



Family Courts Bill 2022

Observations by the Ombudsman for Children's Office

October 2024

Introduction

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

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

The OCO has previously expressed the view, and continues to hold the view, that reform of the family justice system is long overdue.¹ In our submission to the UN Committee on the Rights of the Child in 2022, we noted that the current family justice system is not child-friendly, and has not been designed with children in mind.² We raised concerns about the lack of formal training for legal professionals in child and family law proceedings, lack of child-friendly, age appropriate information, inconsistencies in the approach to family law cases, persistence of infrastructural issues that mitigate against child-appropriate courts and proceedings and the unsuitability of the courts for child participation. In addition, in their 2023 Concluding Observations on Ireland, the UN Committee on the Rights of the Child recommended that the State "Prioritize the reform of the family law system based on the family court bill, with a view to ensuring that proceedings on custody and other family matters are promptly resolved in a child-friendly manner by professionally trained staff."³ The OCO therefore welcomes the publication of the Family Courts Bill (the Bill), as it represents the foundation to establish a specialized family court system in Ireland, and is an important step in the realization of the commitments and overall vision of the Family Justice Strategy 2022-2025. We also welcome the consultative approach taken to the development of a new family justice system, and note the OCO's continued engagement with the Department of Justice (the Department) through our submission to the Family Justice Oversight Group in 2021,⁴ and most recently our participation in the Department's Family Justice Development Forum in July of this year.

We note that our office was unable to make a submission on the General Scheme of the Bill when it was initially published, however, we wish to acknowledge the considerable work that has been undertaken by the Department in the implementation of the Family Justice Strategy,

¹ See OCO, [Submission to the Family Justice Oversight Group on the development of a national Family Justice System](#) (2021); OCO, [Report to the UN Committee on the Rights of the Child pursuant to the combined fifth and sixth reports submitted by Ireland under the simplified reporting procedure](#) (2022) and OCO, [Submission to the UNCRC on General Comment No. 27 'Children's Rights to Access to Justice and Effective Remedies'](#) (2024).

² OCO, [Report to the UN Committee on the Rights of the Child pursuant to the combined fifth and sixth reports submitted by Ireland under the simplified reporting procedure](#) (2022), 31-32.

³ UN Committee on the Rights of the Child, [Concluding observations on the combined fifth and sixth periodic reports of Ireland](#) CRC/C/IRL/CO/5-6 (2023), para. 26.

⁴ OCO, [Submission to the Family Justice Oversight Group on the development of a national Family Justice System](#) (2021).

and now wish to offer guidance and recommendations on the Bill and its amendments as it passes through the stages of government. The purpose of these observations is to set out the issues that the OCO believes merit consideration in the interests of ensuring that the Bill has appropriate regard to the rights of all children in Ireland who may be involved with the family justice system.

The OCO welcomes the following aspects of the Bill:

- The establishment of a family court as divisions within the existing court structures, with the judges assigned to these courts having the sole focus of determining family law cases.
- The inclusion of a section on guiding principles, and the explicit focus on a number of key matters including the best interests of the child and the right of the child to be heard.
- The requirement of both the court, practicing solicitors and barristers, and the parties to proceedings to have regard to the guiding principles.
- The emphasis on non-adversarial routes of solving disputes, and the focus on accessibility and reducing delays where possible.
- The introduction of amendments to remedy concerns raised by stakeholders in relation to domestic violence, which includes a focus on the safety of children and provides for limitation of cross-examination.
- Amendments introduced to clarify concerns raised by stakeholders about the transfer of jurisdiction to the Family District Court.
- Provision made for the introduction of a common practice direction for all family courts.
- The emphasis on collaboration between the courts and the Courts Service.

However, the OCO believes that there are a number of issues that have not been sufficiently addressed in the amendments to the Bill. We have therefore prepared these observations to highlight the gaps and deficits in the Bill that could be further strengthened to ensure the Bill fully upholds the rights of children in the family justice system. The observations are prepared pursuant to section 7(4) of the 2002 Act, which provides for the Ombudsman for Children to advise on any matter concerning the rights and welfare of children.

