



**Family Justice Oversight Group, Department of Justice:  
Development of a national Family Justice System**

**Submission by the Ombudsman for Children's Office  
26 February 2021**

## **1. Introduction**

The Ombudsman for Children's Office (OCO) welcomes the Department of Justice's establishment of a dedicated Family Justice Oversight Group (Group) in September 2020 to facilitate a coordinated approach to developing a national family justice system. The OCO also welcomes this Group's decision to initiate a structured consultation process with a broad spectrum of organisations and professions at an early stage and in order to ensure that the Group's deliberations are informed by the expertise, experience and perspectives of different stakeholders. We appreciate the Group's invitation to the OCO to take part in this formal consultation process, including the opportunity to participate in an initial consultation meeting held on 28 January 2021 and to make this current submission.

The OCO is an independent statutory body that was established in 2004 under the Ombudsman for Children Act 2002 (2002 Act). Under the 2002 Act (as amended), the Ombudsman for Children has two core statutory functions:

- to promote the rights and welfare of children up to the age of 18 years
- to examine and investigate complaints made by or on behalf of children about the administrative actions of public bodies, schools and voluntary hospitals that have or may have adversely affected a child.

The OCO is making this current submission pursuant to sections 7(1)(a), 7(1)(b) and 7(4) of the 2002 Act. In preparing this submission, the OCO has been mindful of several matters, including the expertise and experience of the diverse range of organisations and professions that are likely to participate in the Group's consultation process. In particular, we are cognisant of making this submission at an early stage in the Group's work and that this work will necessarily take time given that the development of a national family justice system is a complex, multi-dimensional undertaking, which will entail changes in law, policy, structures, procedures and practices as well as

the investment of adequate resources and capacity building among a range of professionals working in the system.

Accordingly, while we note the topics that are the focus for this first phase of consultation, the main purpose of this brief submission is to encourage the Group to focus on identifying the fundamentals first and to outline what we believe a number of these fundamentals should be. The OCO looks forward to follow-up engagement with the Group in this regard and to participating in future phases of the consultation process.

## **2. Developing a vision for a national family justice system**

The need to reform the family justice system in Ireland has been recognised for many years. Having regard to the nature and extent of the difficulties that have been highlighted by stakeholders, the OCO believes that the Group's work needs to be directed towards *transformational* change.

The OCO welcomes that the Group has been tasked with creating a high level vision for the development of a national family justice system. Devising a vision and identifying corresponding core principles and values that will underpin actions and decisions associated with developing and, in due course, delivering the system are vital preliminary steps. We therefore encourage the Group to implement these steps as a matter of priority.

In this regard, while difficulties in the current system may help to explain why change is needed, it appears to the OCO that other key questions have yet to be answered, in particular: what should a national family justice system be and do, and who is it for and there to serve? In the absence of these questions being answered through the development of a vision at this early stage, there is a risk that deliberations focused on how the system needs to change will occur in something of a vacuum - we cannot know how to build something if we do not know what we are building and who it is for. We are of the view that developing a vision at this juncture is also essential for the purposes of:

- establishing a shared understanding and developing consensus among stakeholders as regards what this very significant change process is directed towards achieving
- mitigating risks of incoherence and discordance that could arise due to the range and complexity of issues that need to be addressed and the diverse expertise, experiences and perspectives of stakeholders who will input to this change process.

Engagement with multiple stakeholders is pivotal to the effective development of a national family justice system and the OCO notes that the Group is approaching stakeholder engagement as a phased, multi-dimensional process. Therefore, the OCO suggests that the Group might usefully work in consultation with stakeholders to develop a preliminary vision, and corresponding principles and values, on the basis that this initial vision can be refined over time as part of an iterative process.

