for the trial to take place on a certain date find themselves at a loss when the trial hearing is put back to a later date, sometimes several months away. As with our interviews, the court accompaniment workers to whom Dr. Leahy spoke emphasised how the delay in the legal process is devastating for complainants whose lives are 'on ice' while they wait for their case to conclude, noting that "Healing and closure can only truly be achieved once the trial process is behind them. Until then, complainants must constantly be mindful that they will need to relive their experience in the witness box as part of the trial process."

3.4.4. According to our interviewees, such experiences of delay were replicated in the context of other relevant offences and in the civil processes too. In the context of applications under the *Domestic Violence Act, 2018*, we heard how, endeavouring to stay on top of an ever-expanding workload, some District Courts respond promptly to the first application made by a victim under the *Domestic Violence Act 2018* and once that crisis has abated for a family, the court's attention moves to the crisis situation in another family or to a different aspect of law entirely. And so, for example, once a first Protection Order is granted and, ostensibly, an element of stability re-introduced into the family in question, it can take many months for the victim's ultimate need – a Barring Order – to come to the hearing stage. In those circumstances, the victims in a family, both adults and children, are held in a form of limbo which can itself have further traumatising consequences. Given, however, the acknowledged vulnerability of victims of domestic and/or sexual violence, we recognise the need to prioritise cases in which domestic and/or sexual violence is in issue and to maintain that priority until the case has concluded in order to afford victims the opportunity to begin to rebuild their lives. Indeed, tackling delay is vital to enhancing the position not only of victims but of alleged perpetrators too. It is in the interests of everybody involved that all of the relevant court hearings are conducted as promptly and efficiently as possible.

3.4.5. While there are many acknowledged causes of delay within the court systems, one to which reference is increasingly made is the shortage of judges. The

very recent reports of the OECD[34] and of The Judicial Planning Working Group[35] both point to the need to dramatically increase the number of judges in the court system and also make many other recommendations for systemic reform. In response to those recommendations, the government has committed to appoint an initial tranche of 24 new judges in 2023 with, subject to the implementation of certain reforms and efficiencies, a further 20 to be appointed in 2024. Both the OECD and The Judicial Planning Working Group envisage the ongoing need to devise a more planned approach to calculating necessary judicial numbers and we recommend and anticipate the timely and comprehensive implementation of those proposed reforms.

3.4.6 The efficient and prompt conduct of court hearings in relation to domestic and/or sexual violence may also be encouraged by the consistent use of case management and other related procedures. One such procedure is embodied in the introduction by the Criminal Procedure Act 2021 of a pre-trial hearing at which potential issues will be canvassed and hopefully resolved in advance of the trial hearing date, thereby allowing the trial to proceed on its scheduled date. As this new procedure only came into force in February 2022, it is as yet too soon to see if it will consistently ensure the more efficient conduct of relevant criminal prosecutions but this is a matter that must be reviewed at an appropriate juncture.

3.4.7. Other courts around the country have case management procedures in place, some of which are more consistently enforced and complied with than others. One successful example of prioritisation of applications pertaining to domestic violence is found in the District Court in the Courts of Criminal Justice, where through a process of close case management, the court has succeeded in having most cases involving offences pursuant to Section 33 of the *Domestic Violence Act 2018* for breaches of Orders granted under that Act disposed of within three months from the date upon which a date for hearing is assigned. We understand that in many other courts around the country, such a process regularly takes in excess of 6 months and may in fact take a year to reach conclusion from that date.

3.4.8. This example of focussed and robust case management which begins at an early stage and continues throughout the court process highlights the important role that this judicial practice can have in reducing court process delays in such an important area. One other example of case management arises in relation to child care cases which are the subject of a practice direction within the Dublin Metropolitan District on Case Management in Child Care Proceedings. This practice direction envisages that such proceedings should, in ordinary course, be concluded in between 9 to 12 months from the date of commencement. It envisages the conduct of a number of case management hearings to ensure that the case is progressing efficiently and that matters such as disclosure, the commissioning of expert reports and applications to admit the hearsay evidence of children should be dealt with in a timely way. There would be benefit in the extension of such envisaged practices to other courts and in that regard we note that one of the expressly-stated guiding principles of the *Family Courts Bill 2022* is the promotion of and engagement in "active case management, including time limits and maximum word counts for submissions.[36]"

34 Modernising Staffing and Court Management Practices in Ireland: Towards a More Responsive and Resilient Justice System, 2023
35 December 2022.
36 Section 8(c).

3.4.9. In the context of the impact of delay upon children, the European Court of Human Rights has stated that delay in the conduct of proceedings involving children may constitute a violation of Article 8 ECHR which guarantees respect for private and family life. Thus, for example, in *M & M v Croatia*[37], the Court stated that ineffective and delayed conduct of custody proceedings may give rise to a breach of positive obligations under Article 8 of the Convention. In this jurisdiction, the impact upon children of delay in proceedings is perhaps seen most visibly in the fact that therapeutic interventions deemed necessary to enable a child to recover from trauma that he or she has endured are not given until child care proceedings are concluded, as the lack of certainty regarding many of the fundamentals of a child's life – where he or she will live, will he or she still be in the care of parents or not – are unknown until those proceedings are determined, and it is regarded as inappropriate to commence therapy in such an uncertain environment.

3.4.10. While attempts have been made to avoid delay in child care proceedings via the adoption in the Dublin Metropolitan District of the Practice Direction on Case Management in Child Care Proceedings, in our view even greater – and more geographically uniform – progress can be made in the context of child care proceedings, if that Practice Direction were bolstered by the introduction of a statutory provision applicable to child care proceedings which is comparable to Section 31(5) of the *Guardianship of Infants Act 1964 as amended*[38] which states that in applications in which guardianship, custody or access are in question "the court shall have regard to the general principle that unreasonable delay in determining the proceedings may be contrary to the best interests of the child". Indeed this issue is addressed in *The Family Courts Bill 2022* which states that one of its guiding principles in relation to "proceedings in which the welfare of a child is involved or likely to be affected" is that there should be no unreasonable delay in determining the proceedings. The terms of the Bill extend to child care proceedings and also to applications pursuant to the *Domestic Violence Act 2018* and it is to be hoped that the enactment and implementation of such a provision will promote the speedier resolution of such applications in which there are child victims, whether direct or indirect.

3.4.11. It remains as yet unclear whether Section 31(5) of the *Guardianship of Infants Act 1964 as amended* is often invoked by lawyers and utilised by judges in guardianship, custody and access applications to, for example, impose detailed time frames upon the preparation and completion of expert reports. We heard at interview of some courts in which a time frame is laid out by the presiding judge, but also of others where it was left in the hands of the expert to decide when reports would be back before the court. In such circumstances, a practice direction along the lines of the one employed in the Dublin Metropolitan District Court in the context of child care proceedings, in which guidelines regarding the efficient conduct of all such proceedings, is recommended in relation to all private law proceedings, including those under the *Domestic Violence Act 2018 a*nd public law proceedings which impact upon the welfare of children. As *The Family Courts Bill* both refers to the imposition of time limits as a means of active case management and confers upon the Principal Judge of the Family High, Circuit and District Courts the authority to issue practice

37 Family Law Reports [2016] 2 FLR 18].
38 By section 63 of the *Children and Family Relationships Act* 2015.

directions, it is hoped that the combination of this statutory guiding principle and focussed practice directions will provide a more robust regime by which relevant proceedings can be brought to a more timely conclusion, to the benefit of the affected parties.

3.5. The Court Environment

3.5.1. The final factor mentioned by many as one which brought them to the point of cross-system withdrawal was the experience of the court day itself, in the sense of the experience in the court building before a hearing. While many commentators, and some of the interviewees that we met, referred to alleged perpetrators using the court *process* to further their coercive control over victims[39], many of the people that we met spoke of how the court day experience itself has a similar effect. In that regard, we heard how victims were routinely distraught by the consequences of the lack of waiting and consultation rooms in a crowded court-building environment, which forces them to spend hours in close proximity to the alleged perpetrators and their family members who often come to provide support, making known their disapproval of the victim. In one particular case, we heard how the court office is in a different building on the other side of the road to the court building, and while crossing over and back between the two buildings, victims are often jeered by family and supporters of the perpetrator.

3.5.2. The intimidating environment is further created by the presence of large groups of people, all called to attend court at the same time and this is made worse outside of the cities and large towns where all types of cases, criminal and civil, are often dealt with on the same day. Many regularly wait for hours until their case is called. While ordinarily some of those people attending court tend to wait in the court itself until their case is called, one by-product of the *in camera* rule is that that relief-valve is turned off as everybody awaits the calling of their case in a confined space outside the door of the court room. In the absence of any or sufficient waiting and meeting rooms, victims of domestic and/or sexual violence are obliged to give intimately personal instructions to their legal representatives in this crowded and intimidating environment which can be so distressing that it can, it seems, make people want to pull out from the process so that they never have to go through it again.

3.5.3. The irony that these proceedings are supposedly *in camera* in an attempt to protect the privacy of the parties in these most sensitive parts of their lives was not lost on some of those we interviewed. As Dr. Conor O'Mahony *et al* have also noted[40], the very fact that neighbours, co-workers, other members of the community see victims going in and out of those courts is one more source of stress at an otherwise difficult time, and this social stigma appears particularly acute in the context of child care proceedings. In Dr. O'Mahony's research project, legal representatives working in the area of child care, amongst others, were interviewed. A quote from one of the lawyers explains the situation clearly: "*In camera* is a nonsense, you know. Everybody knows what everybody

39 In this regard, see, *Understanding Court Support for Victims, Domestic Abuse Commissioner* (England and Wales), 2021.

40 O'Mahony, Burns, Parkes and Shore, *Child Care Proceedings in Non-Specialist Courts*, International Journal of Law, Policy and the Courts 1.

else is there for, everybody can see the upset in the faces of the people coming out of the court."

Others added that as there are very few consultation rooms in the buildings in which they work, and "Because we get social work reports so late, quite often, [w]e're reading reports to parents in the corridor beside other people, and there could be disclosures of sexual abuse, there could be very, very, very sensitive information in those reports, which the parents may never have heard before. And a lot of these parents can't read, so you have no choice but to read it with them... And it's just wrong. It's really wrong."

3.5.4. Echoing findings from other jurisdictions, research in this jurisdiction shows that the effective operation of the rule in practice is greatly undermined by the nature of the physical facilities in which private family law and child care proceedings are held, which can cause both the identity of the parties and the details of their cases to be exposed.

3.5.5. It was perhaps in recognition of the particular social stigma associated with involvement with child care proceedings that Section 29(3) of the *Child Care Act 1991* makes special provision for the separate hearing of child care matters in court in order to better protect the privacy of families going through this most difficult of processes. That provision stipulates that the courts shall sit to hear such proceedings "at a different place or at different times or on different days from those at or on which the ordinary sittings of the Court are held". The evidence gathered by Dr.O'Mahony indicates that unless a separate and dedicated court facility is available, and there is only one such court that exists in the country – in the Bridewell in Dublin – this does not happen in practice. In most areas, child care forms only a small part of the diverse work of the sitting District Court, and court buildings are often very small. As a result, there is little or no separation between child care proceedings and other proceedings. It is to be welcomed that *The Family Courts Bill 2022* itself adopts the principle embodied in Section 29(3) of the *Child Care Act 1991*. The Bill envisages that family law proceedings shall be conducted in a different building or a different room than other court business or shall be conducted on different days or at different times than other court business, save in those exceptional circumstances in which to do so would be contrary to the welfare of a child or otherwise due to the urgency of the case[41]. It is hoped that the enactment and implementation of the Family Courts Act and the adoption of the Family Justice Strategy which itself endorses this approach will bring about real progress made on these issues.

3.5.6. In trials involving child victims, it is to be expected that children will attend the Court to be cross-examined on foot of an interview given in accordance with the requirements of the *Criminal Justice (Evidence) Act 1992*. In civil proceedings, children rarely attend to give evidence, although it is conceivable that they may

41 Section 8(7) and (8).

attend with greater frequency in the future[42]. Article 12 of the UN Convention on the Rights of the Child specifies that children should be heard 'freely'. In his 11th report, The Special Rapporteur for Children notes that this right will not be met if children;

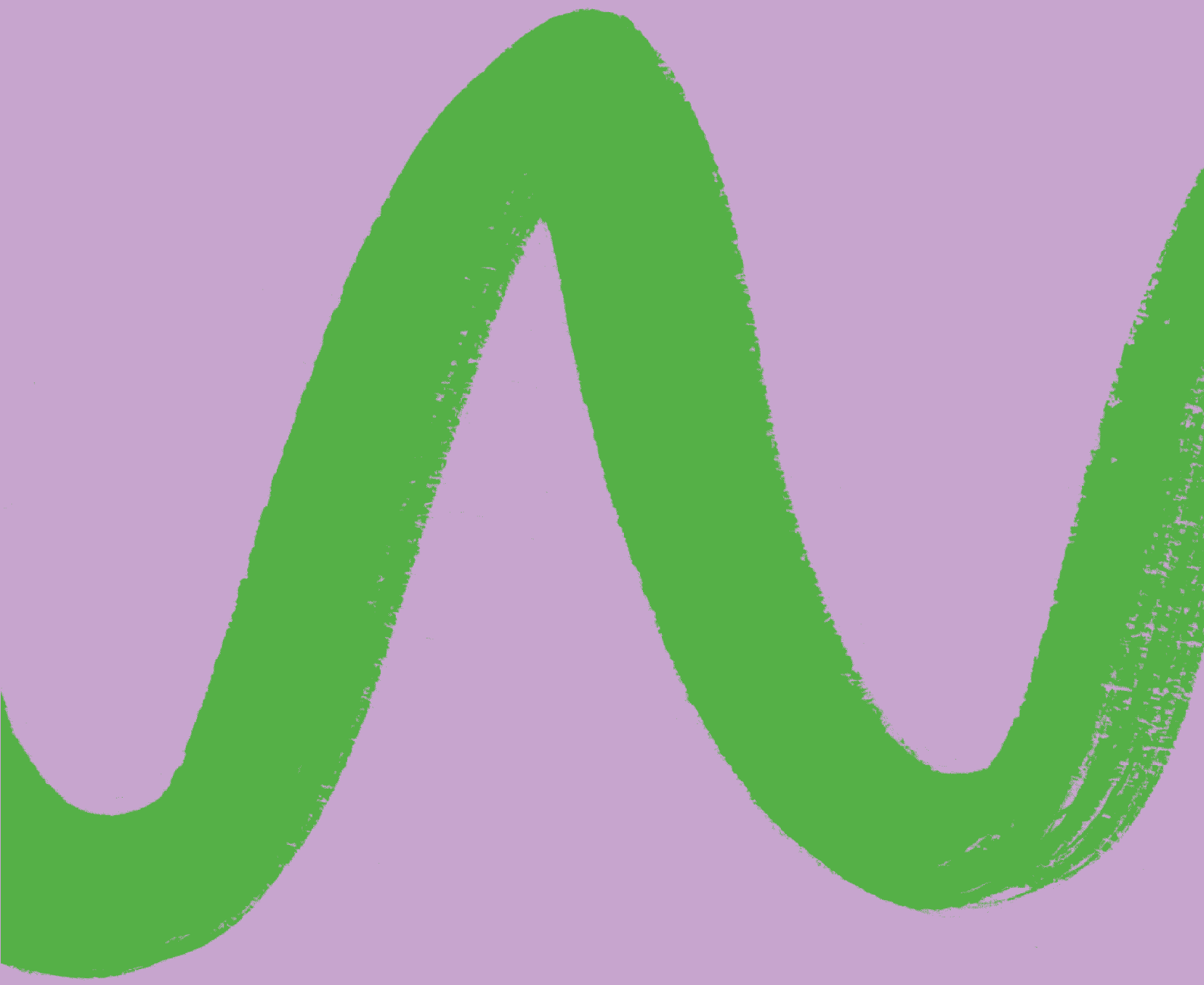
> "are in a process, or an environment, which is not designed to accommodate children, which the Irish infrastructure is not. There has been attention given in recent years to 'child-friendly justice' and how proceedings can be better suited to the specific needs of children. I have noted in previous reports the Council of Europe Child-Friendly Justice Guidelines which outline methods for achieving proceedings and settings which are child-sensitive. The Committee on the Rights of the Child provides that the court environment should not be intimidating for children and that the physical environment of courtrooms should be considered with children in mind".