Guiding Principles

- **The best interests of the child**

The recognition of the importance of the best interests of the child within the guiding principles of the Bill are welcome. However, it is of concern to the OCO that the best interests of the child will be regarded as the “primary” consideration, rather than the “paramount” consideration, meaning that the best interests principle is only partially incorporated into the Bill. As noted by

the Bar Council of Ireland⁵ and the former Special Rapporteur for Children Conor O’Mahony,⁶ it is unsatisfactory that the wording contained in the Bill does not reflect the paramountcy principle as stated in both the Constitution (Art. 42A) and various domestic legislation.⁷

The OCO are disappointed that the amendment put forward on 2 October 2024 to provide that in proceedings in which the welfare of the child is involved or likely to be affected by the outcome, the best interests of the child shall be the paramount consideration of the court in the conduct of proceedings, was withdrawn.⁸

Pursuant to the State’s obligations under Article 3 of the UN Convention on the Rights of the Child (UNCRC), the UN Committee on the Rights of the Child (the Committee) has repeatedly recommended that Ireland ensure that the best interests principle is fully integrated and consistently interpreted in all relevant legislative, administrative and judicial proceedings and decisions.⁹ The purpose of the best interests principle is to ensure the full and effective enjoyment by children of the other rights they have under the UNCRC, such that the Committee states that, when assessing and determining the best interests of a child, the State’s obligation to protect the child must be among the considerations to take into account.¹⁰ Although not all family law proceedings will involve children, it is important that where children are involved, whether directly or indirectly, their best interests are upheld as intended by the Committee.

The Council of Europe’s Child Friendly Justice Guidelines provide that “Member states should guarantee the effective implementation of the right of children to have their best interests be a primary consideration in all matters involving or affecting them.”¹¹ Although the Bill gives effect to this provision, in the Irish context it is important that all domestic legislation is aligned with the language contained within the Constitution, to fully incorporate the best interests principle in the conduct of all family law proceedings.

During Committee stage debates, Senator Barry Ward put forward an amendment to replace the term “primary” with “paramount” in the Bill, noting that Article 42A.4.1 of the Constitution requires provision to be made in law that in all proceedings concerning adoption, guardianship or custody of, or access to, any child, the best interests of the child must be the paramount

⁵ The Bar of Ireland, [Submission on the Family Courts Bill 2022](#) (2024).

⁶ [Annual Report of the Special Rapporteur on Child Protection](#) (2021).

⁷ See for example Guardianship of Infants Act 1964 (as amended), Child and Family Agency Act 2013, Children and Family Relationships Act 2015, Adoption (Amendment) Act 2017.

⁸ [Family Courts Bill 2022: Committee Stage](#) (Seanad Éireann debate -Wednesday, 2 Oct 2024).

⁹ UN Committee on the Rights of the Child (2006), [Concluding observations: Ireland](#), CRC/C/IRL/CO/2, para. 23; UN Committee on the Rights of the Child (2016), [Concluding observations on the combined third and fourth periodic reports of Ireland](#), CRC/C/IRL/CO/3-4, para. 30; UN Committee on the Rights of the Child (2023), [Concluding observations on the combined fifth and sixth periodic reports of Ireland](#), CRC/C/IRL/CO/5-6, para. 16

¹⁰ UN Committee on the Rights of the Child (2013), [General comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration](#), CRC/C/GC/14.

¹¹ Council of Europe, [Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice](#) (2010), 18.

consideration, and therefore the wording of the Bill should reflect this. Minister McEntee responded to this amendment, stating that “The specific mention and focus on paramount is for the outcome of the proceedings within the court. Providing for the best interests of the child to be a primary consideration in the conduct of the proceedings as a guiding principle for the courts and legal practitioners and indeed for the parties in a case does not displace any existing legislative provisions providing for the best interests of the child to be paramount in the overall outcome of the proceedings.”¹²

However, although not incorporating the paramountcy principle within the Bill does not displace existing legislative provisions, it is unclear what negative effect, if any, will be had by including it. Although the guiding principles in the Bill apply only to the conduct of proceedings, rather than the outcome, the Bill covers both public child law and private family law proceedings. Not all legislation covered by the Bill incorporates the best interests principle fully, meaning that depending on what legislation is the subject of proceedings under the Bill, a child will receive differing levels of protection. As the Bill governs the conduct of all family law proceedings, it is important that the best interests principle is applied consistently throughout the broad range of proceedings covered by the Bill, to ensure children’s rights are upheld effectively, as intended by the Committee and the Constitution.