The development of a vision will need to include a focus on identifying and articulating the fundamentals. The OCO suggests that the following should be recognised as fundamentals of a national family justice system:

- **Person-centred, not system-oriented** – A national family justice system needs to be person-centred and therefore sensitive to and focused on anticipating and accommodating the diverse and sometimes complex needs and circumstances of children and families who engage with it.
- **A service, not a system** – A national family justice system needs to be recognised as a service and this service needs to be outward-looking and public-facing.
- **Comprehensive, coordinated and interdisciplinary** – A national family justice service needs to provide a comprehensive, coordinated, interdisciplinary service to children and families.
- **Inclusive and accessible** – A national family justice service needs to be inclusive of and accessible to all service users in all its aspects. As such, it needs to recognise, understand and accommodate the diverse needs and corresponding requirements of service users, including children.
- **Enabling, supportive and empowering** – A national family justice service needs to enable and support service users to interact and engage with it effectively. It needs to recognise service users, including children, as active participants and to empower them to participate. Doing so requires proactive measures to ensure that the system works for service users (i.e. that it does not exacerbate or add to difficulties that service users are already experiencing) and that barriers which may preclude or inhibit service users' effective participation, including children's participation, are anticipated and addressed.
- **Open, transparent and accountable** – A national family justice service needs to be open, transparent and accountable. Allowing for procedural safeguards required to protect service users' privacy, the system needs to support the collection, analysis and publication of data that can strengthen public understanding of the service, support effective monitoring and oversight of the service, and enable the service to learn and improve.

Having regard to the above, the OCO encourages the Group:

- to refer from this point onwards to the development of a National Family Justice *Service* in order to communicate a clear message that service users are at the heart of this change process
- to provide for consultation with service users, including children, from an early stage in the process and on a phased basis throughout the process so that they are in a position to really influence how a national family justice service takes shape, as it takes shape

- to give equitable attention to the different types of proceedings that will fall within the scope of a national family justice service (i.e. care proceedings, family law proceedings, and proceedings that have a criminal dimension)
- to give full consideration to the diverse and sometimes complex needs and circumstances of children and families who need to engage with the service and to work towards developing a service that not only incorporates ADR mechanisms, but also facilitates children and families to access key support services, including family support services, in a timely manner
- to consider diversifying the Group’s membership further so that it includes representatives from additional State agencies, in particular agencies that are responsible for providing key support services to children and families.

### 3. Designing a national family justice service with and for children

The OCO is cognisant that, while care proceedings necessarily involve children, not all family law cases do. We are firmly of the view that a national family justice service needs to be developed in such a way that, in all circumstances where a child is involved or affected, *the child comes first*. In this regard, we encourage the Group to have due regard to and work with the Council of Europe’s [Guidelines on Child-Friendly Justice](#).

We suggest that an appropriate way to achieve this would be to establish from the outset that the *best interests of the child* will guide actions and decisions to develop and, in due course, deliver a national family justice service. This approach would be consistent with:

- the principle that parental responsibilities need to be exercised with the best interests of the child as their primary concern
- Ireland’s obligations under international human rights standards, including Articles 3, 9, 18 and 21 of the [UN Convention on the Rights of the Child](#) (UNCRC) and Article 7 of the [UN Convention on the Rights of Persons with Disabilities](#) (UNCRPD)
- relevant European standards and guidance, including the [European Convention on Human Rights](#), the [European Convention on the Exercise of Children’s Rights](#) and the Council of Europe’s Guidelines on Child-Friendly Justice.

Having regard to domestic law, the OCO further suggests that, where children are concerned, actions and decisions associated with the development and future delivery of a national family justice service should be grounded in and driven by the *paramountcy principle*, i.e. the best interests of the child should be treated as the paramount consideration. This approach would align work to develop and deliver a national family justice service with:

- Article 42A(4)(1) of the Constitution
- provisions in relevant primary legislation<sup>1</sup>

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<sup>1</sup> [Guardianship of Infants Act 1964](#) (as amended), [Child and Family Agency Act 2013](#), [Children and Family Relationships Act 2015](#), [Adoption \(Amendment\) Act 2017](#).

- evolving proposals to amend existing primary legislation.<sup>2</sup>

It appears to the OCO that treatment of children’s best interests as the paramount consideration in all circumstances where children are concerned can facilitate an approach to developing and delivering a national family justice service that recognises children’s status as subjects of rights, respects children’s inherent dignity and upholds other rights of children, which are engaged in this context. Having regard to the UNCRC, these rights include:

- children’s rights to non-discrimination (Article 2)
- children’s right to life, survival and development (Article 6);
- children’s right not to be separated from their parents, except where separation is in the child’s best interests, and to maintain relations and contact with their parents, unless this is contrary to their best interests (Article 9)
- children’s right to freedom of expression and information (Article 13)
- children’s right to privacy (Article 16)
- children’s right to be protected from all forms of violence, injury, abuse, neglect, maltreatment and exploitation (Article 19).