3.5.7. In light of all of the above, it is recommended and anticipated that court buildings will be adapted to provide, for example, sufficient waiting and consultation rooms, that consideration be given to facilitating separate facilities and/or times of entry and egress for victims where appropriate. It is also recommended to provide staggered times for court cases in order to reduce the numbers in court buildings and that special measures be provided within the courtroom itself in a family law context akin to those available in criminal law courts for vulnerable witnesses. We understand that consideration is being given to matters of this nature in the context of the development of the anticipated new Family Courts structure.

3.5.8. We also endorse the introduction in court of listing practices on a piloted basis, whereby cases are assigned a particular fixed time and day in the court diary, with penalties attached for not attending at that time without good cause. Such a practice would reduce the numbers in the court building and environs at any one time, and could also serve to keep matters moving more efficiently through the system. We recommend the adoption of this practice on a piloted basis and, if successful that it be extended. We recognise the added work that this would entail for Courts Service personnel and therefore recommend *the provision of additional resources to the Service to enable it to fulfil such a function.*

42 The Supreme Court of England and Wales in *Re W* has now removed the well-established presumption against children giving evidence in civil proceedings, giving judges broader discretion in deciding whether or not a child should be compelled to give evidence. In England and Wales, under Practice Direction 12J, a court must ensure, as best they can, that appropriate arrangements are made for the hearing and any subsequent hearing. As the guidelines issued in relation to Practice Direction 12J provide: • The court can provide a victim with a separate waiting room to wait in before you are called in front of the judge. This will limit your contact with the other party when you are not in front of the judge. • If you are afraid that the other party will follow you out of the court then you can ask the judge or the Cafcass officer to help you by asking the other party to remain in the court building for a certain period of time after you have left. • The court can place a screen in between you and the other parent, so that you cannot see each other. The judge will decide whether or not to allow the screens. • In more serious cases, you can ask to attend the hearing via a video link or live link so you do not have to be in the room with the other parent. • If you are worried about being questioned directly by your abuser, or you are worried about having to question him directly at a final hearing or a fact finding hearing, you can request that the judge asks the questions instead. You should ask for the special measures you would like before the first hearing. If you are the applicant, you can do this on your application form. If the father of your children has made the application, you can tell the court that you would like special measures when you respond to his application. You should do this in Form C7 within 14 days of receiving his application.

4. Towards a Common Understanding of the ‘Adult Victim’



4.1. Introduction

4.1.1. During our interviews with victims and their support personnel, we heard of markedly different experiences at the hands of professionals operating in the three legal processes under consideration. What follows in this Chapter is a discussion of the different approaches to the same victims adopted in the different processes under consideration. We engaged in this discussion as it seems to us that if the three different legal processes are genuinely to adopt a collaborative approach in the interests of victims of domestic and/or sexual violence, they must all endeavour to treat the victim in the same way – as a person in need of support and protection, whose allegations must nonetheless be tested in a thorough and respectful manner.

4.1.2. In recounting the following experiences below, we do not, of course, deny that there are pockets of good practice in those viewed critically in the following comments and indeed of bad practice in those referred to in more favourable terms in victim interviews. Nonetheless, a definite picture emerged from our interviews of adult victims who, having reported incidents of violence to members of An Garda Síochána, found them by and large to be supportive of their position, particularly when compared with the views prevailing in the two other systems. It is important to re-iterate, however, that the victims and support personnel drew a very real difference between the positive manner in which members of An Garda Síochána whom they knew had received appropriate training relating to such familial violence dealt with victims and the considerably more negative and less understanding response of Gardaí who did not have the benefit of such training. One particular example of such bad practice which was brought to our attention by a number of interviewees referred to an apparent but unexplained reluctance on the part of members of An Garda Síochána in certain parts of the country to prosecute offences under Section 33 of the *Domestic Violence Act 2018* for breach of Orders granted under that Act. A number of interviewees expressed particular concern about the fact that it was common knowledge in certain areas that the Gardaí would be unlikely to prosecute for such offences, and in other areas still that they would show limited interest in pursuing the matter to a prompt conclusion once the court process had begun. Such practices instil in perpetrators a sense of immunity from consequence for their violence and can undermine the will of victims to pursue the protective orders available pursuant to the *Domestic Violence Act 2018* in the first place. As the *Policy of An Garda Siochana on Domestic Abuse Intervention* (HQ Directive 23/2017) cites that "reports of crime coming within the scope of domestic abuse will be dealt with promptly and thoroughly", it is clear that the problem stems from the failure to put that policy into effect in a uniform and consistent way in relation to Section 33 offences. We therefore recommend the conduct of a State-wide review by An Garda Síochána of those practices within the organisation regarding the investigation and prosecution of offences under Section 33 of the Act of 2018 and, thereafter, the adoption and implementation of an appropriate uniform policy amongst An Garda Síochána regarding the consistent and prompt investigation and prosecution of offences under that Section. We also repeat our earlier recommendation that all members of An Garda Síochána receive appropriate in-person training in relation to the dynamics of abusive relationships, the impact of domestic and sexual violence upon adult and child victims and how to best respond to it.

4.1.3. A further issue of very real concern relates to the manner in which members of An Garda Síochána respond to allegations of domestic violence disclosed by Travellers. In our interviews, we learnt of a tendency on the part of some Gardaí to minimise such allegations, to disbelieve the victim's account and/or to leave the parties to sort the matter out amongst themselves. We heard how these negative experiences have led to a reluctance on the part of many Travellers to report such abuse at all. A similar picture is painted in considerably greater detail in the recently-published *Irish Travellers' Access to Justice* Report[43] in which many Travellers spoke of the particular vulnerability of victims of domestic violence, given the widespread fear within their community of reporting such matters to the Gardaí. In addition to the concerns drawn to our attention, the Report also noted that Traveller victims of such violence are fearful of calling the Gardaí out to their homes following an incident of domestic violence, as it is their experience that such call outs are frequently used by members of An Garda Síochána to seek to gather evidence against neighbours or other family members in relation to other possible, unrelated, offences[44]. The Report notes that representatives from Traveller organisations recognised the need for urgent attention to be given to the response of An Garda Síochána to allegations by Travellers of domestic violence, and makes a number of important recommendations in relation, in particular, to training for members of An Garda Síochána, lawyers, the judiciary and court staff. In that regard, the Report more specifically calls for cultural competency training to provide an understanding of the experiences and needs of Traveller victims of crime across the criminal justice process and also seeks the introduction of anti-racism and equality training which specifically addresses anti-Traveller racism. While the Report makes other important recommendations in relation to training and many other issues, of relevance are those recommendations regarding the need to introduce appropriate cultural competence and anti-racism/equality training. We endorse those recommendations in the context of victims of domestic and/or sexual violence and, as always, believe that such training should take place in-person and not via Zoom or other similar method.

4.2. The Prevailing Experience in the Public Law Child Care Process

4.2.1. Victims and their support personnel reported that where the adult victim has children, and Gardaí notify the Child and Family Agency in compliance with their mandatory reporting obligations, a less positive response is encountered from the Child and Family Agency than is generally the case from specially-trained members of An Garda Síochána. Victims understood that the Child and Family Agency's primary focus must clearly be upon the needs of a child or children, yet they nonetheless anticipated a supportive response as victims themselves. Instead, we were told on numerous occasions that they found themselves held responsible for a failure to protect a child or children of the relationship and ultimately felt that they were themselves the wrongdoer, being

43 Joyce, S, O'Reilly, O, O'Brien, M, Joyce, D, Schweppe, J and Haynes, A (2022) *Irish Travellers' Access to Justice*. European Centre for the Study of Hate: Limerick.

44 The 2004 An Garda Síochána Human Rights Audit also reported that Travellers stated that calling Gardaí to a domestic violence incident could heighten a victim's exposure to risk, as Gardaí might use the opportunity to check people's car insurance, "a practice which pitted the victim against other members of the community", p.91.

left fearful that an application would be made to take that child or children from them and placed into the care of the Child and Family Agency. Such an experience runs entirely contrary to long-standing international research which makes it clear that a key principle in child protection is the protection of the adult victim in domestic violence situations. This research, unfortunately, has also tended to support our experience that victims are undermined and blamed for a failure to offer protection to their children[45].

4.2.2. The account of the adult victim's experience of child protection services in England and Wales described in the June 2020 *Understanding Court Supports for Victims of Domestic Violence* Report of the Domestic Abuse Commissioner of England reflects the experiences of the victims whom we interviewed. The report noted that victims were strong in voicing how they are retraumatised by victim-blaming and lack of perpetrator accountability in the family justice system (the term 'family justice' in that report being used to embrace both private family and public child care law). Also in England and Wales, the Harm Panel noted in its report that submissions made to it showed:

> "that different parts of the system adopted different approaches, did not always share information, and could reach conflicting and contradictory decisions. Thus, the same parent, typically a mother, could be treated quite differently by the different systems, with varied results for her and the child. In the criminal justice system, she would expect to be treated sympathetically as a victim of a serious crime, with her safety and that of the child paramount. In a public law case, the focus would shift to protecting the child, with the mother being a possible protector but also a potential colluder with the abuser. In a private law case, the same mother would be more likely to be treated, not as a victim or protector, but with suspicion as a threat to the abuser's relationship with the child and a possible alienator. Those conflicting approaches lead to contradictory decisions between different parts of the justice system. The panel received multiple examples where the protective stance of other parts of the system was undermined by private family law proceedings[46]."

4.2.3. This quotation reflects perfectly what we were told in interviews. When this account was put in interview to personnel within the Child and Family Agency, they acknowledged that, as in every system, perhaps a small minority of victims may have felt unsupported but they felt that the majority of adult victims received an appropriately supportive response from them. They felt that the 'Signs of Safety' child-protection model that they have been employing for a number of years provides the necessary support to parent victims as it identifies both strengths and weaknesses within a family. It is acknowledged that no definitive conclusions can be drawn on the basis of our relatively small group of interviewees but nonetheless a clear and unambiguous picture of that experience, which mirrors the experiences in England and Wales, emerged from them which ought not be ignored and requires further attention.

45 Safety and Sanctions Executive Summary (Women's Aid, 1997).
46 The Report, generally referred to as the Harm Panel Report, is formally titled "Assessing Risk of Harm to Children and Parents in Private Family Law Cases", 2020.

4.2.4. If the experience of the victims and their professional support persons are indeed representative of a wider pattern, then it is submitted that the approach adopted within the Child and Family Agency needs to be changed towards a more parental strengths-based approach that promotes the safety and welfare of children. Such an approach can work alongside one that works to hold perpetrators responsible for their actions, with a view to promoting positive outcomes for their children. Interestingly, this approach mirrors the thinking behind a model that was devised in the United States and which has, in very recent years, been piloted in various local authorities in Australia, Scotland[47] and also in England and Wales[48]. The Safe and Together Model has three fundamental underlying principles. The first involves "keeping children safe with survivor parent/guardian" where possible, as this is usually the most effective way to promote their safety and stability. In order to achieve this, it recognises the need to help both child and adult "victims to heal from trauma, ensuring nurturance and stability". The second aim is to encourage professionals to promote a "strengths-based partnership" with the victim parent and, finally, the model recommends intervention with the abuse perpetrator in order to reduce risk and harm to children. Audits of the application of the model in the UK and elsewhere have shown significant attitude changes with less victim-blaming by child welfare services who also became better at partnering with those adult victims. In addition, an enhanced ability was noted by those trained in the model to document and assess the impact of perpetrators' behaviour on children[49] – recognising patterns of abuse and controlling behaviour rather than focussing on individual incidents[50]. Others pointed to the need for ongoing training into the application of the model to ensure that the cultural shift which the model envisages takes firm root.

4.2.5. We note that as part of its *Childhood Domestic Violence National Advisory Group* project in this jurisdiction, Barnardos is exploring the Safe and Together Model with both the Child and Family Agency and domestic violence services. As the organisation commented in its submission on the draft of the Third National Domestic, Sexual and Gender-based Violence:

> "The starting point is to move away from a narrative in which non-abusive parents are seen as failing to protect their children and saying perpetrators are the people responsible for their domestic abuse, their parenting choices and the impact on the child, not the survivor's actions. In doing so, it's vital to look at a pattern of behaviour, not just singular incidents of physical violence."

47 As of 2019, 10 local authorities in Scotland use this model; See Safe and Together Edinburgh Implementation Report 2018 (https://safeandtogetherinstitute.com/wp-content/uplods/2018/05/Safe_and_Together_Implementation_Report-2017.pdf.

48 See, for example, Safe and Together Manchester, 2018 Andrew Bocciaga.

49 Safe and Together Overview and Evaluation Data Briefing Document, 2018.

50 Safe and Together Edinburgh Implementation Report 2018, above.

4.3. The Experience of the "Adult Victim" in Private Family Law Processes

4.3.1. The quotation set out earlier from the Harm Panel's Report acknowledges that the experience of adult victims in England and Wales is particularly harsh in the private family law system. One observation made repeatedly in our interviews, even more frequently than the above comments about the experience with the Child and Family Agency, related to the use in the private family law system in this jurisdiction of the 'parental alienation' model. The term 'parental alienation' is understood to refer to any situation in which a parent is perceived as engaging in strategies to exclude the other parent from a relationship with their child, particularly in high-conflict separation situations, regardless of whether or not the child actually rejects the other parent[51]. At its core is the assertion that allegations of domestic and/or sexual violence are often simply a means by which a parent making the allegations seeks to restrict an innocent parent's access to and custody of their child; in essence that such allegations are false.

4.3.2. Recourse to this model has, it would appear, become increasingly popular in courts in Ireland and other jurisdictions in recent years, being raised by lawyers for alleged perpetrators as a means of cancelling out and even silencing allegations of domestic violence by a victim in the course of access or custody applications. It is, we heard, also in favour with some or possibly many of the expert assessors engaged by courts in private law applications to determine the welfare of the child[52] or to discern the child's views [53], thereby impacting upon the decisions of courts who, in many cases, place considerable reliance upon the views of experts. We were told, perhaps most worryingly, that the increased use of this model in the courts system has impacted upon the willingness of victims to even raise domestic violence before a court in applications for access or custody.

