

## Child Care Law Reporting Project (CCLRP)

### Observations on Concerns for Vulnerable Children Arising from the Covid-19 Pandemic

3 April 2020

As of now, the Child Care Law Reporting Project (CCLRP) is not currently attending court sittings as we do not wish to unnecessarily add to the numbers in court. We recognise and support the decision to adjourn or postpone all non-essential child care proceedings and close any non-essential services. These are extraordinary times and we do not underestimate the pressure that our elected representatives, civil and public servants are working under. We are available to support the national effort to address this pandemic in whatever way we can.

The following observations set out the initial views of the CCLRP in relation to concerns for vulnerable children arising from the Covid-19 pandemic. We hope these observations will be helpful in planning how best to support children and their families during this emergency, including if the restrictions continue for a period of weeks or months and when normal court sittings and services resume.

#### 1. Children in Care: Access

Many children in care have regular access with parents, siblings and extended family members, which may be supervised if there is a risk to the children at access due to parents' own vulnerabilities or to a history of abuse. Access arrangements may be court directed. Access, and particularly supervised access, is likely to be hindered or considered impossible under the present Covid-19 restrictions, given the need to maintain social distance, if an individual/family is cocooning or self-isolating, and in circumstances where the availability of public transport is limited. Clarity would be helpful on two points, what factors determine if face-to-face access visit are considered "essential" and how is access affected by the 2km from home restriction. Access arrangements could be under further strain if either parent is living with or taking care of an older person eg a grandparent, or if the foster carer is a grandparent. If the grandparent is 70+ they will now be "cocooning" and children will not be visiting or not being visited, even for parental access.

If face-to-face access is cancelled, it is important that alternative forms of access are found, through phone calls, letters, Skype, Facetime, Zoom, or similar technology. Of particular concern would be babies and younger children under interim care orders (renewable monthly) where family reunification is planned. How is the bond with the parent to be maintained under the current restrictions?

If virtual contact could be encouraged to be maintained on the same day/hours as the access arrangement which is already in place, it may help with the continuity and security for the child who is old enough to use the technology. This will be more difficult with very young children and babies. In addition, families may need support to increase their connectivity (phone credit, stamps/writing material, access to technology and internet access).

## 2. Children at Risk Living in the Community

Children are now effectively confined to their homes with parents who may be under extreme pressure, have lost their employment and/or means of earning an income, have an addiction, mental health difficulties and/or are prone to violence or abuse. We know that many children are finding the current crisis stressful and no doubt that stress is compounded for those living in challenging family situations.

**Early Years' Settings & Schools:** With the closure of all schools and early years' settings, children have lost a vital link that they had with their teachers on a day-to-day basis. If the child wishes to seek support such as ringing a teacher, social worker or Childline, the child may have nowhere to go to make that call without being overheard. The live-chat option on the Childline website can be tricky enough for children in abusive situations or children in care (where difficulties have arisen with foster-parents) as the child has to register and create a nickname and password. If other people are sharing the computer, the child may fear being found out. Children with lower literacy levels, who would probably use the phone to ring in normal times, would find this element more challenging. In addition, some children may not have access to the internet or to phone / phone credit.

Schools and early years' settings have been providing a vital link between children and social services, as children may confide in teachers or teachers may notice that a child is showing signs of abuse. Testimony and documentary reports from teachers and early years' providers are often submitted as evidence in care child proceedings.

Some schools are attempting to provide for the pastoral side of their work with online assemblies at a specific time and links for pupils to contact staff. This may help bridge the gap and may lead to pupils confiding with their teachers about problems in the home as they had been used to doing face-to-face. How can children know that the same rules will apply as normal and that they can still confide about their problems with a trusted adult and that the adult will pass on their concern to somebody who could help them? Are there arrangements for teachers to do this under the new restrictions? The advertisement about "Talking makes us stronger" was helpful in relation to teaching children what to do about online abuse, and a similar advertisement might help children know they can contact their teachers safely.

**Therapeutic Supports:** As far as practicable, children who are receiving or in need of therapeutic support should continue to receive such support using alternative means of contact (phone and online etc). Among other things, therapeutic support can play a vital role in maintaining a child at home; preventing care placements breakdowns; and in identifying the child's needs, which is often central to care child proceedings.

## 3. Children Suffering from Food Poverty

The Children's Rights Alliance has already stressed the importance of continuing the food support provided previously by school meals and we welcome the Government's recent actions. This is vital, but it is not clear that there is a consistent approach around the country to the distribution of this food. Initially, it was left to individual principals to organise it, though this has apparently now been changed. Can the supports being rolled out for the over-70s and other vulnerable groups to receive food deliveries be combined with a system for distributing food to families at risk of food poverty? Voluntary bodies have already offered to help, and can be further harnessed to assist.

#### 4. Children Leaving Care

It is usual practice that when a child reaches 18 years, they 'age of care' and transfer to adult services and those in residential care leave their placement. Some care leavers may be eligible to receive aftercare supports. Given the need for continuity and stability and the uncertain economic climate, where possible a freeze should be put in place. This would mean that on turning 18 years or on reaching the end of the eligible aftercare period, there should be no change to a young person's care placement, designated social worker, access to supports or aftercare arrangements during the pandemic. Once a young person reaches the age of majority, care orders are no longer valid but the child can opt to remain in their placement and receive supports. British Columbia has instigated such a freeze in relation to care leavers in response to Covid-19.