A focus on children’s best interests would also help to ensure that a further right of children and a core children’s rights principle are upheld, namely: children’s right to express their views freely in all matters (including judicial and administrative proceedings) affecting them and to have due weight given to their views, in accordance with their age and maturity. In this regard, the guidance provided by the UN Committee on the Rights of the Child in its General Comments on Article 12 and Article 3 of the UNCRC is clear that ascertaining and affording due weight to a child’s views is integral to an assessment and determination of what is in the child’s best interests:

*“There is no tension between articles 3 and 12, only a complementary role of the two general principles ... In fact, there can be no correct application of article 3 if the components of article 12 are not respected. Likewise, article 3 reinforces the functionality of article 12, facilitating the essential role of children in all decisions affecting their lives.”<sup>3</sup>*

The OCO welcomes that the Group intends to implement a targeted consultation with children themselves. We strongly encourage the Group to approach engagement with children as a process rather than as a once-off event and to ensure that children are consulted from an early stage and on a phased basis throughout the process. If engagement with children is delayed, there is a foreseeable risk that their views will be sought after key decisions have already been made and, therefore, that the scope for children to influence the development of a national family justice service will be inappropriately curtailed.

<sup>2</sup> See the most recent iteration of the [Child Care \(Amendment\) Bill 2019](#), which lapsed following the dissolution of the Dáil and Seanad in early 2020, as well as the most recent [proposals](#) published by the Department of Children, Equality, Disability, Integration and Youth in July 2020 as part of its review of the Child Care Act 1991.

<sup>3</sup> UN Committee on the Rights of the Child, General Comment No. 12 (2009), [The right of the child to be heard](#), para. 74 (see also paras. 53, 56, 71 and 73) and General Comment No. 14 (2013), [The right of the child to have his or her best interests taken as a primary consideration](#), p.6.

Among the issues that it is vital to elicit children's views and ideas on are those issues that the Group has already identified under the heading 'Voice of the Child', namely:

- How best to incorporate the voice of the child?
- How can the proposed new service of family justice be made more child-friendly?
- How can we keep children informed in the family court service?

The OCO has extensive experience of working directly with diverse cohorts of children for the purposes of hearing and highlighting their experiences, views and ideas on matters relating to their lives and their rights as children. Accordingly, we would welcome the opportunity in due course to support the Group's work to address these questions. For the purposes of this current submission, however, we encourage the Group to ground their deliberations on these matters in a recognition that the current system, having never been designed with children in mind, is not child-friendly. Furthermore, we suggest that the task of developing a child-friendly family justice service can only be achieved if it is implemented with and for children and if it is approached by asking 'what works well for children?'

As regards incorporation of the voice of the child, the OCO has previously expressed concerns and remains of the view that existing law and practice are seriously deficient and that very considerable work remains to be done to realise children's constitutional right to be heard under Article 42A(4)(2). Developing and implementing an appropriate legislative, procedural and practice framework that vindicates children's right to be heard in the context of a national family justice service will require coordinated, detailed examination. At this juncture, the OCO suggests that the following are among the key components of children's right to be heard which need to inform the development of such a framework:

- As subjects of rights, children need to be recognised as *active participants* in, not as passive recipients of, decisions affecting them.
- The right to be heard is a right of *every* child, without discrimination. As such, no child or group of children should be always already precluded from expressing their views and being heard. Furthermore, proactive measures are needed to ensure that opportunities for children to be heard are accessible, inclusive and sensitive to children's evolving capacities, needs, circumstances and preferences.
- Children's exercise of their right to be heard is a *choice* for children, not an obligation. No pressure of any kind should be placed on children to express their views. Children need to be provided with timely, accessible information to support them to decide whether or not they wish to express their views. Where children do wish to express their views, they should have choices, including about how they wish to express their views and what they wish to discuss.
- Children have a right to express their views *freely*. This requires measures to ensure that children can express their views without any pressure or influence being exerted

on them as regards what they may wish to say. It also requires the provision of a safe environment and the use of methods that support children to express their views in ways that suit them.

- Children's right to be heard is not a right to determine decisions affecting them. However, the obligation to give due weight to children's views means that children should be able to *influence* decisions affecting them. Furthermore, children should be provided with clear, accessible feedback so that they understand what impact their views have had and the reasons made for decisions affecting them.