

1 Introduction

One Family welcomes the opportunity to make a submission to the Joint Committee on Justice in relation to the General Scheme of the Family Court Bill. We are Ireland's organisation for people parenting alone, sharing parenting and separating. We provide a range of specialist family support services some of which are specifically designed to decrease conflict in separated families. Our full range of services can be reviewed at www.onefamily.ie.

We have been delivering services for 49 years and consistently see parents and children unnecessarily struggle through, and are harmed by the family law system. As a result we have undertaken research, developed position papers and made submissions on a wide range of relevant issues including:

- Child Contact Centres
- Child's Views Experts
- Courts Service Strategies
- Law Reform Commission
- Shared Parenting
- Child Maintenance
- Pre-Budget Submissions.

These can be reviewed here: <https://onefamily.ie/policy-campaigns/>.

Our CEO represents the interests of court users on the Courts Service Board; she sits on the Family Law Development Committee, the Dublin Circuit Family Court User's Group and the Legal Aid Board's External Consultative Panel. The Board of One Family is comprised of former service users, former senior civil servants, practicing legal practitioners and voluntary sector service providers.

2 General Observations

We are aware that the issue of resources is not generally dealt with in legislation (although the Children & Family relationships Act included provision that additional funds not be required) but we believe it is key to the success of Family Law Justice Reform and this legislation and is worthy of mention at appropriate Heads.

We note that this submission is high level but much more detailed consideration will be required in the future to give full effect to the required reforms.

User-Centred Reforms

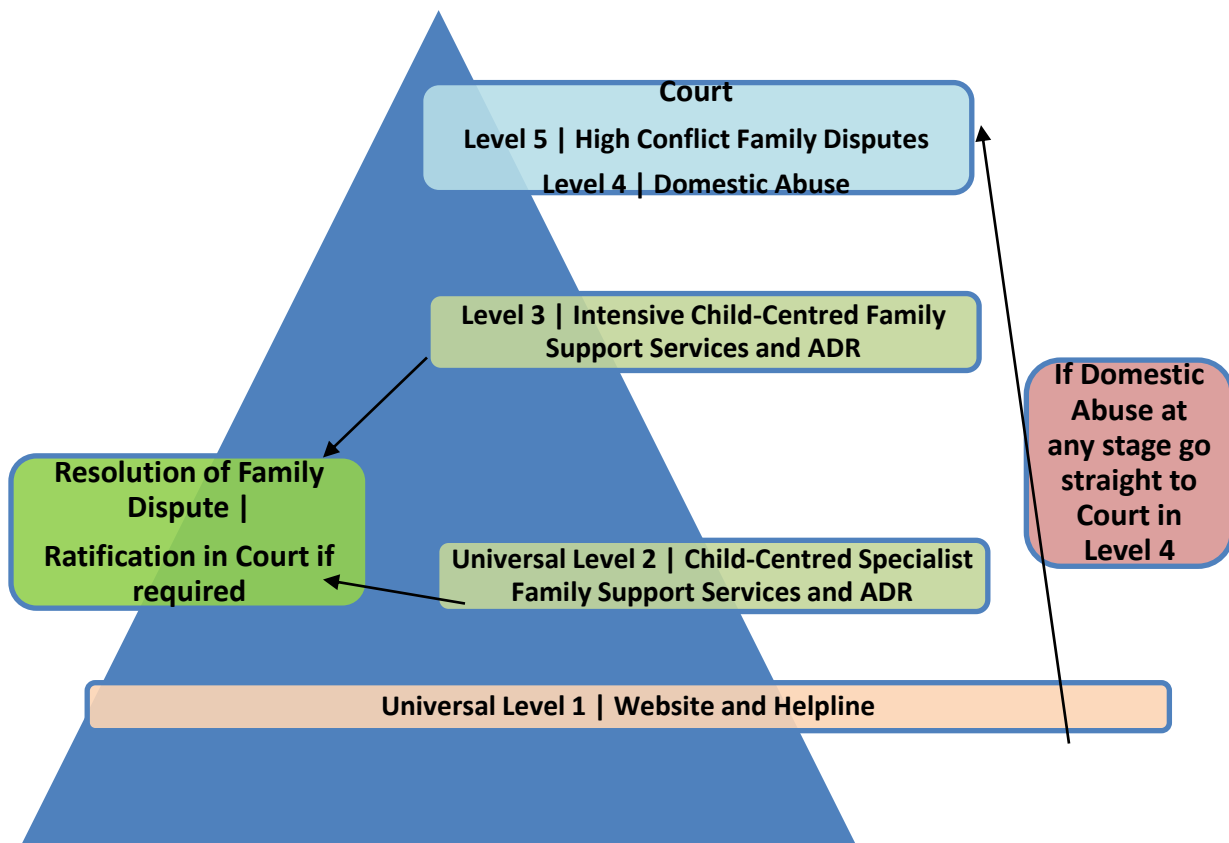
We strongly recommend that all reforms whether legislative, service development or cultural reforms are user-centred. This is required in order to truly develop a system that will meet the