In our office’s submission to the Family Justice Oversight Group in 2021, we emphasized that the 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 recognizes children’s status as subjects of rights, respects children’s inherent dignity and upholds other rights of children, which are engaged in this context.¹³ In order for children to have their rights respected throughout the conduct of all proceedings under this legislation, their best interests must be the paramount consideration of the court, legal practitioners and parties.

The OCO recommends that the amendment put forward to provide that in proceedings in which the welfare of the child is involved or likely to be affected by the outcome, the best interests of the child shall be the “paramount” rather than the “primary” consideration of the court in the conduct of proceedings, should be accepted at the next stage.

- **The voice of the child**

The OCO broadly welcomes the inclusion of a provision in the guiding principles which ensures that in respect of a child who is capable of forming his or her own views and where the child

¹² [Family Courts Bill 2022: Committee Stage](#) (Seanad Éireann debate -Wednesday, 2 Oct 2024).

¹³ OCO, [Submission to the Family Justice Oversight Group on the development of a national Family Justice System](#) (2021), 5.

wishes to express such views, in so far as is practicable, the views of the child are ascertained and given due weight having regard to the age and maturity of the child.

However, we believe that this provision needs to be strengthened in order to ensure it is aligned with Article 12 of the UNCRC and the recommendation made by the UN Committee on the Rights of the Child in their 2023 Concluding Observations on Ireland. In addition, the OCO remains concerned that the current mechanisms in place within the justice system to ascertain the views of the child are insufficient. The OCO has previously expressed concerns¹⁴ and remains of the view that existing law and practices are seriously deficient, particularly in relation to expert reports, and that very considerable work remains to be done to realise children’s constitutional right to be heard under Article 42A.4.2.

The UN Committee on the Rights of the Child have stated that the right of the child to be heard under Article 12 of the UNCRC “constitutes one of the fundamental values of the Convention.”¹⁵ The child’s capacity to form his/her views should be assessed on a case-by-case basis.¹⁶ Article 12(2) states in particular that the child shall be afforded the right to be heard in any judicial proceedings affecting him/her, including, for example, proceedings concerning separation of parents, custody, and child victims of physical or psychological violence. After the child has decided to be heard, he or she will have to decide how to be heard “either directly, or through a representative or appropriate body.” The Committee recommends that, wherever possible, the child must be given the opportunity to be directly heard in any proceedings. In cases where the child is heard through a representative, it is of utmost importance that the child’s views are transmitted correctly to the decision maker by the representative. The Child Friendly Justice Guidelines also emphasise the importance of hearing the voice of the child in matters which affect them, giving due weight to their views and bearing in mind their maturity and any communication difficulties they may have.¹⁷

As noted by our office in our submission to the Family Justice Oversight Group,¹⁸ and most recently in our submission to the UN General Comment on the Right to Access to Justice and Effective Remedies,¹⁹ children need to be recognized as active participants in decisions which

¹⁴ See OCO, [Report to the UN Committee on the Rights of the Child pursuant to the combined fifth and sixth reports submitted by Ireland under the simplified reporting procedure](#) (2022); OCO, [Submission to the UNCRC on General Comment No. 27 ‘Children’s Rights to Access to Justice and Effective Remedies’](#) (2024); OCO, [Uncertain Times: Annual Report 2023](#) (2024), 37.

¹⁵ UN Committee on the Rights of the Child (2009), [General Comment No.12 on the right of the child to be heard](#), CRC/C/GC/12, 5.

¹⁶ UN Committee on the Rights of the Child (2009), [General Comment No.12 on the right of the child to be heard](#), CRC/C/GC/12, 11.

¹⁷ Council of Europe, [Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice](#) (2010), 17.

¹⁸ OCO, [Submission to the Family Justice Oversight Group on the development of a national Family Justice System](#) (2021).

¹⁹ OCO, [Submission to the UNCRC on General Comment No. 27 ‘Children’s Rights to Access to Justice and Effective Remedies’](#) (2024).

affect them, and be recognized as autonomous rights holders. A child’s lack of legal capacity to initiate proceedings themselves, and the tendency for children’s needs to be subsumed within that of their family, underscores the need for effective mechanisms to hear the voice of the child to be in place. While it is welcome that this provision is included within the Bill, it is only a step in the direction of fully realizing the right of the child to be heard.