4.3.3. This model first found common acceptance in Canada after joint research by a psychologist and a lawyer[54] in the late 1980s estimated that between 11-15% of children in divorcing families were alienated from one parent and aligned with the other, as a result of the influence of the latter parent upon the child. In the following years, family law judges in Canada were obliged to attend

51 Farkas, 2011. Hayez and Kinno 2005.

52 See Section 32 of the *Guardianship of Infants Act 1964* as amended; Section 47 of the Family Law Act 1995 as amended. *Section 20 of the Child Care Act 1991).*

53 See Section 27 of the *Domestic Violence Act 2018*, and Section 32 of the *Guardianship of Infants Act 1964 as amended).*

54 Barbara Jo Fidler and Nicholas Bala. In the following years, family law judges in Canada were obliged to attend professional training to help them to determine, when hearing children's voices in cases, if the child's voice was being influenced by parental alienation. In support of this model, it is often noted that in May 2019, the World Health Organisation endorsed parental alienation as a "care-giver child relationship problem" in the International Classification of Diseases (11th Revision, ICD- 11). It should be noted, however, that in February of the following year, the World Health Organisation, somewhat unusually, declared that it had removed "parental alienation" from its classification "A backlash against this model did, however, emerge over time as researchers in both Canada and United States found that claims of "parental alienation" discount other well-documented causes of parent-child conflict such as family violence and parental neglect. In that regard, one commentator concluded that "alienation claims are leading courts to discount evidence of paternal abuse of women and children, remove children from parents who seek to protect them, and place children with abusive parents—even in cases where judges acknowledge family violence and abuse. Women and children are silenced as lawyers, mediators, evaluators, and judges fail to investigate claims of abuse and concerns for safety in favour of punishing them for resisting contact."

professional training to help them to determine, when hearing children's voices in cases, if the child's voice was being influenced by parental alienation. The model spread to the US courts and to the courts in England and Wales. In those latter jurisdictions, research conducted in 2017 of 291 abused mothers who had gone through family court proceedings found that 58% of women were accused of deliberately preventing the child's relationship with the other parent, 46% of making those allegations as revenge and 55% of inventing the abuse. The report also noted that 40% of those questioned had been accused of parental alienation by a lawyer, social worker or psychologist, that 37% reported being advised by their own legal representatives not to raise their abuse allegations in the equivalent of access and custody applications and, finally, that 93% stated that the court determined that their abuser was 'safe' for their children[55].

4.3.4. It was also noted in the English research that the effect of the use of this model is to disregard a child's voice, as the child was taken to be merely repeating the alienating parent's views. If such a state of affairs prevailed in this jurisdiction, that would effectively contravene the constitutional imperative that the voice of the child be heard in proceedings affecting them. In 2011, Stephanie Holt[56], referring to the experience of children in this jurisdiction, noted that children are listened to selectively in the context of applications for access – listened to if they want access and overruled if they don't on the grounds of their age or supposed immaturity, as it is assumed that there could be no other reason for them not to want what is generally regarded as being in their best interests.

4.3.5 In June 2022, the Minister for Justice announced a public consultation process on the issue of parental alienation, as part of her Department's Justice Plan 2022. In its invitation to submit views, the Department noted that "it would appear that the term has been increasingly cited in the Irish courts". In circumstances where the Department of Justice which co-commissioned this report is still engaged in a consultation process about parental alienation, it is inappropriate to reach any conclusions at this juncture in relation to the merit or otherwise of this model. It is noted, however, that many of the groups with which the members of the Advisory Committee are aligned have made submissions in their own names to the Department of Justice on this matter.

4.3.6. While it is not appropriate for us to adopt a definitive view at this time in relation to the parental alienation model, it would nonetheless be wrong to fail to record – for the benefit of the above-mentioned public consultation process and otherwise – the views offered to us by victims and those who support them in the court processes. As we noted earlier, we were told on a considerable number of occasions by such interviewees of the negative impact of the use of this concept upon the hearing that victims of domestic and/or sexual violence obtain in private law proceedings. It has served, we heard, to silence victims at a time when the focus in the corresponding criminal justice context is to endeavour to ensure that the victim's voice is heard. Many of the interviewees expressed concerns and fears about the potential of this concept to undo the recent progress made in this jurisdiction on behalf of victims.

55 2017 Report of the Collective Backbone Survey.
56 Vol 17(4) Child Care in Practice, 2011; *Domestic Abuse and Child Contact.*

4.3.7. In any court process, all relevant allegations and denials are open to challenge by or on behalf of the opposing party. In this particular instance, however, part of the problem stems from the fact that the allegedly manipulated statements are made by a child outside of the courtroom and are therefore admitted to the court on a hearsay basis. In some cases, it will be alleged by a parent that a child made statements to them which revealed psychological manipulation of that child by the other parent. In other circumstances, an expert assessor may make an allegation of that nature after interviewing the child to determine the child's wishes or best interests. A very real concern on the part of our interviewees, however, is that this concept can be both invoked and accepted in the courtroom without any valid forensic basis. A concern was also expressed about the lack of objectivity and/or a bias towards the concept on the part of some of the expert assessors engaged in the private family law processes, leading to a tendency on the part of such assessors to conclude that parental alienation arises in a disproportionately large number of cases. In this regard, we refer to the pertinent comments of Sir Andrew McFarlane, the President of the Family Division of the High Court in England and Wales, who in October 2021 issued a memorandum entitled Experts in Family Courts which noted that "pseudo-science which is not based on any established body of knowledge will be inadmissible in the family court". That same month, he delivered a speech in which he referred to that memorandum and noted that: "Where the issue of parental alienation is raised and it is suggested to the court that an expert should be instructed, the court must be careful only to authorise such instruction where the individual expert has the relevant expertise."[57]

4.3.8. In light of the above, we repeat our recommendation made in Paragraph 3.3.4. regarding the adoption of a practice direction requiring courts dealing with all applications impacting upon the welfare of children to ensure that, prior to the court appointment of experts, to satisfy itself of the potential appointee's expertise, having first required the production of evidence of all relevant training, qualifications and affiliations to bodies and organisations of that person. That practice direction should also require experts upon whom the parties themselves agree without recourse to appointment by the court to produce sufficient evidence in all documents submitted to court of their training, qualifications and of the organisations and bodies to which they are affiliated.

4.3.9. In the light of all of the above, having regard to the interests of fairness and transparency, and to ensure the maintenance of appropriate standards of expertise, we recommend that all experts must set out in all of their reports for court their training, qualifications and affiliations to all professional bodies and organisations.

57 *Quote from Supporting Families in Conflict: There is a better way,* an address to the Jersey International Family Law Conference, October 11 2021. As this report being completed, an appeal against a custody order was ongoing before the same Judge, in which the appointment of the expert was challenged. In the lower court, the court-appointed expert had concluded that the mother had engaged in parental alienation and recommended that the father enjoy sole custody. The court at first instance had placed considerable reliance upon the findings of the expert and in her appeal, the mother argued that the person appointed by the court did not have the requisite expertise to make the findings in question. In that regard, see the judgment of the Peterborough in this case;V F v M (2022) EWFC 89.

4.4. Concluding Remarks

4.4.1. The above accounts of the experiences of victims point to a disparity of treatment of victims of domestic or sexual violence in the various legal processes under consideration. While it may not be appropriate to draw definitive conclusions from the experiences of a relatively small group of interviewees, neither, in our contention, is it acceptable to ignore them. This is particularly the case as those experiences closely mirror the experiences highlighted via research in England and Wales and, indeed, elsewhere. As our aim is to ensure the development of a culture of respect and support for victims of domestic and/or sexual violence as they navigate all of the legal processes under consideration, while all the while respecting the rights of alleged perpetrators to a fair hearing and/or trial, we feel that there is a need for a number of further pieces of relevant research to be undertaken.

4.4.2. First of all, in the context of the experience of the adult victim in the private family law process of the parental alienation model, we note the ongoing public consultation process in which the Department of Justice is currently engaged. In the context of the adult victim's experience as a parent of the public child care process, however, we recommend that research is commissioned into the manner of treatment of such adult victims.

4.4.3 If both the above research into the adult victim's experience of the public child care process and the public consultation process being conducted by the Department of Justice into 'parental alienation' once concluded point to disparate treatment of victims in the various legal processes under consideration in this report, we recommend the conduct of further research for the purpose of identifying fundamental common principles in relation to the treatment of victims of domestic and/or sexual violence in the three processes under consideration.

4.4.4. We also recommend that a body independent of the Child and Family Agency commission an annual survey of the experiences with the Child and Family Agency of parents who themselves are victims of domestic or sexual violence.

4.4.5. Furthermore, we recommend that The Courts Service commission an annual survey of the experiences of persons within the private family law processes in those cases in which allegations of domestic or sexual violence are raised.

4.4.6. Indeed, at this juncture it is opportune to mention a general concern that was expressed by both interviewees and our Advisory Committee about the general influence that experts often have in the various civil processes and the lack of transparency or oversight in relation to the manner in which they conduct their functions and reach their conclusions. As we are confined to consideration of intersectional issues between the various processes, it is beyond our remit to discuss and analyse all of those concerns, save to note our earlier recommendation that they receive the requisite training and that they be required to make that training and all affiliations known in their reports. We do, however, note the recommendation in the Family Justice Strategy that further research be conducted into the role of expert assessors in the family justice system.

5. Promoting Collaborative Practices in the Three Legal Processes

5.1. Introduction

5.1.1. In recent years, unified domestic violence courts have been piloted in Scotland, certain states of the United States, in Canada and in Spain. In those jurisdictions, one domestic violence court will deal seamlessly with all of the fallout from familial violence – the criminal prosecution of the alleged perpetrator, the protection of the victims in the family home, the regulation of a child victim's relationship with the alleged parent and indeed, at times, with the victim parent. Such a model attempts to limit the potential for vital information – about the conduct of the alleged offender, the exact pattern of violence, the impact upon both adult and child victims – to fall into the gaps between what would ordinarily be three distinct processes and so be lost to the courts. We do not have such a unified system in this jurisdiction, and indeed considerable effort has gone in recent years into designing a new separate and distinct family court system. Thus, talk of a unified court approach to all issues of civil and criminal law in the context of domestic and/or sexual violence may seem out of sync with the direction in which the Irish courts structure is going. Nonetheless, in due course, once the new family court structure envisaged in *The Family Courts Bill 2022* is established and has been operating effectively for a period of time, there may well be merit in piloting a unified court in the specific areas of sexual and/or domestic violence and until that point in time is reached, there is indeed merit in monitoring developments in those other jurisdictions who have adopted the unified approach. Nonetheless, for the moment, even though private family law and public child care law will both come under the ambit of the new family court structure, the respective hearings will take place in parallel processes that are not designed to meet.

5.1.2. This position regarding court structures stands in contrast to the inter-agency rhetoric that is employed in the professional communities who provide much of the evidence that comes before the courts and, in our submission, effective and comprehensive collaborative practices between the institutional actors in the various processes are vital to the protection of victims within the three legal processes under consideration. If those institutional actors do not collaborate and pool their information and other resources, material will be lost and so will never even make it into the courtroom to be heard and considered by the assigned judge.

5.1.3. While no single person or agency is likely to have the complete picture of every aspect of a victim's experience of domestic and/or sexual violence, that full and comprehensive picture begins to emerge when people and organisations come together to share their own particular insights. Collaboration and co-ordination between those various contributors present the opportunity to amalgamate all insights and thus to develop the most effective response on the victim's behalf. Indeed, the life-threatening dangers of poor communication and information sharing between agencies have been emphasised internationally in safeguarding and domestic homicide reviews, while, by contrast, research has noted considerable improvements in the lived experience of child victims when they benefitted from effective inter-agency working[58]. In this jurisdiction, the still-relied-upon 2006 *Framework for the Assessment of Vulnerable Children and Families; Assessment Tool and Practice Guidance* report by Buckley *et al* states that multidisciplinary work is fundamental to good practice in child protection and welfare.

58 See the *Ofsted Report* noted at Footnote 66 of the Harm Panel Report.

5.1.4. Indeed one of the statutory functions of both An Garda Síochána and the Child and Family Agency is to engage in inter-agency cooperation. Both bodies, but in particular the latter, engage with a range of other bodies and private individuals when endeavouring to develop a comprehensive picture of a child's needs. An adult victim of domestic and/or sexual violence will also often find themselves engaging with a mixture of statutory and voluntary agencies. Crucially, the provision of information to a court based upon such inter-agency insight enables that court to make decisions which best protect the needs of victims and the interests of justice.

5.1.5. And so, we must examine the extent to which the actors in the various processes work collaboratively as far as their general practices and in particular their evidence-gathering processes are concerned. If the desired inter-agency collaboration is not in fact in place, are there steps that can be taken to ensure that such information is brought to the attention of the courts in question, in order to ensure more just outcomes? Given that each system has its own purpose and procedures, it is to be expected that collaborative approaches will not succeed in all cases and so we must assess whether the appropriate steps are in place to enable courts to resolve any collaborative impasses that may arise. In addition, we will look to see if there is – or if there is potential for – the sharing of relevant information between the three court processes. Even though the processes are designed to work singularly, there may be some opportunity for information to be shared between those courts themselves.

5.2. Inter-agency Professional Training and 'Work-Shadowing'

5.2.1. In order to achieve optimum co-ordination and collaboration among the various institutional actors in the legal processes under consideration, it is important that each body understands the role that the other or others play in the overall scheme of victim protection. The Family Justice Strategy itself acknowledged that professionals in the family justice system need to be well trained and aware of the roles others have in the system, and added that:

> "Stakeholders and service providers have said that they are not fully informed about the different roles their colleagues in other disciplines perform and the various services that are available to assist their client".

5.2.2. At present, there do not appear to be any formal channels through which cross-professional understanding can be developed, and, in such circumstances, we recommend the promotion of inter-agency learning as one way of ensuring the promotion of such insights. Such training should promote a joint understanding of the multi-faceted needs of victims and the role that each actor in the chain of intervention plays in meeting those needs and, thereby, promote the development of better multi-sectoral working habits in the interests of such victims. Equally, such training could help to create a greater understanding of the methodologies and terminology employed by the different actors in the various processes. Furthermore, if the observations noted in Chapter 4 about a possible difference of treatment of victims in the different processes are found to have general application, inter-agency training could facilitate the emergence and development of common principles in this regard.

5.2.3. In order to yield the best results in practice, inter-agency training should be systematic, targeting all sectors and delivered at multiple levels, and be provided to all professionals with a role in the chain of intervention or who are in regular contact with victims. It will need to be reviewed at regular intervals to ensure that it still reflects current best practice standards.

5.2.4. As part of that joint learning, which should be in-person and not via Zoom or other similar means, it is felt that considerable cross-institutional empathies and understanding can be acquired by the promotion of "work-shadowing" practices. This involves all actors in the chain of intervention work-shadowing the other actors in the process/es for a period of time in order to see the same realities from a different perspective. It is understood that a work-shadowing project across the child protection sector in Stirling, Scotland worked well to produce greater understanding among the various actors of each other's position and fostered a willingness to work more collaboratively.

5. 3. Joint-interviewing of Children: A Collaborative Practice in Waiting?

5.3.1. When a child is the victim of an act or acts of domestic and/or sexual violence, then he or she will be interviewed by a specially-trained member of An Garda Síochána, and all efforts are made to ensure that the same member remains engaged in the investigation for the duration of the process. That interview is generally recorded on video and then used in the criminal court as the child's evidence-in-chief, thereby reducing the amount of time that the child has to be in the witness box. He or she will, however, have to be available for cross-examination by the defence legal team, although the child can be in a different room in the court building and give his or her evidence by live stream to the court room.

5.3.2. Other than in circumstances where the Barnahus Model, discussed below, is engaged, the interview for the purposes of the criminal investigation will often take place in a specially designed suite, furnished with all of the equipment necessary to make a video recording of a child's interview for the purposes of any criminal proceedings that may ensue[59]. The suites are designed and decorated with a view to providing a less intimidating physical environment for a child than would be the case in an ordinary Garda station environment. Of greatest significance, however, is the specialist training of the Garda interviewer which is designed to create a conducive environment in which the child can give his or her best evidence regarding the events in question. In that regard, research has consistently shown that repeated interviews carried out by people who are not specifically trained in forensic interviewing can cause distortion of a child's account of events by suggestive questioning, thus having a clear detrimental effect on the criminal investigation.