needs of families and all their members, particularly the most vulnerable who are children, rather than the institutions and professions which rely on family law for their livelihood.

Service Model

We have an overall concern about the fact that the legislation does not make provision for the development of necessary resources and structures for the provision of family support services, mediation and other ADR to ensure that pathways are developed that are real alternatives to immediate court use for the resolution of private family law issues.

We are also concerned that discussions and decisions about this General Scheme is missing the context of what these possible radical changes could look like and an awareness that these should significantly reduce the volume of disputes going to family court. This is a summary of One Family’s suggested **Family Law Service Model** for Family Law Justice Reform¹:



¹ A detailed explanation of this proposed Family Law Service Model will be developed in our upcoming submission to the Family Justice Oversight Group as part of their Consultation process and will be available from 26 February 2021 on www.onefamily.ie or by request.

Gendered Language

We recommend the replacement of gender specific language such as ‘he/her’ in legislation with a simpler and more inclusive ‘they/their’.

Relevant Sections of Bill	Our Commentary & Concerns
Head 5 – Guiding principles	
<p>(3) The principles referred to in subheads (1) and (2) are—</p> <p>(a) encouraging and facilitating as far as possible the resolution of issues in dispute by means of alternative resolution methods, such as mediation, unless resolution by such means would not be appropriate due to the nature of the proceedings,</p>	<p>Domestic abuse is not suitable for resolution by means of ADR including mediation. Related matters in a family that has experienced Domestic Abuse are not suitable for resolution by means of ADR including mediation. Mechanisms for encouragement and facilitation of ADR should be clarified as these services will need to be available, accessible and affordable. Court practitioners including judiciary will require training on ADR including an understanding of the use and scope of mediation. More robust mechanisms will need to be employed to ensure mediation is supported and promoted by the legal profession.</p> <p>The Mediation Act 2017 should be fully enacted so that the profession is regulated and subject to a Mediation Council.</p>
<p>(b) promoting and engaging in active case management practices, including time limits and maximum word counts for submissions,</p>	<p>Scheduling of court cases with definite appearance dates is welcome from the perspective of court users. Active case management of cases is welcome insofar as is possible allowing for the urgency of a particular case. Ideally the same highly trained judge should manage all aspects of a family’s requirements.</p>
<p>(c) conducting proceedings in a manner which—</p> <p>(i) is as far as possible user-friendly for the parties,</p>	<p>A clear understanding of all parties needs to be ascertained with a child-centred and child-safety view being paramount. Court practitioners including judiciary will require a clear understanding on what user-friendly means. This should include the use of online communication systems as much as possible both for upload of relevant documents and for participation in court as required. Systems should also be identified and provided to ensure accessibility to proceedings for all users including those with disabilities, those for whom English not a first language etc.</p>