The OCO are also concerned that the insertion of the term “in so far as practicable” within this provision dilutes its strength. In their 2023 Concluding Observations on Ireland, the Committee recommended that Ireland “Ensure the right of all children to express their views and to have them taken into account in all decisions affecting them, including in the courts and in all forms of family law proceedings, and that they are given adequate support to engage an expert to present their views at no cost to them or their family.”²⁰ Thus, the term “in so far as practicable” should be deleted, to ensure that there is a presumption that all children should be heard, even if difficulties arise in doing so.

The OCO are aware of the work currently being undertaken by the Department of Justice to implement the actions under the Family Justice Strategy related to the voice of the child, including the publication of the review of expert reports in the family law process and the establishment of a voice of the child working group. However, the OCO are concerned that this work will not be progressed in full when the Bill is envisioned to pass, meaning that appropriate and effective mechanisms to hear the voice of the child will not be in place. Thus, the guiding principles of the Bill cannot be upheld.

The OCO recommends that the Department:

- **Progress all remaining actions to reform the current mechanisms for hearing the voice of the child in all child and family law proceedings under the Family Justice Strategy.**
- **Allocate adequate resources to ensure the right of a child to be heard is given full effect within the Bill.**
- **Delete “in so far as is practicable” in section 8(2)(a)(iii) of the Bill.**

- **Access to information**

The OCO welcomes the inclusion in the guiding principles of a provision ensuring children are informed, as appropriate to their age and capacity and the nature of proceedings, of developments and progress in the proceedings and the outcome of proceedings. However, we are concerned that the legislation is lacking clarity around what children can and should be informed of, and how this information will be provided. The court and legal professionals are

²⁰ UN Committee on the Rights of the Child (2023), [Concluding observations on the combined fifth and sixth periodic reports of Ireland](#), CRC/C/IRL/CO/5-6, para. 18.

given wide discretion to decide what information is appropriate to his or her age and capacity, and what is appropriate in relation to the nature of proceedings. In the absence of mandatory training for all legal professionals on the provision of child-friendly information, it is unclear how this will be implemented in practice. In particular, when a child is not party to proceedings, it is unclear how they will be provided with the appropriate information about decisions which will affect their lives. Information will also need to be adapted to the specific needs of the child, including any communication difficulties they may have.

The Council of Europe's Child Friendly Justice Guidelines provide that children should be promptly and adequately informed throughout proceedings, including in relation to their rights, the systems and procedures involved, existing support mechanisms, the general progress and outcome of proceedings and the availability of protective mechanisms.²¹ Children should receive this information directly, and it should be provided to children in a manner adapted to their age and maturity, in a language which they can understand and which is gender and culture sensitive. The UN Committee on the Rights of the Child note also the importance of the provision of child friendly information to children, particularly in realizing their right to be heard.²²

The lack of child-friendly information provided to children within the justice system currently has been raised to the OCO repeatedly. As part of our office's work on youth justice, the OCO's Investigation team has been conducting monthly outreach visits to Oberstown Detention Campus since 2018. Some of the children the OCO has met with, who were detained on either remand or sentenced, told us they had significant difficulty understanding the court and legal process they had been through. They did not always fully understand what was being asked of them, or stated about them, in court. They did not know what was going to happen when they went to court or what were their rights as part of the proceedings. These concerns were also shared with us by advocates working with these children. They gave us examples of instances where children did not understand the conditions of their bail and could not communicate to the Court or their legal representatives why they may be unable to meet the conditions of their bail e.g. stay away from specific areas, but it is on their way to the school. They also told us about some children with significant learning difficulties who require special needs assistance in school, are attending court without support to help with their understanding. In addition, in our consultation with our Youth Advisory Panel (YAP) on our submission to the UN General Comment on access to justice and effective remedies, the young people repeatedly emphasized the importance of access to child friendly information on court processes.²³

²¹ Council of Europe, [Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice](#) (2010), 20-21.

²² UN Committee on the Rights of the Child (2009), [General Comment No.12 on the right of the child to be heard](#), CRC/C/GC/12, 10.

²³ OCO, [Submission to the UNCRC on General Comment No. 27 'Children's Rights to Access to Justice and Effective Remedies'](#) (2024).