59 Discussed in more detail at Ch 5 of the O'Malley Report.

5.3.3. While specialist training of interviewers can help to make the child's – and indeed the adult's – experience of interviews less traumatic, one of their most immediate effects from the victim's perspective should be the reduction in the number of interviews that the specialist must conduct, thereby reducing the number of times that a victim is re-traumatised by re-visiting the violent events in question. This development is entirely in keeping with the requirements of the Lanzarote Convention which Ireland has ratified, which demands adoption by State Parties of procedures designed to reduce re-traumatisation of child victims of sexual abuse and specifically refers to the minimisation of the number of interviews which a child shall be obliged to undergo. One other potentially significant cross-process means of reducing the number of interviews which a child victim has to face is the joint interviewing of the child by An Garda Síochána and the Child and Family Agency. While both interviews have different objectives – the Child and Family Agency's interview seeking to assess the risk to the child and An Garda Síochána seeking to gather evidence for the purpose of a criminal investigation – it is well-acknowledged both internationally and in this jurisdiction that an inter-agency approach to the interview process serves the best interests of the child. In that regard, the Child and Family Agency's 2017 *Children First: National Guidance for the Protection and Welfare of Children* envisages that joint specialist interviews will be conducted in cases where it is "deemed necessary" by both the Gardaí and the Child and Family Agency. This document also notes that the Child and Family Agency and An Garda Síochána have joint responsibility to ensure that specialist interviewer training is provided to the staff of both bodies. The Guidance continues that:

> "The aim of this training is to develop specialist expertise in the interviewing of children who may have been abused. It will also enable members of each service to fully understand each other's role and responsibilities and to learn how to work collaboratively. Joint working between social work and policing services involved in the investigation of child abuse is recognised internationally as providing children with a less traumatic investigation experience and better outcomes where criminal and social care enquiries run in parallel."

5.3.4. Joint specialist interviewing is also envisaged in the 2017 *Joint Working Protocol between An Garda Síochána and Tusla*, but almost 5 years after the publication of both documents, it appears that practice remains by and large aspirational. While An Garda Síochána indicate that they have a full cohort of trained specialist interviewers, at present there are only approximately 16 within the Child and Family Agency. We were told by the Child and Family Agency that a functioning inter-agency system of child specialist interviewing requires in excess of 100 such specialists within their organisation. Much of the problem seems to stem from the fact that the training for the staff of the Child and Family Agency, which is provided by An Garda Síochána in Templemore College was put on hold due to the Covid pandemic. We understand, however, that such training is set to re-commence in the near future.

5.3.5. A current cause of concern and one which will equally need to be addressed when joint interviewing between An Garda Síochána and the Child and Family Agency becomes a more common practice is the delay between a child's

disclosure of abuse and the conduct of interview by the relevant professionals. While data in relation to the extent of this delay is limited, it would appear that it is not uncommon for a delay of 6 weeks to arise between disclosure and the conduct of a forensic interview with a child by a specialist member of An Garda Síochána. This delay can sometimes extend to a period of months[60]. Under the EU Barnahus Model employed in a number of EU countries, and discussed more generally in the next paragraph, a first child protection interview should take place within a week of disclosure – and within 24 hours in acute cases. The Barnahus Model also recognises that forensic interviews for use in court should be conducted within 1 to 2 weeks of such disclosure. In the case of teenagers, an outside period of 3 weeks may safely be employed[61]. Such a tight window for interviewing is imposed in light of the understandings devised from child psychology that, in particular when a younger child discloses such abuse, he or she will discuss it at the outset and then seek to move on[62], losing the capacity to recall pertinent details within a short period of time. Thus delays of the type mentioned in an Irish context can result in a case being 'uninvestigable'. We recommend that this situation be remedied as soon as possible by the adoption and implementation of a policy by An Garda Síochána in relation to the prompt timing of its own interviews with children and of a further joint policy by The Child and Family Agency and An Garda Síochána in relation to the prompt timing of jointly conducted interviews with children. These policies must reflect the obligation to conduct interviews as soon as appropriate in accordance with the requirements of international best practice, with personnel from both bodies turning their attention to the scheduling of such interviews and other necessary steps as soon as the disclosure is made.

5.3.6. One other form of joint specialist interviewing of child victims of sexual abuse takes place within the Barnahus system which represents a very advanced form of inter-agency intervention. This model has been piloted in this jurisdiction in Galway since September 2019 and is due to be extended to the Dublin and Cork areas in the near future. This model co-ordinates in one purpose-built location essential forensic examination, child protection assessments and therapeutic screening of children who have been the victims of sexual abuse. The child is interviewed by a specialist interviewer according to an evidence-based protocol. The interview is recorded and viewed by the other professionals whose questions are put to the child by the interviewer.

5.3.7. Having begun its life in Iceland in 1998, the model spread to Norway and Sweden and it is now also employed by certain local authorities in Scotland, and in England and Wales. A more robust form of the model is used in the Scandinavian countries than that which applies in the latter jurisdictions. In the Scandinavian form of the model, the child's interview in the Barnahus (meaning children's house) is also observed 'live' by a judge, a social worker,

60 In relation to garda delay in the conduct of interviews, see the Garda Soichana Inspectorate Report, Responding to Child Sexual Abuse – A Follow Up Review (2017); see also https://www.independent.ie/irish-news/courts/garda-defends-length-of-time-taken-to-interview-children-in-abuse-trial-40541892.html.

61 Per the Barnahus EU quality standards https://www.barnahus.eu/en/the-barnahus-quality-standar/. Page 23.

62 In relation to children's patterns of disclosure, see *Child sexual abuse disclosures: Does age make a difference?* McElvaney, Deecember 2019, 99 Child Abuse and Neglct 99; see also How Children Tell: Containing the Secret of Child Abuse, McElvaney t al.

the police, the prosecution and defence teams and the child's advocate. Once again, all parties present their questions in advance to the interviewer who puts them to the child. The interview is recorded and used in any subsequent court proceedings. Only one interview is conducted, and the child is not required to attend in court for cross-examination or any other purpose, as all questions are put at that one interview.

5.3.8. Neither judges nor the respective legal teams have any involvement in the version of Barnahus employed in England and Wales, nor in the version being employed in this jurisdiction. The Galway Barnahus project has developed a suite of inter-agency protocols that can form the basis for the practice in the centres to follow in Dublin and Cork. Participation in the EU Barnahus network has also facilitated the development of best practices in the Galway model. We understand, furthermore, that a review is at present being undertaken within the Barnahus project involving members of An Garda Síochána, the Child and Family Agency, The Health Service Executive and Children's Health Ireland, in order to streamline the child protection service and improve overall the service provided. While there is little publicly-available information in relation to how the service is operating and it has not been possible for us to determine, for example, how soon after disclosure interviews by Gardaí and the Child and Family Agency are being conducted and services provided, it is our understanding that consideration is being given in the current review to improving forensic, interview, medical and therapeutic practices with a view to, amongst other things, reducing the time a child will wait for the appropriate services and support.

5.4. Information-sharing Between An Garda Síochána and The Child and Family Agency

5.4.1. As we have previously noted, the system of mandatory reporting introduced by the *Children First Act 2015* compels a member of An Garda Síochána and other persons identified in the Act, "who knows or has reasonable grounds to suspect, that a child has been harmed, is being harmed, or is at risk of being harmed", to report that knowledge or suspicion to the Child and Family Agency. The 2015 Act also provides that the Child and Family Agency may ask any mandated person, whether or not they made the initial mandated report, to provide any necessary and proportionate assistance in assessing the risk to a child. 'Mandated assistance' may include a request to supply further information over the phone, produce a verbal or written report or attend a meeting.

5.4.2. A further statutory form of mandated collaboration is found in Section 12 of the *Child Care Act 1991*. That provision envisages that where a member of An Garda Síochána has reasonable grounds for believing that there is an immediate and serious risk to the health or welfare of a child, and it would not be sufficient for the protection of that child to await the making by the Child and Family Agency of a court application for an Emergency Care Order, then that Garda may enter the child's home or any other place without warrant for the purpose of removing the child to safety, and as soon as possible thereafter deliver the child into the custody of the Child and Family Agency. The Child and Family Agency will then, having assessed the risk, decide whether to return the child to

the care of his or her family, or apply to court for an Emergency Care Order.

5.4.3. In 2017, the extensive *Report of the Audit on Section 12 of the Child Care Act 1991* was published, and it addressed, amongst many other things, the nature of the inter-agency communication between the Child and Family Agency and An Garda Síochána in the context of that specific provision and, indeed, more generally. The Report referred to a persistent lack of feed-back from the Child and Family Agency to those Gardaí who had exercised Section 12 powers about the steps subsequently taken by the Agency in relation to the child, a practice which led to a loss of learning on the part of An Garda Síochána. The Report found that this failure to feed back reinforced "institutional silos between agencies tasked with pursuing the same child protection objectives". It also concluded that there was no evidence of "effective and robust systems for inter-agency information-sharing and co-operation after the invocation of section 12". While those comments are clearly Section 12-specific, the Report went on to make the following general – critical – observations about Child and Family/An Garda Síochána inter-agency co-operation:

> "The audit also consistently found low levels of meaningful communication between agencies… The evidence from the interview and focus group stages of the audit also strongly indicated that good inter-agency cooperation and coordination was largely dependent on the organic development of good, informal, personal relationships with individuals within other agencies with child protection functions and responsibilities. There is little evidence that An Garda Síochána, Tusla and related agencies have developed formal structures to foster good inter-agency cooperation."

5.4.4. The Audit was published in January 2017 and that same year two documents of interest in the context of inter-agency co-operation in the area of child protection were published. The Child and Family Agency's *Children First: National Guidance for the Protection and Welfare of Children* sought to give assistance in relation to the provision of mandated information, and the *Joint Working Protocol for an Garda Síochána and Tusla* which, like the Guidance document, recognised the child-protection benefits of collaborative work between the two agencies and set out a hierarchical structure through which this collaboration and other purposes could be achieved and/or kept under review.

5.4.5. Thus the Protocol envisages, for example, that the Child and Family Agency and An Garda Síochána will each designate personnel at assessment, investigation and management levels to work collaboratively[63]. At the apex of the information-sharing structure devised by the Protocol is the National Child Safeguarding Strategic Liaison Committee (NCSSLC)[64] which is co-chaired by An Garda Síochána's Assistant Commissioner (Special Crime Operations) and the CEO of the Child and Family Agency and which also comprises other representatives within both organisations and the HSE. The aim of the NCSSLC is to ensure a

63 A Local Area Office Social Work Team Leader within Tusla and a designated Inspector/Sergeant of the corresponding Garda district will constitute a Liaison Management Team with responsibility for ensuring that interagency liaison is maintained and that each reported child protection/welfare concern is appropriately processed.

64 The Assistant Commissioner, Special Crime Operations, and the Chief Executive of Tusla co-chair the National Child Safeguarding Strategic Liaison Committee, which also comprises other appropriate representatives within both organisations and the HSE.

coordinated, effective response between agencies to resolve challenges within the child protection and welfare system[65]. There are three strata beneath the NCSSLC and the one closest to ground level is the Local Liaison Management Team which should oversee investigations and assessments, review the progress of all cases and resolve any challenges arising in the local liaison process. It will also have the task of considering specific child-centred matters – for example, to consider the impact of the alleged abuse and of a prosecution or, conversely, of a decision not to prosecute – upon specific child victims, and to consider and identify the support needs of such children[66].

5.4.6. The Joint Protocol provides that there shall be an annual review conducted. None has been published to date, but we understand that the first such review is currently being conducted. We were assured by some interviewees that the structure set up under the Protocol is in operation, and we await the annual review to see to what extent it is effective and how it could be improved, if at all. We did hear at interview of good working relationships between personnel in both organisations who engaged in the sharing of such information. It is not as yet clear, however, whether, as was found in the Section 12 Audit, positive working connections built up between staff from the two organisations remain the basis for such sharing or whether information is in fact shared in a systematic manner through formal channels which ensures the comprehensive ongoing transfer of relevant information for the purposes of achieving the most effective child protection results.

5.4.7. We also understand that a Data Sharing Agreement between the Child and Family Agency and An Garda Síochána is currently being drafted and is due to be published in the coming months and that too may impact upon the extent and effectiveness of information-sharing between the two organisations. At present, however, it is not possible to say what exactly the nature and extent of the inter-agency information-sharing is between the two bodies nor are we aware of the likely content of the proposed Data Sharing Agreement.

5.4.8. One further and vital CFA policy which has very recently come into force and which raises very real concerns about the nature and extent of the inter-agency collaborative work between the Child and Family Agency and An Garda Síochána in this field is the *Child Abuse Substantiation Procedure* (CASP, Version 1.2), in operation since the end of June 2022. The document sets out how allegations of abuse will be substantiated by the Agency and, at its outset, indicates without identifying the parties involved, that a "diverse group of

65 The Committee works to enhance joint working at a strategic level, including: Joint training; Local Tusla/An Garda Síochána liaison; Missing children from care; Unaccompanied minors; Vetting; Liaison with religious orders and dioceses; Children in special care; Organised child abuse.

66 Above the Liaison Management Team is the Senior Local Management Liaison Forum which has overall responsibility for the management of child protection and welfare within its geographical area. The Protocol envisages that the Senior Local Management Liaison Forum will review joint working arrangements to ensure good practice in respect of notification, information sharing, case management and policy and procedure implementation. It will also provide assistance to the local Liaison Management Team on complex child protection cases and resolve any area of difficulty that may arise in local joint working arrangements. Finally, it will advise the National Children First Liaison Management Committee of any operational matter that may have implications for national joint policy and procedures. This Committee will, in essence, provide direction, advice and guidance to local management and operational services in respect of Children First joint Garda/Child and Family Agency liaison, policy and procedure and further develop such policies and procedures as required, ensuring that all such developments are child-centred and in accordance with legislation and international best practice.

external sectoral stakeholders" were consulted when this new policy was being devised. It is thus not clear the extent to which An Garda Síochána had an input into the creation of this new policy, if at all. Chapter 6 of the document is entitled "Inter-Agency Co-operation between Tusla and An Garda Síochána" and refers, amongst other things, to the Joint Protocol described above. Of very real concern, however, is the fact that the substantiation procedure envisaged in CASP does not identify the points at which joint work will take place between the two agencies. Indeed, Stage 2 of the procedure envisages that, having taken some preliminary steps to assess an allegation, the social worker in question will begin the interview process with witnesses and, crucially, the "person the subject of the abuse allegation (PSAA)". Having done that, and then carried out checks relating to reliability and accuracy of information gathered, the social worker will issue the provisional conclusion to the person the subject of the abuse allegation, await their response, consider that response once received and then carry out any further assessment that may be required. The person who is the subject of the abuse allegation will then be provided with an opportunity to respond to any further information gathered during the further assessment and that response will be incorporated into the social worker's final conclusion. The final conclusion, including a determination of risk, if any, will be issued to the person the subject of the abuse allegation.