Relevant Sections of Bill	Our Commentary & Concerns
(iii) minimises as far as possible conflict between the parties,	Court practitioners including judiciary will require training on how to minimise conflict between parties. This training should include modules required prior to appointment to the Family Court Division and regular CPD/Judicial refresher training. The entire structure of service pathways needs to be developed to provide an early intervention approach to family dispute resolution as alternatives to immediate court action.
(iv) is just, expeditious and likely to minimise costs of those proceedings,	<p>We support and recommend a principle of matters being resolved in the lowest appropriate court. We recommend that expert reports as required by court into issues relating to children are subsidised by the state as required to ensure children’s safety is not compromised by a lack of income. We recommend that early and effective action against non-compliance with Court procedures and/or Court orders/directions is taken in the course of effective family-centred case management.</p> <p>Where cases drag on, they inevitably cost more financially and in terms of impact on the family. Active management is required of conflictual cases to avoid unnecessary and deliberate delays.</p> <p>We propose that regular research be undertaken on the costs of various types of cases across the jurisdictions, to capture number of adjournments, cost of delay in hearing cases and other relevant cost causes. We also propose that data systems be developed and maintained to support evidence-based decision making; quality of service provision; quality of court experience etc based on the desired outcomes for the entire system which should include child safety; resolution of the conflict for the family and in terms of returns to court; speed of process etc.</p>
(d) in any family law proceedings in which a child is involved or likely to be affected by the outcome— (i) ensuring that the best interests of each such child are a primary consideration in those proceedings, (ii) in respect of any	<p>We recommend an expansion of the guiding principle to ensure that the ‘best interests of the child’ is a primary consideration to reflect Part V of the Children and Family Relationships Act.</p> <p>The safety of a child is of paramount importance above their voice. The State needs an appropriate mechanism</p>

<p>such child who is capable of forming his or her own views, ensuring as far as practicable that the views of the child are ascertained and given due weight having regard to the age and maturity of the child.</p>	<p>to take responsibility to ensure the safety and protection of children in private family law proceedings. The State should become involved in private family law proceedings where they have a concern about a court order that has been made where safety and access issues arise, or if they have information relevant to any court order that is being made.</p> <p>Family law practitioners and judiciary will require training on the dynamics of Domestic Abuse and in particular the impact on children and abused parents, Child Protection, Parental Alienation etc; as well as how to consult with and hear from children; an understanding of Trauma is also essential.</p> <p>The GAL (Guardian ad Litem) service should be available to children in private family law proceedings if appropriate.</p> <p>Consider introducing the role of Child Court Liaison Officers (CCLOs) in all regions to provide information and support to children and young people who come into contact with the family law system. A parallel system may be required to manage issues concerned with the entire family as in other jurisdictions. Parents need to know that they can go to CCLOs or other appropriate court personnel in relation to safety concerns for their children and that this will be investigated by the state.</p> <p>Specialist practitioners are required to hear the views of the child to ensure that the child is not being inappropriately influenced, abused or coached.</p>
<p>We recommend the following additional Guiding Principles</p>	
<p>In cases involving non-compliance with Court Orders, or concerns where non-compliance might arise, ensure active and regular case management to monitor, and take active steps to ensure, compliance with Court Orders including meaningful sanctions against a defaulting party with clear and defined pathways to escalating sanctions for repeated and/or ongoing non-compliance.</p>	
<p>Management or seizure of cases by a particular judge to ensure consistency, case management and integration of all issues particularly where there is a concern that the case is, or may become, conflictual where possible. A comprehensive case management system is required to facilitate consistency across family courts, integration of all issues to be considered and reduction insofar as is possible of conflict in the conduct of the case.</p>	

The promotion and use of technology to assist in remote hearings and the electronic filing of papers, in particular in respect of centralised Courts so as to ease the issue of access to those Courts. For such centralised Courts, there should be a specific intent to reduce, where possible, the requirement for parties to attend the Court physically, in particular for procedural and similar applications unless they wish to do so or have a lack of access to technology.

A general principle of resolution of a family law issue at the lowest level of family support service or mediation should apply as per our Family Law Service Model. A general principle of resolution should apply that the lowest court should resolve if appropriate. A general principle should apply that expert reports should be ordered only if required and if family supports have failed or if they recommend them. These reports should be undertaken by regulated, managed, qualified experts approved by a relevant statutory body and should be available free or charged on a sliding scale.