The OCO are aware of the work currently being undertaken under the Family Justice Strategy to improve information provision and accessibility within the system, including the review of existing information provision for children, the ongoing Courts Service Modernization Programme and the establishment of a family law information hub. However, this work must be progressed in a timely manner to ensure that the Bill can be implemented comprehensively once commenced.

The OCO recommends that:

- **Provision should be made in the Bill requiring that any information provided to a child must be in a manner that should reasonably be understood by the child.**
- **Further clarity is provided within the Bill regarding what information can and should be provided to children and how this information is shared.**
- **The Department ensure that the courts, legal professionals and parties are given adequate information, support and training on how to implement this requirement.**

In addition, the OCO wish to highlight the importance of court support and accompaniment in implementing the guiding principles of the Bill, particularly in relation to the provision of information and ensuring children's voices are heard during proceedings. The OCO welcome the work being progressed under the Family Justice Strategy in relation to this issue, including research into the role of both Court and Child Liaison Officers in the family justice system and the establishment of a guardian ad litem working group. However, this work is still in the early stages of development. In addition, the OCO remain concerned that provisions of the Child Care (Amendment) Act 2022 have still not been commenced, and the establishment of a guardian ad litem national service has been increasingly delayed.

The complexity of family law proceedings can be frustrating and stressful for children, further exacerbated by a lack of understanding or support. It is important that children are offered support throughout proceedings, and have the choice to be accompanied by a trusted adult. In addition, children from marginalised groups such as children with disabilities, ethnic minority children, children of lone parents and Traveller and Roma children are disproportionately represented in family law proceedings,²⁴ and may face additional barriers when navigating the system, and participating in the process.

As part of the OCO's work in the area of youth justice, informed by our engagements with young people held in Oberstown Detention Campus, our Office voiced concerns relating to the lack of informed understanding and participation of child defendants in criminal proceedings to the Department of Justice. Following open engagement with the Department on this issue, a new scheme is being piloted in two areas (with the commitment to expand nationally) which will see youth justice workers offer to accompany child defendants in court to provide

²⁴ For further information, see Child Law Project, [Falling Through the Cracks: An Analysis of Child Care Proceedings from 2021-2024](#) (2024), Child Law Project, [Findings and Observations for Reform from 10 years' attendance at child protection proceedings](#) (2023) and FLAC, [Annual Report 2023](#) (2024).

information and support. We look forward to tracking the development of this pilot, and hope it will inform similar work in the family justice system.

The OCO recommends that the Department put the necessary human, financial and technical resources in place to ensure that both Child and Court Liaison Officers are made available in family courts, also having regard to the needs of particularly disadvantaged children.

- **Alternative dispute resolution**

The focus in the Bill on encouraging and facilitating non-adversarial routes to the resolving of disputes where appropriate is welcome, as it has been continuously highlighted that the overly adversarial nature of the family justice system has caused problems for parties. However, the OCO remains concerned about the absence of focus on children during alternative dispute resolution, particularly when they are not party to proceedings.

The OCO notes that the Mediation Act 2017 does not apply to proceedings under the Child Care Acts, and as highlighted by the Child Law Project, there is no agency designated to conduct alternative dispute resolution in child care proceedings.²⁵ Although when considering a mediation settlement which relates to a child, the court is bound by the best interests principle contained within section 3 of the Guardianship of Infants Act 1964 (as amended), there is no such requirement related to hearing the voice of the child.

The UN Committee on the Rights of the Child state that the right of the child to be heard and the best interests principle apply to any judicial and administrative proceedings affecting the child, including alternative dispute mechanisms such as mediation and arbitration.²⁶ In addition, the Child Friendly Justice Guidelines provide that “alternatives to court proceedings should guarantee an equivalent level of legal safeguards”, and respect for the rights of the child within the guidelines and all relevant legal instruments “should be guaranteed to the same extent in both in-court and out-of-court proceedings.”²⁷

However, within the Bill it is unclear at present how the voice of the child will be heard if alternative dispute resolution is chosen. If the Bill both encourages and facilitates non-adversarial routes to dispute resolution, children must not be lost within this process, as whether directly or indirectly involved with proceedings, decisions made will have an impact on their lives.

²⁵ [General Scheme of the Family Court Bill Observations to the Joint Committee on Justice on behalf of Dr Carol Coulter and Maria Corbett of the Child Care Law Reporting Project](#) (2021).