5.4.9. It would appear that this process of endeavouring to ensure that a person the subject of an abuse allegation is informed at the earliest possible opportunity of the details of the allegations against him or her is a heightened response to a body of High Court jurisprudence outlining the right of such a person to fair procedures in relation to the conduct of assessments[67]. While such a right must indeed be protected, it must be done in a way that balances that right with competing rights and interests of fundamental importance. The CASP itself refers to the child's right to be free from harm and the child's interest – and indeed the public interest – in having child abuse allegations investigated by An Garda Síochána in an effective manner and prosecutions pursued, where appropriate. Yet the very fact of this early and seemingly unilateral engagement by the Child and Family Agency with the person the subject of the abuse allegation, without Garda involvement, raises the very real spectre of such persons learning all of the details of the allegations against them and thus attending any Garda interview which may take place in due course armed in advance with detailed information. In our contention, such a development represents a very unfortunate retrograde step and we recommend that it must be addressed as soon as possible in, for example, a further version of the CASP, the Joint Protocol, if one is to be devised, and in Garda policy itself.

5.5. Information-sharing Between the Child and Family Agency and Other Professionals

5.5.1. When conducting its assessment into the risks faced by a child whose circumstances have come to its attention, the Child and Family Agency will often engage with other agencies apart from An Garda Síochána in order to obtain a fuller picture of relevant issues. One routine example of such

67 Generally, consideration of this issue commences from the judgment of Barr J in MQ v Gleeson [1998] 4 IR 85. More recent judgments of interest include E O'C v *The Child and Family Agency [2019]* IEHC 843 and A Person subject to an allegation of abuse v The Child and Family Agency [2020] IEHC 464.

collaborative approach may be observed in child protection conferences convened by the Child and Family Agency. A child protection conference is an inter-agency and inter-professional meeting for the purpose of identifying all concerns pertaining to the protection needs of a child. Both statutory and voluntary agencies are invited in recognition of their role in identifying and assessing such concerns. Those invitees will contribute to the assessment of the level of risk and to the development of a Child Protection Plan, if such a step needs to be taken. We note, however, the comments made by Barnardos in its submissions at the public consultation stage for the development of the Third National Strategy on Domestic, Sexual or Gender-Based Violence, that the imposition of restrictions upon data-sharing by GDPR "continues to be confusing for professionals and agencies working in this area and at times has prevented them from sharing information in order to promote safety and wellbeing for children".

5.5.2. Some of the interviewees to whom we spoke expressed similar reservations about sharing information in the wake of GDPR and the *Data Protection Act 2018*. The fact that these measures could have a chilling effect on such an important practice is a very real cause for concern and therefore we recommend that research be conducted into the issue of how such practices may be continued and promoted in a manner consistent with the various data protection obligations imposed by law. If appropriate the research should consider how the Data Protection Act 2018 may be amended, in a manner consistent with the obligations imposed by GDPR, in order to facilitate such inter-agency information sharing. It would be appropriate, in our submission, for the Data Protection Commission to undertake such research.

5.6. Information-sharing in Relation to Adult Victims

5.6.1. An adult victim will also often find themselves engaging with a mixture of statutory and voluntary agencies. Collaboration and co-ordination between those various agencies present the best opportunity by which to amalgamate the information and insights from each and to thereby devise the most effective response to risk on the victim's behalf. Such information may have an inter-court-process dimension as it will both inform the investigating Gardaí and ensure that an adult has access to all relevant information for the purposes of an application under the *Domestic Violence Act 2018*. Once again, GDPR-related concerns apply and the recommended research described in the preceding paragraph should also consider how such information in relation to adults may lawfully be shared.

5.6.2. We note that in recent years An Garda Síochána has, in conjunction with Women's Aid, devised and begun to apply the Domestic Abuse Risk Evaluation Tool in the context of victims of domestic violence. If, in time, the merits and more general-suitability of that tool are established, or indeed that it becomes apparent that a different model should be employed, it would appear that the use of a common means of assessment of risk by all bodies providing supports to victims has much to commend it. Such a uniform approach in relation to the assessment of risk should, it is hoped, encourage the development of appropriate collaborative strategies and safety plans for the protection of victims. Thus, consideration should be given to the establishment of a systematic forum for all

interested agencies to share and collate information in relation such victims. In that regard, we note that the multi-agency risk assessment conference (MARAC) is a development which is used in a number of countries in addressing more high risk cases of domestic abuse. First developed in Cardiff in 2003 in order to provide a platform for local agencies to share information about victims experiencing extremely serious levels of abuse, the model uses a partnership approach to tackling domestic abuse cases that fall within its remit. MARACs are a process, not an agency; a MARAC is a meeting at which statutory and voluntary agency representatives share information to produce a co-ordinated action plan in order to increase victim safety.

5.6.3. A MARAC operates at the local level, with meetings chaired by the police. One positive aspect of the MARAC model is that its costs are relatively low. The police and/or the local authority fund the position of the MARAC co-ordinator and it appears that this is the only direct cost involved. There are now over 250 MARACs across the UK[68] and in 2020 the Domestic Abuse Commissioner for England and Wales asserted that the "MARAC model has helped police in the UK to develop a comprehensive response to domestic violence". The model has also been adopted in the Nordic countries and in Finland where evaluation studies show that MARACs significantly reduce the risk of repeat victimisation and increase the chance of victims reporting and making a complaint about abuse to the police. A study looked at rates of re-victimisation for cases heard at the Cardiff MARAC and found that approximately six in ten victims reported a complete cessation of abuse in the six months following a MARAC, and approximately four in ten victims remained free from abuse after 12 months[69]. Practice so far confirms the strengths of the MARAC model, but also shows a series of weaknesses. For example, it shows that consistent participation of members is critical for the model to function effectively, that establishing focal points or designated representatives within each agency is good practice, and that, even if these conditions are fulfilled, domestic violence training is still needed for those who participate[70].

5.6.4. While we do believe that there is merit in devising and implementing a platform which facilitates information-sharing between bodies holding relevant information in order that the safety of victims may be enhanced, we do not propose to endorse the MARAC model nor other particular channels of inter-agency information-sharing. We therefore believe that there is merit in the conduct of further research to determine the appropriate model of, inter-agency co-operation and risk assessment that will best serve to meet the needs of adult victims of domestic and/or sexual violence in this jurisdiction. Our recommendation stems from the belief that the introduction of such a practice can assist in the presentation of more comprehensive information to courts dealing with Domestic Violence Act applications, criminal investigations and

68 Case Study The Multi-agency Risk Assessment Conference between London police, local authorities and service providers (United Kingdom). Available at: http://www.endvawnow.org/uploads/browser/files/security_marac_case_study.pdf 30.

69 In addition, the agencies involved in the MARAC perceived the process as helping to improve awareness and to strengthen the links between key agencies (Robinson, 2004. and Robinson & Tregidga, 2005. The Finnish research also suggests that MARACs can achieve up to a 60% reduction in abuse, reducing to 43% if adjusted to account for serial perpetrators.

70 In Northern Ireland which recently adopted the model the Chief Inspector of Police has expressed concern about the low numbers of cases being referred to MARAC, indicating that it takes some time for the idea to find cultural acceptance amongst the professions in the field.

possibly in the preparation of victim impact statements at sentencing stage.

5.7. Using Shared Information Gathered in the Child Care Process in Private Family Law Proceedings

5.7.1. While the extent and comprehensiveness of the information-sharing between An Garda Síochána and the Child and Family Agency is not as yet clear, it is apparent that there is indeed *some* form of such a practice in operation. In time, some of the information thus gathered may be used as evidence in any subsequent child care litigation or criminal prosecution that ensues.

5.7.2. Clearly in private family litigation, unlike the criminal and child care court processes, there are no institutional parties with easy access to multi-agency professional expertise and, at present, the information put before the court in such cases is often confined to a personal allegation and denial of violence. Often, it appears, there is little or no evidence before the court about the risk-assessment processes actually undertaken nor any safety plans actually devised by the Child and Family Agency in conjunction with other professionals in order to protect an adult or child from the risk posed by an alleged perpetrator/parent. Likewise, potentially significant evidence from An Garda Síochána, including the results of its own risk evaluation process, are often not brought before the court in such applications. While the court must of course make its own determination as to whether, on the balance of probabilities, it believes the applicant's account, the availability of the evidence of professionals with an in-depth understanding and awareness of the family's circumstances, and in particular the circumstances of any child within that family, would be most beneficial as far as the application of the forward-looking test regarding the need for the *Domestic Violence Act 2018* orders or the granting of access or custody to an alleged perpetrator is concerned. It would therefore appear that decisions of huge importance to the welfare of children are routinely being made under the *Domestic Violence Act 2018* and indeed those in relation to access and custody under the *Guardianship of Infants Act 1964 as amended* in the absence of vitally important information; without due regard for each child's constitutional and ECHR rights to fair procedures.

5.7.3. In England and Wales, the 2020 Harm Panel Report considered the problems caused by the failure to exchange information between the various systems, and in particular the failure to use information gathered in the other proceedings for the purposes of private family law applications. The Panel indicated that it;

> "received multiple submissions detailing instances where information and assessments collected or conducted by other reliable agencies were not used by the family courts to inform decision-making. The Panel therefore is concerned that available evidence of domestic abuse and its impacts on children is ignored by family courts, and that risk assessment [in courts] fail to consider indicators and assessments of risk that have been made elsewhere."

5.7.4. One definite mechanism which could be invoked which would result in such vital information coming before a court dealing with an application for an Order under the *Domestic Violence Act 2018* is found in Section 11 of that Act

itself. That provision confers upon the Child and Family Agency the power to seek a Safety Order, Barring Order or an Emergency Barring Order under the Act itself on behalf of a victim who does not feel able to seek such Orders themselves. The Child and Family Agency must first of all ascertain as far as practicable the wishes of the victim, or where the victim is a child, the wishes of the non-perpetrating parent. While the Child and Family Agency, during our interviews, confirmed that a number of applications of this nature had in fact been brought under the earlier Act governing such applications[71], the fact that many front-line social workers dealing with child-protection issues are unaware of this option, supports the general understanding that Section 11 of the Act of 2018 is very rarely invoked. Yet, the Child and Family Agency's power to bring a Section 11 application represents a potentially vital child protection tool to be used where an adult victim is fearful of bringing the application themselves but supportive of the Agency doing so. Indeed, in our submission, if the Child and Family Agency devises a safety plan which recognises the need for a Barring Order to be put in place to protect a child within a violent family, then it is *incumbent* upon the Agency to utilise its statutory power to apply for such an order, if the victim parent, though not in a position to do so themselves, is supportive of such an application.

5.7.5. Such an *obligation* to apply for an Order in these circumstances arises, we assert, as a result both of Article 42A.1 of the Constitution and of the *European Convention on Human Rights Act 2003*. Article 42A.1 of the Constitution provides that the State may in exceptional circumstances, endeavour to supply the place of parents who have failed in their duty towards their children to such extent that the safety or welfare of any of their children is otherwise likely to be prejudicially affected, but the State must do so by *proportionate* means. Likewise, pursuant to the *European Convention on Human Rights Act, 2003,* all organs of State – of which the Child and Family Agency is an example – are obliged to perform their functions in accordance with the requirements of the Convention. In that regard, the main function of the Child and Family Agency is set out in Section 3 of the *Child Care Act 1991* which obliges it to promote the welfare of children who are not receiving adequate care and protection. That obligation must be carried out in accordance with the Convention and, of most relevance for present purposes, in accordance with Article 3 (freedom from torture and cruel and degrading treatment) and Article 8 (right to respect for private and family life). Both of these Articles impose positive obligations upon bodies such as the Child and Family Agency to protect children; in other words, it is not enough for organs of State to stop others from violating those rights, it must take positive action itself in appropriate circumstances. The requirement that such actions be proportionate arises in this ECHR context also.

5.7.6. Thus, for example, the Child and Family Agency's safety plan in relation to a particular child may indicate that, in order to keep that child safe, a Barring Order must be obtained which will have the effect of removing an alleged perpetrator from the family home, and in the absence of such an Order, it will be necessary for the Child and Family Agency to apply to court for a Care Order placing the child in its care. If, however, the victim parent does not feel strong enough to bring the Barring Order application in his or her own name, proceedings brought by the Child and Family Agency under the

71 *Domestic Violence Act, 1996.*

Child Care Act 1991 to have the child placed in its care will indeed, if successful, protect the child's safety and welfare, thus appearing at first glance to meet the constitutional demand embodied in Article 42A.1. It will also protect the child from further risk of inhuman and degrading treatment and further violation of his or her right to respect for private and family life, as protected by Article 3 and 8 ECHR respectively. Yet, in order to be consistent with the both the Constitution and the ECHR, any such Order placing a child in the care of the Child and Family Agency must be a *proportionate* response to the situation which has arisen. In other words, there can be no less drastic or intrusive means by which the rights of the child to be free from violence may be vindicated. But if the aim is to ensure that the child is protected from violence by not residing in the same home as the alleged perpetrator, then that end may be achieved by the use by the Child and Family Agency of its Section 11 powers to apply for a Barring Order which, if granted, would enable a child to live at home with the protective parent. Thus, that avenue and not the child care application avenue, represents the proportionate and thus the constitutionally- appropriate and ECHR Act-compliant approach which must be first considered and adopted in appropriate circumstances. In our contention, it is appropriate to so proceed if the non-perpetrating parent gives his or her consent to that application. And so, in such circumstances, the Child and Family Agency is not only *entitled* but, we contend, in appropriate circumstances, *obliged* to apply in its own name for a Barring Order under Section 11.

5.7.7. As noted previously, the wishes of the non-perpetrating adult must be taken into account when deciding whether or not to make such an application. While it is regrettable that the Act does not refer specifically to the need to have regard to the views of any children affected, it is submitted that in order to act in accordance with its ECHR obligations, the CFA must, having regard to the age and maturity of the child, endeavour to ascertain and then consider that child's wishes[72]. Once it has decided to bring such a Section 11 application, the Child and Family Agency must then bring the relevant information that it has at its disposal from the child protection process before the court.

5.7.8. If, however, the non-perpetrating parent is willing and able to bring a Barring Order application in their own name, we believe once again that Articles 3 and 8 ECHR have an impact upon the manner in which the Child and Family Agency must act. It is our contention that, where the Child and Family Agency's safety plan in relation to a particular child accepts that the child will be safe in the care of the non-perpetrating parent if the alleged perpetrator is removed from the home and so advises the former to apply for a Barring Order on the understanding that they will apply for a Care Order if not, the Agency must provide practical support to the applicant parent in the context of the Barring Order application. It cannot sit back and leave it in the hands of the parent to do so alone. As we have seen above, it will have a safety plan and all of the inter-agency information that went into the drafting of that plan at its disposal. We

72 Article 42A.4.2.envisages that provision will be made by for securing, as far as practicable, that in all proceedings referred to in subsection 1° of this section in respect of any child who is capable of forming his or her own views, the views of the child shall be ascertained and given due weight having regard to the age and maturity of the child. This provision concerns the need of the Court to have regard to the wishes of a child of appropriate age and maturity, but in this instance we are concerned with the obligation upon the CFA to consider such a voice before making a decision whether or not to bring a Section 11 DVA application.

contend that, in this instance, Articles 3 and 8 impose procedural obligations upon the Child and Family Agency to give evidence at the Barring Order application, setting out the information known to it regarding the welfare of the child, and putting such relevant documents as are at its disposal before the court in evidence, for the purpose of protecting the child. In our submission, however, it is more than a matter of attending court to give evidence and to submit documentation if *subpoenaed* to do so; the Child and Family Agency is obliged to support such an adult applicant in giving evidence and/or bringing or getting evidence ready for the application in order to put the best case before the court with a view to getting a Barring Order that will serve to protect the rights of the child.