Relevant Sections of Bill	Our Commentary & Concerns
Head 6 – Establishment of District Family Court	
<p>(3) The Principal Judge of the District Family Court shall be appointed from amongst the District Judges by the President acting on the advice of the Government and shall take precedence over other judges of the District Family Court.</p>	<p>The appointment of the Principal Judge should be based on possession of relevant skills, including strong interpersonal and communication skills. Relevant experience should include professional management experience. The Principal should have responsibility for the effective and efficient organisation and business of the family law courts across the country, with the authority to issue practice directions; caseload management; and oversight of specialist training. The Principals of the District and Circuit Courts should consult and coordinate the business of their respective courts between them. This is an opportunity to work towards consistency between and to support judges and courts on common issues to maximise positive and consistent outcomes for court users and increase the efficiency and effectiveness of family courts.</p>
<p>(4) A person shall not be assigned to be a judge of the District Family Court unless— (a) he or she is a District Court judge, and (b) he or she is, by reason of his or her training or experience and temperament, a suitable person to deal with matters of family law.</p>	<p>Assignment should be based on a transparent system of recruitment, training and support. Judicial skills and craft including empathy should be nurtured for these roles. It is critical that training is provided and is mandatory on key issues of relevance to family law and that this is done before appointment to the family law division, to maximise positive and consistent outcomes for court users and increase the efficiency and effectiveness of family courts.</p>
<p>(5) Subject to subheads (6) and (7), every judge of the District Family Court shall</p>	<p>The Principal and President should have the authority to reallocate a judge where they are not suitable for</p>

hold that assignment for so long as he or she holds office as a District Court judge.	family law work to the general District Court.
(8) A judge of the District Family Court shall take such course or courses of training or education, or both, as may be required by the Judicial Studies Committee established by the Judicial Council.	We recommend that specialist training, prior to appointment to the Family Law Division and regularly during appointment, be provided on complex issues relating to family law including but not limited to: Domestic Abuse – how it manifests; impact on children; impact on adult abused; programmes that are effective to mitigate it; ongoing access issues; financial abuse; coercive control. Also issues related to Child Abuse including Attachment; Parental Alienation (based on evidence-based research); Family support services; Communication and soft skills; Consultation with Children and Young People; Trauma. The training should be undertaken by all judiciary from all levels who will be working on family law cases; and by all legal practitioners who work on family law cases.
Relevant Sections of Bill	Our Commentary & Concerns
Head 7 – Creation and alteration of District Family Court districts	
(2) The Courts Service, after consultation with the Principal Judge of the District Family Court and the President of the District Court, may by order — (a) divide the circuits referred to in Head 12 into convenient geographical areas (in this Act referred to as “District Family Court Districts”) for the purposes of the District Family Court, and (b) attach to each such district a name by which it shall be known.	Specialist family law judges should be assigned to specific Districts in order to ensure consistency in case management. Proceedings in multiple Districts should not be permitted; the first District shall seize the case although application can be made for transfer.
Head 8 – Jurisdiction of District Family Court additional recommendation	
Parties are obliged to inform the court of related criminal and child protection cases relevant to the family law proceedings.	Systems are required to integrate criminal, childcare and private family law cases together to ensure full knowledge of all issues impacting a family so that appropriate decisions can be made particularly in relation to the safety of children. This is generally in relation to court-ordered access visits with children by a proven/alleged Domestic Abuser resulting in danger and harm to the children and other parent.
Head 9 – Sittings of District Family Court	
(2) The Courts Service, after consultation	The places for sittings should be based on accessibility