²⁶ UN Committee on the Rights of the Child (2009), [General Comment No.12 on the right of the child to be heard](#), CRC/C/GC/12 and UN Committee on the Rights of the Child (2013), [General comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration](#), CRC/C/GC/14.

²⁷ Council of Europe, [Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice](#) (2010), 25.

The OCO notes that under the Family Justice Strategy, work is ongoing to improve the provision of alternative dispute resolution, including the proposed establishment of a Pilot Private Practitioner Family Mediation Scheme, the provision of training supports for legal practitioners and increasing awareness of mediation. However, there seems to be little emphasis on the needs of children in this context.

The OCO recommends that:

- **The guiding principles of the Bill should also apply to alternative dispute resolution processes, to ensure the rights of the child are upheld in proceedings both in and out of court.**
- **The Department prioritise providing information and training to legal professionals on child inclusive mediation practices.**

- **Insertion of a non-discrimination principle**

The OCO are concerned that Article 2 (non-discrimination) of the UNCRC has not been incorporated into the guiding principles of the Bill. As previously mentioned, marginalised groups are disproportionately represented in family law proceedings, and may face additional barriers when navigating the system. In order to ensure all children are treated equally within the new family courts system, it is essential to recognise their diverse needs and circumstances.

Article 2 is one of the core principles of the UNCRC and provides that all children must be able to enjoy their rights without discrimination of any kind, irrespective of their circumstances or those of their parents/guardians. According to the Committee, this principle requires States actively to identify individual children and groups of children the recognition and realization of whose rights may demand special measures.²⁸ This requirement to take positive measures to ensure that disadvantaged or vulnerable groups have equal enjoyment of their rights has also been upheld by the European Court of Human Rights: “The right not to be discriminated against in the enjoyment of rights guaranteed under the [ECHR] is also violated when States...fail to treat differently persons whose situations are significantly different.”²⁹ In addition, protection from discrimination is a fundamental principle of the Child Friendly Justice Guidelines, and provides that certain vulnerable cohorts of children may require specific protection and assistance.³⁰

²⁸ UN Committee on the Rights of the Child (2003), [General Comment No.5 on general measures of implementation](#), CRC/GC/2003/5, para. 12.

²⁹ *Thlimmenos v. Greece*, 34369/97, 6 April 2000.

³⁰ Council of Europe, [Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice](#) (2010), 19. Vulnerable children are identified as migrant children, refugee and asylum-seeking children,

In our submission to the UN General Comment on the Right to Access to Justice and Effective Remedies, the OCO raised our concerns in relation to groups of children who are particularly disadvantaged in exercising their right to access to justice and effective remedies, namely migrant children, children from low income families, children with disabilities and Traveller children.³¹ The Bill in its current form does not adequately protect these groups of children.

The OCO recommends that the Department include a non-discrimination principle within the Bill.

The in camera rule

Part 9 of the Bill sets out the rules related to the attendance of, and reporting of in camera family law proceedings, which largely restates the existing legislative position. The OCO have engaged with the ongoing review of the in camera rule, as provided for under the Family Justice Strategy, and await the publication of the report's findings.

However, the OCO has expressed serious concern about the fact that the Child Law Project has not been re-commissioned, and there have been ongoing delays in securing further funding for the project.³² In addition, under the Family Justice Strategy, the Department has committed to examining the feasibility of establishing a family case reporting system, but this has not progressed.³³

If the Family Courts Bill is to be commenced in full, it is imperative that the Child Law Project is re-commissioned, to ensure transparency and accountability within the system, and should have an opportunity to report on a broader range of proceedings under the Bill, including private family law proceedings.

The OCO recommends that:

- **The findings of the review of the in camera rule are made publically available once finalised, and necessary reforms are progressed based on the findings of the review.**
- **Funding is provided without further delay for the Child Law Project to resume their work.**

unaccompanied children, children with disabilities, homeless and street children, Roma children, and children in residential institutions. However, this is a non-exhaustive list.

³¹ OCO, [Submission to the UNCRC on General Comment No. 27 'Children's Rights to Access to Justice and Effective Remedies'](#) (2024).

³² [Ombudsman for Children expresses despair at situation facing children in care and lack of investment in Child Law Project](#) (8 July 2024).

