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# **Parental Representation and Participation in Child Care Proceedings: A Qualitative Analysis of the Irish District Court**

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## Parental Representation and Participation in District Court Child Care Proceedings

### A Qualitative Study of the Irish District Court

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## Background to Study

- Qualitative Study of District Court Child Care Proceedings
- 3 counties in Ireland – account for over 50% of all applications
- Mixture of urban centres and rural areas
- Focus on professional perspectives
- *In camera* rule making it difficult to involve parents and children



## Background to Study

Profession/Role	Number of Participants
Judges	9
Solicitors	15
Barristers	4
Guardians <i>ad litem</i>	10
Social Workers	31
<b>Total</b>	<b>69</b>



## Background to Study

### Seven themes:

1. Legal and constitutional framework
2. Adversarial v inquisitorial model
3. Timeframe and scheduling
4. Child participation
- 5. Parental representation and participation**
6. Professional interaction and training
7. Facilities



## Parents' Rights

- Strong substantive and procedural rights
- Domestic and international law
- Constitution and legislation
  
- Right to custody and care of children
- Strong presumption that children are best cared for by own family
- Right to fair procedures



## Legal mechanisms

- District Court hearing
- High thresholds for making orders
- Courts and CFA must presume that children are best cared for by own family
- Adversarial process – opportunity to contest application, test evidence etc
- Legal representation – Legal Aid
- Choice of representation; discretion to award costs



## Proportion of Orders Granted

Order	2013	2012	2011
ECO applications	520	519	Unavailable
ECO granted	414 (80%)	424 (82%)	Unavailable
ICO applications	6,023	5,773	4,365
ICO granted	4,993 (83%)	4,682 (81%)	4,138 (95%)
FCO applications	1,117	1,677	2,491
FCO granted	889 (80%)	1,384 (83%)	2,287 (92%)
SO applications	1,317	1,346	1,043
SO granted	970 (73%)	1,074 (80%)	972 (93%)

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## Proportion of Orders Granted

- Rate varied from county to county and year to year
- High of 99%
- Low of 66%
- County 1 particularly high
- County 3 showed significant variation between judges

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## Proportion of Orders Granted

“... we have [a] 100% success rate going back five years ... no application gets lodged before a court ‘til we’ve satisfied ourselves that there is a *prima facie* case. So there’s a high level of checks and balances ... I think also our legal advice would be not to go to court if we don’t have the burden we need ...” (Social Worker, County 1)



## Proportion of Orders Granted

“An unsuccessful application is almost unknown ... The fact that the [CFA] [is] involved indicates that there is a problem and something needs to be done about the problem ...

... as the years go on the pressure increases to make the order because I have occasionally made orders that tended to favour the parents more than the [CFA] had been asking for and I have frequently found that I was wrong and that the children have been damaged ...” (Judge, County 1)



## Proportion of Orders Granted

- County 3: one judge almost never refuses an order – not a single ICO refused in 2012 or 2013
- “They're given for the asking. We never have a case – rarely – that an Interim Care Order doesn't succeed ... I think the court is too quick to grant them. That would be my overall impression.” (Solicitor, County 3)
- Another judge refused almost 50% of ICOs and FCOs



## Legal Representation

- All participants stressed its importance:
- “... it's that kind of fundamental principle. It's like going into prison for 10 years – you need a lawyer, and you should get it, no matter what.” (Judge, County 1)
- “I insist on parents being represented, simple as that. And if a case comes in and a parent is not represented and is making an application for legal aid, I'll adjourn it.” (Judge, County 2)



## Legal Representation

- Legal Aid Board gives priority to child care cases:
- “Within the Legal Aid scheme we prioritise child care proceedings, that someone can come into us on [identifying information removed] morning and we will do our damndest [*sic*] to be in court with them ... [that] afternoon with a full set of reports and again we have a procedure where we can kick in very quickly.” (Solicitor, County 1)



## Legal Representation

- But orders are still made in some venues in the absence of representation:
- “Well, the CFA will insist that the orders are made. They will seek to go ahead on the basis that there is a risk to the child. So, in terms of adjourning, yes, they might be adjourned but an order would be made. So it's not an adjournment in the true sense ...” (Solicitor, County 3)
- CCLRP, 2013-14: 26.7% of ECO and ICO applications involved unrepresented parents





## Legal Representation

- Parents in child care proceedings are often very challenging as clients:
- "... representing parents is probably the most difficult task, really, because you're dealing with people who are very damaged, who are very hurt, who aren't able to look after themselves at times and who may have a serious drug problem and who have huge anger and who themselves may have been in care ... It's a very difficult task." (Solicitor, County 2)



## Legal Representation

- Lawyers lack the time and resources they need to represent parents as they would wish:
- "... I think all this talk about representing parents and constitutional rights, it's all a hill of beans until we get time to prepare our cases properly. And we don't get time to prepare cases properly because nine times out of ten they come the night before, or the morning of it. And I think that's a fundamental issue for me." (Barrister, County 2)



## Legal Representation

- “Lack of resources, I suppose, is one of the main things, isn't it? We just don't, from A to Z, seem to have the resources to get parental capacity assessments, psychological assessments, psychiatric reports ... We've a fee structure of €385 for a report from a consultant and, generally, they're not interested in doing it for €385. I mean, you'll get a couple of people here and there that will do them, but generally speaking, it's like pulling teeth. So it's a constant struggle.” (Solicitor, County 3)



## Parental Participation

- Parents often find it difficult to understand court proceedings:
- “... the vocabulary and the jargon that's being used in the courtroom is very inaccessible to some people ...” (GAL, County 1)
- “Some, because of mental health difficulties, you know they'd say when you come out, 'what happened in there now, what happened in there?'” (Barrister, County 2)



## Parental Participation

- Parents may feel unable to speak up in court:
- “... I would have certainly had some parents who have mental health difficulties, who want to say stuff but the environment of the court just ... they can't cope with it ...” (Social Worker, County 1)
- “... my experience is, a lot of clients don't want to give evidence because they feel constrained that they can't really go up against the social worker who has all that in the report. And they let you say what it is that they want said to the court, but they don't want to get in there themselves ...” (Barrister, County 2)



## Parental Participation

- Judges take different approaches to facilitating parental participation:
- “They speak up behind their lawyers' back ... And I will frequently take their evidence, with the consent of everybody there, in that fashion so that they can participate in that way. But not many parents want to walk up to a witness stand.” (Judge, County 2)
- “... very often, the judge would make an order without the clients being heard. You would really have to press them; if it was contested, you would really have to press Judge [name removed] to hear your client.” (Solicitor, County 3)



## Conclusion

- Gap between theory and reality
- Process supposed to be tilted in favour of parents – but orders granted at very high rates
- Legal representation available, but interim orders sometimes made in its absence
- Legal aid solicitors lack the time and the resources to represent to the standard they would wish
- Levels of parental participation in and understanding of proceedings vary enormously