<p>with the Principal Judge of the District Family Court and the President of the District Court, may, by notice made in accordance with this head, specify— (a) from time to time, in respect of any district, the places at which sittings within that district are to be held, and</p>	<p>for court users including regular public transport; geographical distances to be travelled by court users; the availability of appropriate court buildings that have or can be upgraded with modern accessible technology as well as child-friendly and family friendly resources; a supply of well qualified staff; case volumes and waiting times; location of Legal Aid Board offices. There should also be a dedicated and fully resourced District Court Family Law Office attached.</p>
<p>(b) in respect of any district, the dates and times on which sittings shall commence at each place in the district at which sittings are to be held.</p>	<p>Court sitting times and Court offices should be available out of office hours to increase accessibility by court users. Additional resources for extra judges and Court Service staff will be required for this. Court hearings should be scheduled, with staggered hearing times for cases and cases actively managed to avoid delays, long waits in court buildings for court users.</p>
<p>(3) The District Family Court shall sit to hear and determine family law proceedings in a different building or room from that in which sittings of any other court are held or on different days or at different times from those on, or at, which sittings of any such other court are held.</p>	<p>Physical facilities and attendant processes including signage, waiting rooms, consultation areas etc should all be child and family friendly and should ensure safety and confidentiality reflecting the sensitivity of family law cases.</p>
<p>Head 10 – Proceedings in District Family Court</p>	
<p>(2) (a) Subject to paragraph (b), an application to the District Family Court to commence family law proceedings shall state— (i) the circumstances giving rise to the application, (ii) whether or not mediation under the Mediation Act 2017 has been attempted, (iii) if applicable, whether or not the solicitor acting for the applicant has complied with his or her obligations under sections 20 and 21 of the Guardianship of Infants Act 1964, (iv) if applicable, whether or not the solicitor acting for the applicant has complied with his or her obligations under sections 5 and 6 of the Judicial Separation and Family</p>	<p>A more proactive approach is required here in the content of the provision of clear, resourced pathways that offer real alternatives to court other than in cases involving Domestic Abuse or those that are urgent. Parents with family law issues should be directed to alternative pathways for resolution before going to Court. One Family’s proposed Family Law Service Model could be the basis for further discussion on this. Additionally a more direct reference to the Mediation Act to ensure that the court is satisfied that all reasonable efforts are made, in appropriate cases, to resolve matters through mediation or ADR before Court hearings should be required rather than the current box-ticking exercise.</p>

<p>Law Reform Act 1989, and (v) if applicable, whether or not the solicitor acting for the applicant has complied with his or her obligations under sections 6 and 7 of the Family Law (Divorce) Act 1996. (b) Paragraph (a)(ii) shall not apply to the commencement of proceedings under the Child Care Acts 1991 to 2015 and the Domestic Violence Act 2018.</p>	
<p>(3) Upon his or her own motion or upon the request of a party to the proceedings, a judge of the District Family Court may at any stage during the proceedings, if he or she considers that mediation or another alternative dispute resolution process would assist in resolving some or all issues in dispute, suspend the proceedings to allow the parties to resolve issues by such means.</p>	<p>The provision of responsive, accessible family mediation, reports, ADR and/or family support services will require significant state investment in order to avoid delays. It is not acceptable that courts refer applicants to services in the voluntary sector where funding for these services is not provided or guaranteed. This practice may increase family conflict and trauma and delay resolution of key issues. The Court should keep progress of these outward referral efforts under active review to ensure such efforts are not being used to delay a resolution of the case. Mediation, ADR and/or family support services should be appropriate resourced to report to the court on any relevant matters including the presence of abuse or control within the family. This will require additional resources and systems.</p>
<p>(4) District Family Court proceedings shall, having regard to the proper and effective administration of justice and the need to follow orderly procedures, be as informal as is practicable. (5) Neither judges sitting in the District Family Court nor barristers nor solicitors appearing there shall wear wigs or gowns.</p>	<p>These are welcome provisions.</p>
<p>Head 11 – Establishment of Circuit Family Court</p>	
<p>The same comments apply to Circuit Family Court as District as noted above.</p>	
<p>Head 16 – Establishment and constitution of Family High Court</p>	
<p>We note that there is no tenure requirement for High Court Judge in Family Law and no training requirements. We believe the same tenure and training requirements should be instituted as in District and Circuit Courts. All relevant comments as noted in District Court sections apply here.</p>	