5.7.9. Thus we contend, in light of our submission regarding the obligations of the Child and Family Agency under the *European Convention on Human Rights Act 2003*, that there is a very real obligation to share information between the child care and private family law processes and courts. We submit that the same considerations will apply if parties in those same factual circumstances are then involved in an access and/or custody application involving their child as the Child and Family Agency must share its information with the court and/or give evidence to the court regarding the risks, if any, posed to a child by access and/or custody being awarded to the alleged perpetrator.

5.7.10. We furthermore contend that the obligation which rests upon the Child and Family Agency to engage in private family law proceedings involving familial violence where it has information that will assist the applicant in obtaining an Order that will help to protect and vindicate a child's rights applies also in relation to An Garda Síochána. Since the commencement of *An Garda Síochána Act 2005*, the functions of that body go well beyond the investigation of crime and involves the protection of human rights[73]. Indeed, as An Garda Síochána's functions extend to adults, it would appear that it may have duties in relation to engagement in Domestic Violence Act applications where no children are involved, which clearly the Child and Family Agency does not have. And so, we contend, that the members of An Garda Síochána are obliged in appropriate circumstances to give evidence in applications under the *Domestic Violence Act 2018* and in access and custody applications in which there is underlying relational violence. In doing so, however, An Garda Síochána must not provide any evidence which would prejudice any criminal investigation in relation to, or prosecution of, the alleged perpetrator and they must, therefore, conduct a balancing act between the two competing demands on a case by case basis.

5.7.11. We recommend that the Child and Family Agency review and adapt its practices in relation to the utilisation of Section 11 of the Domestic Violence Act, 2018 which enables it to bring applications itself for Barring Orders and for Emergency Barring Orders under the Act.

5.7.12. We recommend that both the Child and Family Agency and An Garda Síochána review and adapt their practices to reflect their obligations in appropriate circumstances to give evidence in Domestic Violence Act applications and in access and custody applications in which there is underlying domestic and/or sexual violence. In the context of An Garda Síochána, we recommend that guidelines be devised setting out how its members ought to determine on a case-by-case basis whether it was appropriate to give such evidence, having

73 Per Section 7 of the Act of 2005.

regard to the need to ensure that any criminal investigation or prosecution is not prejudiced.

5.7.13. If the Child and Family Agency and An Garda Síochána adapt their practices in the manner recommended, this will impose an additional work burden upon them and so we recommend the provision of extra resources to them to assist them in this regard.

5.8. Agreed Sharing of Documentation Between the Child and Family Agency and an Garda Síochána

5.8.1. The ability to share not only information but also documentation between the parties involved in the various processes will further aid the emergence of a comprehensive picture in relation to the victim and/or the alleged perpetrator and may also have some role to play in avoiding the duplication of reports and the engagement of multiple assessors considering much the same matter in different processes. As mentioned previously, it is permissible for a party to share documentation, information or evidence presented to a court in private family law proceedings or documentation prepared in contemplation of such proceedings to a member of An Garda Síochána for the purposes of the conduct of a criminal investigation, but no such provision applies in respect of child care proceedings.

5.8.2. Prior to the institution of proceedings, there is no bar, other than data protection requirements, on the sharing of documentation by the Child and Family Agency at the request of An Garda Síochána. Once proceedings have commenced, however, it would appear that the Child and Family Agency cannot, because of the *in camera* rule, disclose any documentation to an Garda Síochána without the consent of the court: While the Child and Family Agency is obliged to put all relevant documentation before the Court in child care proceedings, it must be queried whether court approval is required for the disclosure to an Garda Síochána of documents of no relevance to the child care litigation. On the other hand, An Garda Síochána are not constrained in relation to the sharing of documents either before or during the conduct of criminal proceedings and, subject once again to data protection considerations, may share any document unless, in so doing, they interfere with the conduct of a criminal investigation or prosecution.

5.8.3. At present there are no formalised processes for the sharing of documentation between the two agencies prior to the commencement of the child care proceedings. We understand, however, that the Data Sharing Agreement currently being drafted by the Child and Family Agency and An Garda Síochána will address this matter. Although we are not yet aware of the content of that draft agreement, it is hoped that it will set out both those procedures to be adopted when disclosure of documentation is sought prior to the institution of child care proceedings and those pre-court steps to be taken when an Garda Síochána wish to obtain documentation from the Child and Family Agency once proceedings under the Act of 1991 have commenced. Such guidance is provided in England and Wales by the 2013 Protocol and Good Practice Model document on *Disclosure of Information in Cases of Alleged Child Abuse and Linked Criminal and Care Directions Hearings*. This document envisages the timely and

consistent disclosure of material from the police and the Crown Prosecution Service into the Family Justice System and *visa versa*. It also sets out a structured process by which the parties seek disclosure and make applications to court in order to secure such documents where either the party in possession of the documents cannot disclose them without court approval – in child protection proceedings – or, in the context of the criminal process, where the police are refusing to make documentation available to the child protection authorities.

5.9. Applications to Court for Disclosure

5.9.1. A court faced with an application for discovery or disclosure must consider and weigh the competing interests of the various parties; on the one hand where the Child and Family Agency seeks disclosure of documentation from an Garda Síochána, it will rely upon the need to ensure, in the interests of the children involved, that all relevant documentation is before the court when making decisions which will impact in a fundamental way upon the future of any of the children involved. In response, the Gardaí may resist such an application, claiming a public interest immunity which prevents the disclosure of documentation in order to ensure that no prejudice is done to the criminal investigation/s in question. The fear of an Garda Síochána in this context is that disclosure in the child care process will provide a respondent parent who is an alleged perpetrator with information which will enable him or her to arm themselves with answers in anticipation of questions yet to be posed in the criminal process. Our concern that the early disclosure of information to an alleged perpetrator by the Child and Family Agency under its new Child Abuse Substantiation Procedure (CASP) will undermine a prospective criminal investigation in a similar manner is one of the motivations for our recommendation regarding reform of the CASP; see Paras 5.4.8/9. If Gardai do have such concerns in a given case, they may refuse to comply with a request for disclosure until after the alleged perpetrator has been arrested, while in others they will resist such a request until the Book of Evidence has been served upon the accused; at one or other of those points in the criminal justice process, the Gardaí are often satisfied that disclosure will not be prejudicial to the criminal investigation in which they are involved, and they will then provide the requested documentation to the Child and Family Agency.

5.9.2. Thus, very often the issue being contested in a disclosure application of this sort is not *whether* An Garda Síochána will provide such documentation but *when* it will do so, the Child and Family Agency often being anxious to get access to such documentation before An Garda Síochána is willing to divulge it. It is submitted, that, as an "organ of state" under the *European Convention on Human Rights Act 2003,* An Garda Síochána must conduct its functions in the manner which least interferes with a child's Article 8 ECHR right to respect for his or her private and family life. The European Court of Human Rights has made it clear that undue delays in investigative processes can amount to such an interference and so we contend that the Gardaí are obliged to identify the first point in time at which disclosure can be made consistent with their obligation not to harm the conduct of the criminal investigation and to provide the documentation at that point (subject, of course, to any other concerns on their part about the sharing of the documentation), as to wait beyond that point

to disclose is to delay the progress of the child care litigation and thus potentially to violate the Article 8 rights of the child in question. Once asked by the Child and Family Agency for documentation, An Garda Síochána should address to the extent possible and on a case by case basis, the question of when that point in time will be reached, indicating why the investigation will be compromised before that time, and notify the Child and Family Agency promptly of that finding, setting out their reasons in writing.

In light of the above, we recommend that An Garda Síochána devise guidelines in relation to its response to requests for disclosure of documentation made by the Child and Family Agency and indeed by the parties or the Guardian ad Litem in child care proceedings. Those guidelines ought to identify the considerations to which regard should be had by members of An Garda Síochána when responding on a case-by-case basis to such requests. If a request is refused, written reasons for that refusal to be provided by An Garda Síochána. If the proposed Data Sharing Agreement between An Garda Síochána and the Child and Family Agency does not reflect this proposal, we recommend that the draft document be amended accordingly.

We also recommend that the above-mentioned guidelines should apply equally in the context of applications by parties for disclosure of documentation by parties in private family law proceedings.

5.9.3. It is not uncommon for issues regarding the timing of disclosure by An Garda Síochána of documentation to the Child and Family Agency to arise when the Agency seeks to obtain copies of the interview/s conducted by Gardaí with a child victim. In such circumstances, as the Child and Family Agency will thereafter be seeking to rely upon the child's interview/s as evidence at the child care hearing, the Agency will also bring an application to court pursuant to Section 23 of the *Children Act 1997* to have the child's interview admitted as hearsay evidence. This application is generally made alongside, or soon after, an application to lift the *in camera r*ule and the application for disclosure.

5.9.4. While no statistics are available in relation to the number of such applications, it is generally agreed that applications for discovery by An Garda Síochána into the child care process are the less frequent of the two. At present, if An Garda Síochána wish to obtain access to documents put before the child care court, they must bring an application before that court. In such circumstances, the Child and Family Agency may not have any real objection to sharing the documents in question but must let the application proceed to get the Court's approval to the lifting of the *in camera* rule and to the discovery sought.

5.9.5. Partly as a result of that same rule, there is very little information available regarding how the courts determine applications for discovery or disclosure in such circumstances. When the issue recently came before the High Court, Barratt J invoked Article 42A.4.1 of the Constitution to say that the best interests of the child must be the paramount consideration in this context and, on that facts before him, rejected the assertion by An Garda Síochána that the information ought not be shared until the Book of Evidence had been served on the alleged perpetrator and concluded that the best interests of the child in this particular case required that the information sought be made available to the applicant in advance of and for the purposes of an access application.

Determining the best interests of a child in such a context can be a difficult task as on the one hand, the documentation may be of considerable assistance as far as the conduct of the child care proceedings are concerned, and yet the continuation of the criminal proceedings will often itself be of significant benefit to the child. The lengthy list of considerations to which a court should have regard, when determining such matters – as identified by the Courts in England and Wales in a number of judgments[74] – is testament to the many issues to which a judge determining such a relevant application must have regard. No such list has been identified in this jurisdiction and, in the interests of the developing a uniform practice, we recommend the introduction of a illustrative statutory list of issues to which a court determining an application for disclosure or discovery in such a context ought to have regard.

5.9.6. By way of concluding comment in this regard, it may be wondered why An Garda Síochána do not more often seek to obtain from the child care process the court reports of experts who have assessed the impact of the family violence on a child victim, in order for example that the report might be used for sentencing purposes. Of course, the agreement of the expert to such use would have to be obtained prior to the making of such an application. Even better from both an information-sharing and a public resources perspective, would be the possibility of joint commissioning of reports across systems in those circumstances in which the two processes seek to determine the same issue. It is recommended that further consideration be given by An Garda Síochána and the Child and Family Agency to the issue of the joint-commissioning of experts to compile reports where common issues of concern arise, such as, for example, in the context of the impact upon a child victim of domestic and/or sexual violence, when such report could be both used in the child care proceedings and, where appropriate and with the knowledge and consent of the victim, for the purpose of sentencing applications.

5.10. The Privilege Against Self-incrimination

5.10.1. When documents from the child care process are made available to An Garda Síochána for the purpose of its criminal investigation, it is conceivable that within those documents will be an admission relevant to the criminal investigation made by a parent who is both a respondent in the child care proceedings and also the alleged perpetrator. Can An Garda Síochána make use of such incriminating comments to build a criminal case against that parent? If the long-established rule against self-incrimination, which has its basis in the presumption of innocence, applies in the context of child care litigation, then it would appear that the statement cannot be used against him or her. The rule provides that nobody shall be obliged to answer a question if the answer would tend to expose him or her to a criminal charge. *The Child Care Act 1991* does not offer any guidance on whether or not this principle applies in proceedings brought under the Act. While the right has been invoked in the child care courts[75], there does not as yet appear to be any conclusive judicial guidance in the context of such proceedings on the extent to which this principle applies

74 Re R (Children: Disclosure) [2003] 1 FCR 346, Re AB (Care Proceedings: Disclosure of Medical Evidence to Police) [2002] EWHC)Fam) 2918, Re M (Care Proceedings: Disclosure: Human Rights) [2001] 2 FLR 1316.

75 See, eg., *HSE v YG [2012] IEDC 355.*

in the context of statements made within that process, if at all. In a recent judgment, however, the Court of Appeal permitted the use of incriminating statements made to an expert in the course of an assessment undertaken during wardship proceedings to be used in the subsequent prosecution of the parent of the ward who uttered the statement[76]. While Birmingham J, in delivering judgment for the Court, did refer to the unusual factual circumstances of the particular case, it is nonetheless possible that such an approach will find favour in due course in a child care context.

5.10.2. In England and Wales, Section 98(1) of the *Children Act 1989 as amended* provides that no person shall be excused from giving evidence on any matter or from answering any question put to him or her in the course of child law proceedings, on the grounds that to do so might incriminate that person, their spouse or civil partner. Section 98(2) provides, however, that such statements or admissions shall not be admissible in evidence against the person making it, their spouse or civil partner, in proceedings for an offence other than perjury. Underlying Section 98 is a desire to ensure that fulsome and frank answers are given in proceedings relating to children: thus, a witness must answer a question in order to assist the child protection court in the conduct of its function and can do so safe in the knowledge that it cannot be used against him or her as the basis for a criminal prosecution. However, the courts in England and Wales have made it clear that while such statements cannot be used as a basis for a prosecution, they can nonetheless be referred to when challenging an argument made as part of the defence of the accused in any subsequent criminal prosecution.

5.10.3. It appears that the statutory approach in England and Wales gives primary weight to the conduct of relevant civil over criminal proceedings as a means of protecting the welfare of the child victim, while the subsequent judicial interpretation of the statutory provisions endeavours to facilitate some use in criminal prosecutions of incriminating information secured in those civil proceedings. There are clearly many important competing considerations at play here, and while the immediate and practical steps to secure the protection of the particular victim child may indeed be secured via civil proceedings, the prosecution and conviction of an offender may have an important role in the promotion of the welfare of the victim child – and indeed of other alleged or potential victims. Thus we recommend the conduct of further research into the application of the privilege against self-incrimination in proceedings pursuant to the Child Care Act, 1991.

5.11. Specific Issues Arising in Relation to Access and Bail

5.11.1. The topics of access and bail provide a particularly good opportunity for successful collaborative practice between the criminal system on the one hand and the two civil law systems on the other, and for that reason merits separate attention here. The terms of an access arrangement or an access order may be relevant to the conditions upon which bail is granted and, conversely, a civil court aware of bail conditions may fix access terms in a way that does not conflict with those conditions. It may in some cases also be appropriate for An Garda Síochána to make it known to the civil courts whether or not the child's

76 *DPP v BK*, Unreported, Court of Appeal, 22nd October 2022.

interview with An Garda Síochána for the purposes of the criminal investigation has taken place or not. While there is no general principle preventing access between a child and an alleged perpetrator prior to the criminal trial; there may, however, at times be reason to suspend access for a short period until after the child's interview with the Gardaí, in order to avoid the tainting of the child's evidence[77].

5.11.2. It is therefore submitted that channels of communication should be established between the civil court process and the criminal justice process in order to ensure the passage in both directions of information relevant to bail and access such that that information may then be brought to the attention of the presiding judge. The development of such channels of communication may be an important tool in the protection of victims as the pre-trial period can be a time of heightened risk for victims who face the prospect of further violence, intimidation and control at the hands of alleged perpetrators. Likewise, as we heard at a number of interviews, access applications may themselves be a vehicle for control and intimidation of victims by the alleged perpetrator, and so it is imperative that all relevant information regarding the parallel applications is before those courts deciding both bail and access applications.