³³ Department of Justice, [Family Justice Strategy Progress Report](#) (2024).

- **The establishment of a family law case reporting system under the Family Justice Strategy should be progressed.**

Training for judges and legal practitioners

The OCO welcomes the provision in the Bill requiring judges of the family courts to undertake training required by the principal judge of each court in consultation with the president of the court in question and in consultation with the Chief Justice. Minister McEntee also stated during the debates that “... ongoing professional training in the area of family law will be required of family court judges.”³⁴ However, the OCO wish to highlight the importance of specialized training for *all* professionals involved within the family justice system, particularly when children are directly or indirectly involved in proceedings.

The importance of training for legal professionals working within the justice system has been repeatedly emphasized by both the OCO,³⁵ the UN Committee on the Rights of the Child,³⁶ and other stakeholders,³⁷ in order to ensure the level of specialization required for the proposed reformed family court system. The Joint Committee on Justice and Equality recommended in 2019 that “members of the judiciary, lawyers and court staff [should] receive comprehensive specialist training in regard to the particular issues relevant to family law to ensure those involved in family court proceedings have the specialist supports required. Training should be ongoing in order to keep up with the changes and expectations of a modern society.”³⁸ However, no guidelines as to the type of training that should be provided, and how often training should occur, are outlined within the Bill, and the requirement for training in the area of family law is not extended to all legal professionals.

There is a commitment under the Family Justice Strategy to develop and provide training for legal professionals on child-friendly justice. However, the OCO note with concern that this work has not progressed.³⁹ In order to provide a specialized family court system, all legal professionals should have adequate and regular training in order to provide a user-friendly and accessible service, in line with the Bill’s guiding principles. In particular, training should be

³⁴ [Family Courts Bill 2022 \[Seanad\]: Second Stage \(Resumed\)](#) (Dáil Éireann debate -Thursday, 24 Oct 2024).

³⁵ OCO, [Report to the UN Committee on the Rights of the Child pursuant to the combined fifth and sixth reports submitted by Ireland under the simplified reporting procedure](#) (2022); OCO, [Submission to the UNCRC on General Comment No. 27 ‘Children’s Rights to Access to Justice and Effective Remedies’](#) (2024).

³⁶ UN Committee on the Rights of the Child (2019), [General Comment No. 24 on children’s rights in the child justice system](#), CRC/C/GC/24.

³⁷ See IHREC, [Submission on the General Scheme of the Family Court Bill](#) (2020); Treoir, [Submission to the Joint Committee on Justice on the General Scheme of the Family Court Bill](#) (2021); Community Law Mediation, [Submission to the Joint Oireachtas Committee on Justice on the General Scheme of the Family Court Bill 2021](#); Joint Committee on Justice and Equality, [Report on the Reform of the Family Law System](#) (2019); [Annual Report of the Special Rapporteur on Child Protection](#) (2021).

³⁸ Joint Committee on Justice and Equality, [Report on the Reform of the Family Law System](#) (2019), 44-45.

³⁹ Department of Justice, [Family Justice Strategy Progress Report](#) (2024).

provided on child friendly justice, communication with children and how to ensure a child's voice is heard. It is important that the Department of Justice work closely with the President of the Family Courts and the Courts Service to develop and implement comprehensive training on children's rights and child friendly justice.

The OCO recommends that provision be made in the Bill to extend the requirement for training to all legal professionals working in the family courts, and guidelines as to the nature and frequency of this training are included within the Bill.

Judge Selection

Provisions in the Bill related to both the assignment of principal judges and ordinary judges of the family courts are unclear at present. The Bill provides that due to his or her experience, training and temperament, judges will be assigned to sit on the family courts. However, there is little clarity as to what exactly will satisfy these requirements, as they remain undefined. This issue was highlighted by the former Special Rapporteur on Child Protection when commenting on the General Scheme of the Bill, who noted that "Given the significance of this determination, it would be desirable that the Bill make at least some provision defining this standard, whether directly in the text of the Bill or indirectly by reference to regulations or guidelines that are to be drafted subsequently."⁴⁰

The OCO recommends that clarity be provided in the Bill on what is meant by a judge who is "by reason of his or her training or experience and temperament, a suitable person to deal with matters of family law."

⁴⁰ [Annual Report of the Special Rapporteur on Child Protection](#) (2021), 180.