Relevant Sections of Bill	Our Commentary & Concerns
Head 18 – Family Law Rules Committee	
<p>(2) The Family Law Rules Committee shall consist of 3 ex-officio members and 7 nominated members. (3)The ex-officio members shall be— (a) the Principal Judge of the Family High Court; (b) the Principal Judge of the Circuit Family Court, (c) the Principal Judge of the District Family Court.</p> <p>(4) The nominated members shall be— (a) a barrister with experience and relevant expertise in the area of family law nominated by the Bar Council of Ireland; (b) a solicitor with experience and relevant expertise in the area of family law nominated by the Law Society of Ireland; (c) a County Registrar, (d) a Clerk of the District Court, (e) a Clerk of the Circuit Court, (f) the Chief Executive of the Courts Service, or a member of the staff of the Courts Service to whom the Chief Executive has delegated his or her membership in writing and any such delegation may be revoked at any time by the Chief Executive. (g) a representative of the Attorney General</p>	<p>We strongly recommend that court users and relevant experts be included in this Committee in order to ensure that a child-safety perspective is developed and maintained. This may include representatives from organisations or agencies providing mediation, ADR and family support services including specialist Domestic Abuse organisations.</p>
<p>(5) The Rules Committee shall, with the concurrence of the Minister, make rules— (a) prescribing documentation required for the commencement of proceedings; (b) regulating pleadings, practice and procedure; (c) in relation to remedies in proceedings; (d) in respect of costs of proceedings; 22 (e) providing for service out of the jurisdiction; (f) regulating the form and execution of any process, and (g) providing for such incidental, supplementary and consequential matters as appear to the Committee to be</p>	<p>The issue of costs in family law proceedings requires fundamental review. The current rule is that generally each party bears their own costs. That is entirely appropriate in the majority of cases. However costs need to be a significant sanction in cases where there are a) breaches of Court orders and/or b) non-compliance with Court rules and procedures (e.g. delaying in the provision of financial information which is very common place). This needs to be linked to active Case Management where delays and/or non-compliance are identified at an early stage with clear guidelines around costs or other financial sanctions and with escalating costs/other financial penalties for</p>

<p>necessary or expedient for the purposes of this Act.</p>	<p>repeated breaches. Financial abuse is a common component of Domestic Abuse and requires specific training and court management. Costs should not be an impediment to legal representation, expert reports or access to justice. All mediation, ADR and family support services as outlined in our Family Law Service Model should be free or charged on a sliding scale basis. Ireland urgently requires robust research on family law legal costs to provide transparency around what families are paying in private legal fees, in what circumstances etc. A cost benefit analysis of proposed family law reforms could be helpful but would require costing the benefits of family conflict, and state investment in an early intervention and prevention approach to family disputes.</p>
<p>Head 19 – Transfer of proceedings</p>	
<p>One Family agrees that lower courts should be enabled to hear non-contentious consent cases and we welcome that jurisdictions can be moved. In other countries people can divorce without court appearances at all once the appropriate paperwork is managed and reviewed. We support the principle of cost savings to the state and to court applicants through the use of the lowest appropriate courts. The interests of court users must be prioritised above private sector stakeholders.</p> <p>It would be helpful to have clarity on how cases will be identified and managed for moving. We recommend the Principals of the relevant Family Law Court jurisdictions collaborate to identify the appropriate court for a particular case based on a transparent set of principles. This may require additional capacity and resources for lower courts to enable them to have the time required for more complex cases. We note that the District Court already has experience of dealing with complex, difficult Childcare and private family law cases.</p>	
<p>Head 27 – Amendment of Maintenance Act 1994</p>	
<p>We note that Ireland urgently requires statutory management of Child Maintenance both for assessment and enforcement so that parents are not forced to sue each other in private family law proceedings. This will decrease conflict and abuse within families and will have the additional benefit of easing pressure on the Courts.</p>	
<p>36. Proceedings heard otherwise than in public 37. Prohibition on publication or broadcast of certain matters</p>	
<p>The <i>in camera</i> rule needs to be clarified and defined so as to ensure it does not prevent parties accessing support services that are there to assist resolution; or to lessen the availability of remote hearings.</p>	

Ends