5.11.3. In the context of access fixed in the child care process, clearly such two-way channels could be devised between the Child and Family Agency and An Garda Síochána/the DPP's office. As, however, there is no institutional actor in the private family law proceedings, it is to be expected that the channels of communication may be incomplete and therefore courts may not be able to rely upon them. In those circumstances, it is suggested that a system of information-sharing about access in both the private and public law contexts and bail be devised between the Courts Service and An Garda Síochána/the DPP's office.

5.11.4. In order to ensure, for example, that the Courts Service becomes aware of parallel criminal proceedings, the initiating forms which parties seeking private family law reliefs fill in should seek information regarding such proceedings such as the name and contact details of the prosecuting Garda. The Courts Service will thereby be in a position to provide the information regarding terms of access to An Garda Síochána/the DPP's office. In child care proceedings, the Child and Family Agency can provide such information to the Courts Service. Likewise, a prosecuting Garda/representative of the DPP should ensure that he or she has details of any pertinent civil proceedings in order that he or she can inform the Courts Service of any relevant terms of bail proceedings to which a civil court's attention should be drawn when matters regarding access are being determined.

5.11.5. Devising, operating and maintaining such channels will impose additional work burdens upon the Courts Service in particular, but also upon An Garda Síochána/the DPP's office also and so resources appropriate to those additional obligations should be provided.

77 Although consideration would have to be first given to whether such tainting could be avoided if the access were supervised.

5.12. Summary Written Outlines of Decisions in Civil Cases Involving Domestic or Sexual Violence

5.12.1. In the course of our interviews, we heard how in some civil cases, when courts were made aware by the victim or their legal representatives of criminal convictions for acts of violence inflicted by the perpetrator, that court had regard to the nature of that conviction when determining issues such as access by the perpetrator to the children of the relationship. In other cases, however, we heard how the civil court refused or failed to have regard to such convictions, an experience which mirrors that recorded in the research set out in the 2019 Women's Aid Report, *Unheard and Uncounted*. This situation gives rise to two points worthy of consideration. First of all, in the first set of cases, we see evidence of pertinent information from one process being considered and utilised in another process in a manner which offers protection to the interests of victims. Secondly, and more worryingly, however, the two sets of experiences highlight an obvious lack of uniformity in the approach adopted by the judiciary in such circumstances.

5.12.2. Having considered the above, and taking the views of our Advisory Committee into account, we believe that there is merit in requiring District and Circuit Civil Courts to give a brief written outline of its decisions in the context of all matters pertaining to domestic and/or sexual violence and of the reasons for those decisions, and so make a recommendation that a statutory provision to that effect be introduced. While Section 17 of the Domestic Violence Act, 2018 requires judges to give reasons for their decisions in the context of applications under the Act, our recommendation goes beyond the parameters of such applications to include those relating to children in which issues of domestic and/or sexual violence arise and also refers to the need to put the decision in writing. Such a document must be written in an anonymised manner such that no details identifying or tending to identify the parties or the children to the proceedings are included. Those decisions could then be made public by the Courts Service website, as it is one of the bodies authorised by the relevant legislation to report on *in camera* matters; per Chapter 2. Some judgments of this nature are already placed on the Courts website when Judges on the District Court and Circuit Court set out their reasoning in certain cases, and we note the guidance that is derived already by parties and legal practitioners when this occurs. While this is a significant departure from the current practice of many judges, we anticipate a two-fold positive benefit from the extension of this practice to all members of the District and Circuit Court when exercising a civil law jurisdiction in relation to matters involving domestic and/or sexual violence. First of all, enhanced uniformity of judicial practice is likely to emerge as a result of this change, thereby providing re-assurance to victims of domestic and/or sexual violence regarding the likely manner in which their case will proceed. In that regard, we note that *The Family Courts Bill 2022* envisages that it shall be one of the functions of the Principal Judges of the Family High Court, Family Circuit Court and Family District Court to "ensure appropriate consistency" in the exercise of their jurisdiction by the judges of the relevant courts[78]. Equally, such a document should serve to reveal the fact and nature of the collaboration, or the lack thereof, between the various processes, in

78 Section 11, 13 and 15 respectively.

the sense of the extent to which information gathered or orders made in one process are considered in another. It is hoped and anticipated that, as time progresses and some of our recommendations are adopted, the nature and number of such collaborative practices will increase and the adoption of this particular recommendation should hopefully play a considerable role in that regard.

5.12.3. As the decisions of the civil courts will be made in the context of *in camera* proceedings, the parties will remain bound by the rule, although our earlier recommendations about a victim's ability to discuss information from court with support persons and those providing therapeutic supports under appropriate conditions applies also at this juncture.

5.12.4. In making the above recommendation about the outline reasoned Decision, we are conscious that this will place an added burden upon an already overworked body of judges and so we repeat, at this juncture, our earlier observation regarding the appointment of more judges.

5.13. A Domestic Violence Court Register

5.13.1. As we have seen earlier, it is in the context of private family law that gaps in relevant information-sharing are most apparent and thus it is there that the greatest danger of court decisions being made on the basis of less-than optimum evidence arises, with all of the attendant dangers for victims to which such a situation gives rise.

5.13.2. While in the preceding paragraphs, we considered the extent to which concurrent criminal convictions are considered in civil proceedings, there is also much merit in the consideration by a court exercising a civil jurisdiction in relation to private family law matters of the fuller picture which access to the alleged perpetrator's *previous* civil orders, consent arrangements recorded in court, undertakings given to court plus relevant criminal convictions will provide. Whereas information about such history could be in no way determinative of an application for, for example an order under the *Domestic Violence Act 2018* or indeed for any other order, and cannot interfere with the respondent's right to a fair hearing, it would nonetheless enable the presiding judge to get a fuller understanding of the familial violence in appropriate circumstances. Clearly, once again, a respondent could point to changes in their behaviour since the previous orders were made, by for example availing of appropriate supports, to show that the history of previous orders was of no or of very limited relevance in the context of the application before the court. Reference might also usefully be made to such orders in child care litigation, for the purpose of aiding the understanding of the child's family circumstances.

5.13.3. As a general rule, reference to a history of convictions and orders may not be appropriate in the context of a criminal trial as it would tend to interfere with the alleged perpetrator's constitutionally-protected presumption of innocence. Nonetheless, it is noted that in a limited number of criminal contexts, reference is permitted to previous conduct and indeed orders and it is possible that reference may be made to such a history in the context of prosecutions for coercive control under the *Domestic Violence Act 2018*[79].

79 Eg In that regard, see, for example, the S13 of the Bail Act 1997 and Section 1(2) Probation Act Orders.

5.13.4. Bearing all of the above in mind, and given the tendency towards less restrictive evidential rules in civil court processes, reference to such information in civil court processes should be both worthwhile and legally permissible. It is also contended that benefit could be derived from the use of such information in the context of sentencing applications before the criminal courts. In this regard, we refer to an approach adopted in Ontario, Canada. There, Section 21(4) of Ontario's *Children's Law Reform Act 1990 as amended,* which regulates the equivalent of an access or custody-application in that jurisdiction, envisages that applications of that nature shall "... be accompanied by an affidavit, in the form specified for the purpose by the rules of court, of the person applying for the order, containing, amongst other things, information respecting the person's current or previous involvement in any family proceedings [including under its child protection legislation] or in any criminal proceedings".

5.13.5. While in this jurisdiction, the impact of the constitutional presumption of innocence may be such that it is not appropriate to compel reference in such an affidavit to criminal prosecutions other than those which result in a conviction, it is clear that there is much to commend the thinking underlying this provision. Not only does it aim to reduce the risk of courts and lawyers not being aware of the full history of violence, it may also dampen an alleged perpetrator's urge to engage in repeated applications for access as a means of maintaining control over the other parent. On the other hand, it is quite possible that alleged perpetrators will not always provide fulsome information regarding their past history and so a considerable onus will be placed upon the applicant/victim to secure that information at an already difficult time.

5.13.6. Perhaps it would be more beneficial to introduce a National Domestic Violence Court Register in which civil court orders and criminal convictions of relevance would be maintained. Access to the database of orders would be limited to a select number of persons; relevant Courts Service personnel, the Probation Service, Child and Family Agency and An Garda Síochána, by way of example, and those persons may only use such information for the purpose of bringing relevant information before the courts. If Courts Service personnel access a list of orders and convictions under such a Register and make it available to a presiding judge, they must also make it available to all of the parties to the proceedings at or about the same time. For the sake of clarity, we also note that this proposed Court Register is entirely separate and distinct from the Garda Register being considered by the Minister for Justice in the context of the Justice 5 year strategy announced in July of 2022.

5.13.7. In Australia, in 2009, the Family Law Council proposed a similar solution to the problem of courts making decisions without access to much of the relevant information. It noted that:

"Family violence is an important consideration in many aspects of proceedings in the federal family courts. The ability of the Courts to make appropriate orders rests on the provision of adequate information regarding family violence and family violence orders. At present, unless the parties disclose the existence of family violence orders, the courts have little ability to determine whether there are other relevant orders in force. A national register of protection orders presents a viable option to address these issues. Orders made by the State and Territory Courts, as well as those made by the federal family courts could be

made accessible to court staff, child protection agencies, police and mental health agencies on a national register... Extending access to police services and welfare authorities would further enable any response to family violence by these groups to be timely and appropriate."

5.13.8. This proposal has not, to date, found approval in Australia, nor elsewhere to our knowledge (although a similarly named Register of Familial Violence has been established recently in Australia, albeit to facilitate people to whom protective orders are granted in one state seeking to have those orders registered and given effect to in the other states and by the federal authorities).

5.13.9. We therefore recommend the development and implementation of a National Domestic Violence Court Register on which information regarding previous orders and convictions of relevance would be stored. It is envisaged that such information could be utilised by civil courts but not by criminal courts, save for the purpose of sentencing applications.

5.13.10. Clearly the adoption of such a Register would impose obligations upon the Courts Service on whom responsibility for maintaining the Register would most likely be placed, and so the Service would need to be adequately resourced to ensure that the Register's listings were comprehensive and, therefore, reliable.

5.14. Joint Case Management and Linked Directions Hearings

5.14.1. In England and Wales, the 2013 Protocol, discussed above, provides for joint case management and linked directions hearings and specifies the procedures to be followed in such hearings when criminal and civil proceedings occur concurrently. If a parent of a child who is the subject of care proceedings is charged with any offence relating to violence against a child or child cruelty, and the local authority responsible for the conduct of the care proceedings, the Crown Prosecution Service, any other party to the care proceedings or the presiding judge considers that the care and criminal proceedings do, or may, impinge on one another, the matter will be brought to the attention of an allocated case management judge in the family court. That judge will then consider whether or not there is likely to be a need for a linked directions hearing in respect of the criminal and family cases. At such a hearing, issues regarding timely disclosure of documentation and, also for the avoidance of delay, the fixing of court dates and attendance with court-appointed experts on dates that are suitable for all parties to all proceedings will be dealt with. *The Family Courts Bill 2022* indicates that the anticipated new court structure will have its own rules of court, that the Principal Judges of the three courts may issue practice directions and, as noted previously, it refers also to the practice of case management. We therefore recommend that the introduction of a system for linked case management and joint directions in due course be kept under review by the relevant Family Rules Committees. Yet again, if such a policy is adopted in due course, it would appear that the in camera rule would need to be amended to enable the conduct of such a joint process, as persons from outside the child care process, such as the legal representatives in the criminal process, could be in attendance.

6. Recommendations

6.1. Introduction

6.1.1. Recent years have seen many advances in relation to the treatment by the law of victims of domestic or sexual violence. Such advances can be seen *via*, for example: Ireland's ratification of the Istanbul Convention; the *Criminal Justice (Sexual Offences) Act 2017* giving effect to the Victim's Directive; the introduction of the offence of coercive control in the *Domestic Violence Act 2018*; and the adoption, current and anticipated, of the many measures recommended in the O'Malley Report itself, yet much more remains to be done in this area to enhance the experiences of victims in the various legal processes in which they become entangled. In conducting this research, we encountered people who, having already been subjected to domestic or sexual violence, were re-traumatised by their involvement in the parallel court processes which they entered in the aftermath of such violence. In order to avoid or, at a minimum, to reduce re-victimisation of such vulnerable persons, it is imperative that those court processes are conducted in both a victim-centred co-ordinated manner, while at all times having due regard to the weighty procedural rights upon which the other party, the alleged perpetrator, is entitled to rely.

6.1.2. The Third National Strategy on Domestic Sexual and Gender-based Violence, published in 2022, anticipates that the recommendations of this report in conjunction with those of the O'Malley Report and the Strategy itself will "work to reduce attrition rates and enhance access to the legal system for individuals experiencing domestic, sexual and gender-based violence". In our opinion, a three-fold range of solutions is required – those which endeavour to improve the *experience* of victims while in the processes themselves, those which improve the *processes* and thus benefit the victim by promoting just outcomes, and, finally, those which pertain to the conduct of research which will assist in the formulation of policies which enhance the court experiences of victims in the future.

6.1.3. In the remainder of this Chapter, the report's recommendations are set out. Whilst they are all set out under 8 distinct headings, it is noted that a number of them cross the boundaries of more than one of the headings used.

6.2. Recommendations

6.2.1. Support persons

(a) The introduction of a properly resourced and comprehensive system of both court and non-court support for adult victims of domestic or sexual violence. Under this model, a small team of persons with appropriate accredited training will be assigned to a victim of domestic or sexual violence to assist him or her throughout the entire journey through the various legal' processes. The court role will include attendance at meetings and assessments where appropriate. In fulfilling the non-court role, the support personnel will, amongst other things, use their knowledge of the victim to identify all other services which are necessary as he or she navigates the various processes. The team will be led by a support leader and should be available to a victim from the moment that they first come forward to report the violence until a reasonable period after the conclusion of the last process, if a victim so wishes.

(b) That such support persons undertake appropriate accredited training, including training on the particular support needs of victims from minority and/or vulnerable groups in society – such as migrant victims, members of the travelling community, people with a disability and members of the LGBTQI community.

(c) The appointment of support personnel from minority and/or vulnerable groups in society – such as migrant victims, members of the travelling community, people with a disability and members of the LGBTQI community – should be promoted in order to enhance the level of understanding from which victims can benefit.

(d) That a comprehensive piece of research be conducted in relation to the possibility of introducing a support person/persons for child victims, in which the input of all stakeholders, including child victims and aged-out child victims is secured, where appropriate, in order to address the ways, if any, in which such a support person could help a child going through the relevant legal processes. If the research concludes that such a role is warranted, its parameters must be clearly identified and consideration given to the nature of the training and qualifications needed. We also recommend that the research should address the role, if any, of such a support person in the provision of information to a child regarding the outcome of court proceedings.

(e) That training be provided to members of the judiciary, lawyers and Court Services personnel to explain and promote the role of such support persons in the various processes. Given the extent to which this role is a vital one within the various court processes, it should also be explained and promoted on the Courts Services website.

(f) The introduction of a practice direction providing guidance in relation to the permission of support persons to attend *in camera* civil court proceedings.

(g) The introduction of a new provision into the *Child Care Act 1991* permitting accompaniment for respondent parents in child care proceedings where those parents are victims of domestic or sexual violence allegedly perpetrated by the other respondent parent, and which imposes an obligation upon a judge who refuses such permission to give reasons for that refusal.

(h) The insertion of a specific provision into the *Family Courts Bill 2022* permitting parties to proceedings in which allegations of domestic or sexual violence arise to have the benefit of a support person present throughout court proceedings, unless the interests of justice require otherwise, and that the provision also require that judges refusing admission to support persons to court give reasons for their decision.

6.2.2. Amendment of the *in camera* rule

(a) That the relevant *in camera* rule statutory provisions be amended to permit parties to discuss the outcome and content of proceedings with support personnel, who shall remain bound by confidentiality obligations at all times in relation to those discussions. The right to conduct such discussions must be curtailed if a victim has commenced but not yet completed cross-examination.

(b) That the relevant *in camera* rule statutory provisions be amended to permit victims to discuss the content of proceedings with those engaged in the provision of therapy to the victim. Such therapy providers shall remain bound by confidentiality obligations at all times in relation to those discussions. The right to conduct such discussions must be curtailed if a victim has commenced but not yet completed cross-examination.

(c) That The Courts and Civil Liability Act 2004, The Child Care (Amendment) Act 2007 and The Courts and Civil Liability Act 2013 be amended in order to enable persons authorised by that legislation to attend *in camera* hearings to conduct pertinent discussions with parties. Any publication arising from such engagement shall be subject to the existing restrictions in relation to the removal of all identifying details. The right to conduct such discussions must be curtailed if a victim has commenced but not yet completed cross-examination. The Minister for Justice may, by statutory instrument, add to the list of authorised persons who may engage in such research.

6.2.3. Training

(a) That all professionals whom victims encounter obtain relevant training enabling them to acquire an in-depth understanding of the dynamics of domestic and sexual violence and its impact upon both adult and child victims. Such training must be of a systematic and mandatory nature. It must be provided by qualified and experienced training staff and done with the involvement of non-governmental and civil society organisations working in the field. Such training, when established, should be regularly monitored by external experts to ensure that it is of the requisite standard and that it conforms with best international practice. Such training should be provided on an in-person basis.

(b) That judicial training which promotes an understanding of matters pertaining to domestic or sexual violence continue to be made available under the programme of training being provided by the Judicial Studies Committee of the Judicial Council and/or in accordance with the terms of *The Family Courts Bill,* 2022 once enacted.

(c) That reasonable provision be made for leave in order to enable judges to attend such training.

(d) A list of suggested relevant competencies to be devised by both The Law Society and The Bar Council regarding the training and skills which legal practitioners representing clients in the areas under consideration should have. Such training to be made available to practitioners(e) That the Legal

Aid Board require that all barristers wishing to be placed on its Panel for Counsel, and all solicitors wishing to be on the Private Practitioners Panel, undertake such training.

(e) Endorsing the recommendation made in the recent *Irish Travellers Access to Justice* Report; that cultural competency training which promotes an understanding of the experiences and needs of Traveller victims of domestic or sexual violence in the criminal justice process, and anti-racism and equality training be provided to members of An Garda Síochána, the judiciary and legal professionals. Such training to be provided on an in-person basis.

(f) That the academic syllabus for all social workers includes mandatory studies in relation to domestic and sexual violence and its impact upon both adults and children.

(g) Qualified social workers to have ongoing training of the nature described above.

(h) That all persons assigned to undertake expert reports in both private family and public child care proceedings must show evidence of accredited and ongoing training of the nature described above. All documentation that they present to court must also refer to all relevant training undertaken, all relevant qualifications and all organisations and bodies to which they are affiliated.

(i) The adoption of a practice direction requiring courts to ensure the production of sufficient information and documentation establishing the expertise of all persons whom it is proposed to appoint as experts in the context of all applications pertaining to children. In that regard, courts should require evidence of all relevant training, qualifications and affiliations to bodies and organisations, before appointing the person and/or accepting their evidence. In the context of experts chosen in private family law proceedings by the parties themselves without recourse to the court, the court shall, before accepting the expert's evidence, require the production of sufficient evidence of the person's training, qualifications and of the organisations and bodies to which they are affiliated.

(j) The introduction of inter-agency training in order to help each discipline and sector to better understand the role of others within the various processes who support victims and, in certain circumstances, the perpetrator too. In order to yield results in practice, inter-agency training should be systematic, targeting all sectors and delivered at multiple levels, and be provided to all professionals with a role in the intervention chain and in regular contact with victims. It will need to be reviewed at regular intervals to ensure that it still reflects international best practices.

(k) The introduction of appropriate 'work-shadowing' practices enabling actors within a system to observe the other actors in the systems over a period of time.

6.2.4. Avoidance of delay across the various processes

(a) The prioritisation of all cases involving domestic and/or sexual violence.

(b) The timely and comprehensive implementation of the reforms recommended by both the OECD and the Judicial Planning Working Group regarding the significant increase in the number of judges in this jurisdiction. From our perspective, a particular increase in the number of District Court Judges is needed in order to ensure the more prompt determination of civil law applications involving domestic or sexual abuse.

(c) That, save in exceptional circumstances, An Garda Síochána adopt and implement a policy of conducting specialist interviews with child victims within a week of the disclosure of the violence in question, and within a shorter time when possible to do so.

(d) That, save in exceptional circumstances, the Child and Family Agency and An Garda Síochána also to commit to the above interviewing time frames when conducting joint interviews with child victims. Both bodies to schedule such joint interviews and other necessary steps as soon as disclosure is made.

(e) That provision be made in the practice direction alluded to at Paragraph 6.2.3.(j) to court practices regarding the efficient engagement and involvement of experts.

(f) The conduct of a State-wide review by An Garda Síochána of those practices within the organisation regarding the investigation and prosecution of offences under Section 33 of the Act of 2018 and, thereafter, the adoption and implementation of an appropriate uniform policy amongst An Garda Síochána regarding the consistent and prompt investigation and prosecution of offences under that Section.

6.2.5. Further research

(a) That research is conducted into the impact of GDPR and *The Data Protection Act 2018* on information-sharing practices between statutory and non-statutory bodies. The Data Protection Commission may, if appropriate, conduct such research.

(b) In the context of the adult victim's experience of the public child care process, that research is commissioned into the manner of treatment of such adult victims.

(c) The conduct by an independent body of an annual survey in relation to the experiences when dealing with the Child and Family Agency of parents who themselves are victims of domestic and/or sexual violence.

(d) That the Courts Service commission an annual survey of the experiences of persons within the private family law processes in cases in which allegations of domestic and/or sexual violence are raised.

(e) If both the research into the adult victim's experience of the public child care process alluded to above and the outcome of the ongoing consultation process into parental alienation being conducted by the Department of

Justice point to disparate treatment of victims in the various legal processes under consideration in this report, we recommend the conduct of further research for the purpose of identifying and promoting fundamental common principles in relation to the treatment of victims of domestic or sexual violence in the three processes under consideration.

(f) That research is conducted into the role of expert assessors in the court processes under consideration.

(g) That research is conducted into the form of formal structured inter-agency co-operation and risk assessment that will best serve to meet the needs of adult victims of domestic and/or sexual violence.

(h) The review in due course of the impact of the introduction by the *Criminal Procedure Act 2021* of a pre-trial hearing in criminal trials and the impact thereof upon the timely progression and conclusion of those trials to which it applies.

(i) The conduct of research into the application of the privilege against self-incrimination in proceedings pursuant to the *Child Care Act, 1991.*

6.2.6. Collaborative practices at the evidence-gathering stage

(a) The prompt review and alteration of the Child and Family Agency's new Child Abuse Substantiation Procedure (CASP) to provide for appropriate and timely engagement between the Child and Family Agency and An Garda Síochána. Such changed approach to be reflected in a new version, if any following the current review of *The Joint Protocol between Tusla and An Garda Síochána* and in Garda policy itself.

(b) That the Child and Family Agency review and adapt its practices in relation to the use of Section 11 of the *Domestic Violence Act 2018* which confers upon it the power to apply for a Safety Order, Barring Order or an Emergency Barring Order itself on behalf of a victim or victims.

(c) That the Child and Family Agency review and adapt its practices to reflect its obligations in appropriate circumstances to give evidence in Domestic Violence Act applications and in access and custody applications in which there is underlying domestic or sexual violence.

(d) That An Garda Síochána review and adapt its practices regarding the giving of evidence in appropriate circumstances in Domestic Violence Act applications and in access and custody applications in which there is underlying domestic or sexual violence. In doing so, An Garda Siochana to devise guidelines regarding the conduct, on a case by case basis, of an assessment of whether evidence may be given without causing any prejudice to a criminal investigation or prosecution.

6.2.7. The promotion of collaborative processes in court

An Garda Síochána to devise guidelines in relation to its response to requests for disclosure of documentation made by the Child and Family Agency, the parties or the *Guardian ad Litem* in child care proceedings and by parties in private family law proceedings. Those guidelines to identify

the considerations to which regard should be had by members of An Garda Síochána when responding on a case by case basis to such requests. If such a request is refused, written reasons for that refusal to be provided by An Garda Síochána. If the proposed Data Sharing Agreement between An Garda Síochána and the Child and Family Agency does not reflect this proposal, we recommend that the draft document be amended accordingly.

(a) The introduction of a statutory provision setting out an illustrative list of issues to which a court determining an application for non-party disclosure in the context of proceedings under the *Child Care Act 1991* should have regard.

(b) That consideration is given by An Garda Síochána and the Child and Family Agency to the issue of the joint-commissioning of experts to prepare reports where common issues of concern arise, for example, in the context of the impact upon a child victim of domestic and/or sexual violence, when such a report could be used both in the child care proceedings and for the purpose of sentencing applications.

(c) That formal channels are established between the Courts Service and An Garda Síochána and/or the Office of the Director of Public Prosecution, in order to ensure the transfer in both directions of information relevant to bail and access applications. In order to facilitate the implementation of the above recommendation, the initiating forms which parties seeking private family law reliefs fill in should seek information regarding any parallel criminal proceedings pertaining to alleged acts of domestic or sexual violence, such as the name and contact details of the prosecuting Garda.

(d) That the necessary resources be made available to the Courts Service, An Garda Síochána and the Office of the DPP to enable those bodies to undertake the additional obligations which the introduction of the channels of communication identified in the above recommendation will entail.

(e) The introduction of a statutory requirement that judges in District and Circuit civil matters in which domestic or sexual violence are in issue, provide a brief reasoned outline for their Decision. Such Decision must be written in an anonymised manner such that no details identifying or tending to identify the parties or the children involved are included. These Decisions may then be published by the Courts Service on its website.

(f) The development and implementation of a National Domestic Violence Register on which information regarding previous civil orders and criminal convictions of relevance would be retained and made available to courts determining pertinent civil law applications, to criminal courts for the purpose of sentencing applications and to the parties.

(g) The provision of appropriate resources to enable the Courts Service to operate the above Register.

(h) That consideration is given in due course by the relevant Rules Committee established if and when *The Family Courts Bill 2022* is enacted and the new

Family Courts structure is firmly established, to the conduct of Joint Case Management hearings in parallel with civil and criminal proceedings pertaining to domestic or sexual violence. If such an approach is adopted, we recommend a statutory amendment of the *in camera* rule in order to enable legal representatives and parties from the criminal proceedings to attend such hearings, where appropriate.

6.2.8. The physical court environment

(a) It is anticipated that the new Family Courts structure envisaged in the *The Family Courts Bill 2022*, will bring about a new physical court environment in which we recommend that consideration be given, for example, to the provision of sufficient waiting and consultation rooms, to the introduction of separate facilities and times for entry and egress of victims of domestic or sexual violence where appropriate, to staggered times for court cases in order to reduce the numbers in court buildings and to the introduction of special measures within the family law courtroom itself akin to those available in criminal law courts for vulnerable witnesses.

(b) The adoption of a listing system practice on a piloted basis under which cases are assigned a particular time and date for court, and penalties are imposed for non-attendance without good reason. If that pilot works well, we recommend the extension of the practice.

(c) The provision of additional staffing and other resources to the Courts Service to enable it to attend to the additional work that a listing system will entail.

Appendix (i)

Organisation	Person	Role
An Garda Siochana	**Detective Chief Superintendent Colm Noonan**	Head of Garda National Protective Services Bureau (GNPSB).
	Detective Superintendent Derek Maguire	Human Trafficking
	Detective Inspector Adrian Kinsella	DV/SV Training
Children's Rights Alliance	**Tanya Ward**	CEO
Cork Sexual Violence Services	**Mary Crilly**	CEO and Court Accompaniment
Court Services	**Angela Denning**	CEO Court Services
	Peter Mullan	Head of DIrectorate
	Emer Darcy	Head of Family Law Reform
	Alan Byrne	High Court Registrar
Child Care Law Reporting Project	**Dr. Carol Coulter**	Lead
Dublin Rape Crisis Centre	**Cliona Woods**	Head of Court Accompaniment service
Aoibhneas Domestic Abuse support for Women and Children	**Emma Reidy**	CEO
	Cathy Wyer	Head of Outreach and Court Accompaniment
Domestic Abuse Services Adapt Kerry	**Claire O Driscoll**	Outreach
Adapt Limerick	**Denise Dunne**	Director of Services
Kerry	**Siobhan Coffey**	Director of Services
Laois	**Nicola Phelan**	
Laois	**Marna Carroll**	Co-Ordinator DV Services
Kerry	**Jessica Fox**	Legal support services
Legal Aid Board	**John McDaid**	CEO

Organisation	Person	Role
Femicide Research	**Maura Butler**	Independent Consultant
National Women's Council	**Orla O'Connor**	Director
Women's Aid	**Sarah Benson**	CEO
	Eavan Ward	Services Manager
Saoirse DV Services	**Nadine O'Brien**	Head of Outreach Services and Court Accompaniment
RCNI & Safe Ireland Legal Services	**Caroline Counihan**	Legal representative for RCNI and Safe Ireland
Men's Aid	**Kathrina Bentley** **Karl Heller**	CEO Court Accompaniment
SiSi	**Mary-Louise Lynch**	CEO
Ombudsman for Children	**Dr. Niall Muldoon**	Ombudsman
Retired CEO	**Gordon Jeyes**	Former Nat. Director of Child Care Services UK. Former CEO of the Child and Family Agency
Pavee	**Tessa Collins**	Community Worker with responsibility for DSGBV
Safe Ireland Members	**Lisa Marmion**	Service Dev. Manager SI
	Marie Hainsworth	Manager Donegal DV Services
	Carmel McNamee	Sligo, Leitrim, West Cavan Manager DV & Advocacy Services
	Trish Quigley	Mayo WSS Support worker
The Child and Family Agency	**Colette McLoughlin**	Services Director
	Joan Mullan	Chief Social Worker
	Niall Nolan	National Manager DSGBV
	Deirdre Furlong	Social Worker

Organisation	Person	Role
SATU	**Professor Maeve Eogán**	National Clinical Lead Sexual Assault Treatment Units
Independent Consultants for the 3rd National Strategy DSGBV	**Dr. Grainne Healy**	Lead Independent
	Dr. Kathy Walsh	Consultants
University of Limerick Law School	**Dr. Susan Leahy**	Co-director Centre for Crime Justice and Victims Studies
Immigrant Council of Ireland	**Brian Kiloran**	CEO
Belong To	**Moininne Griffith**	CEO
Irish Times	**Mary Carolan**	
TENI	**Sara Phillips**	CEO
Judiciary	**Ms. Justice Mary Rose Gearty**	High Court Judge
	Her Honour Judge Rosemary Horgan	Circuit Court
	Judge Grainne Malone	District Court
Barnardos	**Áine Costello**	National Co-ordinator of the Childhood Domestic Abuse Project
EPIC Empowering People in Care	**John Murphy**	Advocacy and Research Officer