#### 5. Social Workers and Foster and Residential Care

**Children First:** The Covid-19 pandemic is likely to have a significant impact on the pattern, number and nature of child protection referrals. Dr Joe Mooney commented that with schools and community facilities closed the number of mandatory reports to child protection services is likely to drop during this pandemic (IrishSocialWork Blog 31/3/20). The effective operation of the *Children First* approach to child safeguarding whereby it is the community's responsibility (teachers, early years providers and youth workers etc) to identify and report concerns about children at risk is likely to be significantly hindered during this pandemic as children are now indoors and "invisible" to these mandated professionals. When children are able to once again re-engage with educational and community services, it is likely that such professionals will see a deterioration in the presentation of some children and will make referrals to the child protection services. This could lead to a significant surge of referrals, for example when the schools re-open. Creative ways are needed to ensure children do not remain "invisible" for an extended period of time. This may mean partial opening of schools and other community-based services during the traditional summer holidays.

A joined-up approach between social workers, teachers and other community-based workers would be beneficial to ensure children deemed vulnerable or at risk receive daily/weekly contact from a professional, with the opportunity to build a rapport between the child and adult. Such children could include those on the Child Protection Notification System and those living in households where there is a reasonable concern in relation to domestic violence. Other members of the community, including An Post staff, home delivery workers and volunteers may be coming into contact with vulnerable children and families. A public awareness message informing these people of the approach channels available to report a child welfare concern would be welcome.

**Care Placements:** During the pandemic, there may be increased demand for care placements including as a result of:

- The situation at home deteriorates (exacerbated by the intense stress and pressure associated with the pandemic, in particular domestic violence and isolation) and a child is admitted to care.
- An increase in placement breakdowns due to the pressures arising from complying with the stay-at-home orders, including children absconding from residential care.
- Parents caring for a child with special needs at home seek respite care.
- A parent/guardian or foster carer needs to cocoon, self-isolate, becomes ill or dies and the child is admitted to care or need to change placement.

- A cluster of Covid-19 infections arises in an environment where self-isolation is difficult such as residential children's home, Direct Provision, emergency homeless accommodation or Traveller halting site and a child needs to be admitted to care or change placements.

We welcome the Government's efforts through the "Return to Practice" policy to recruit additional social workers and social care workers. A discussion with relevant stakeholders may be valuable to explore how best the foster and residential care systems can expand their capacity in a very short timeframe without breaching relevant national quality standards and laws. The community-based volunteer movements that have emerged in response to Covid-19 could be mobilised, however vetting and assessment of potential carers would pose a challenge.

## **6. Court Service and Assessments**

The courts are continuing to hear domestic violence applications and some child care applications, including emergency care orders, exceptional or urgent interim care orders and extensions of care orders and interim care orders. In addition, uncontested applications for extensions of interim care orders can be dealt with without requiring the parties' attendance in court. Alternative measures have also been put in place by the High Court for the hearing of uncontested reviews of special (secure) care order. These measures are appropriate and necessary during this emergency phase. However, once the courts resume normal service, there is likely to be significant pressure on the courts especially in private family law and child care, resulting in long lists on Family Law days and waiting lists to secure dates for care order hearings. The knock-on impact will last for months if not years. We know before the pandemic in some areas there was a delay of up to one year to secure a date for a child care order hearing. The CCLRP has documented the difficulties faced by the District Court prior to this pandemic and called for the establishment of a Family Court. The introduction and enactment of legislation to establish a Family Court should be prioritised by the new Government. In the interim, the District Court should be provided with additional supports, including additional moveable judges and administrative support, to ensure it can address the backlog of cases in a timely manner.

If the pandemic continues to disrupt the ability of the courts to hear child care cases and social workers ability to do home visits, it may be appropriate to amend the Child Care Act 1991. Issues that could be explored include the validity of a supervision order (s. 19) or a care order (s. 18) where a child is at home, if a home visit cannot be conducted effectively; the length of Interim Care Order (s. 17); and an alternative dispute resolution mechanism to address issues of access (usually heard under s.37) and issues affecting the welfare of a child in care (usually heard under s.47).

## **7. Communications**

The Department of Children and Youth Affairs, the Child and Family Agency and the Court Service have been engaging in public communications in response to the pandemic and this is most welcome. However, as far as we are aware there is no publicly available information or guidance for children in care, a parent/guardian of a child in care or foster/residential carers addressing issues of access, absconding, leaving care, aftercare and available supports.

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## Supplementary Observations

24 April 2020

### **1) Sequencing Approach to School/Early Years Re-Opening with a Focus on Child Welfare**

As we understand it, the plan is to re-open schools/early years settings on a phased basis for limited periods of time and with restricted student numbers. Early years setting for medical personnel and Leaving Certificate students are to be prioritised. In terms of the next phase of re-openings, we would urge that settings attended by children from disadvantaged/at risk backgrounds be prioritised as opposed to adopting an age category approach (eg all 1<sup>st</sup> year students across the country).

Under this targeted approach, DEIS schools, special needs schools and community early years providers should be re-opened before non-DEIS schools, private schools and private early years providers. We acknowledge that this approach is a blunt instrument as not all vulnerable/at risk children will fall into these categories.

Apart from exam students, we assume the initial focus of schools/creches will be on wellbeing, child welfare and re-connecting children with a learning environment (rather than on curriculum learning). Given that at-risk children have to varying degrees been 'invisible' to Children First mandated persons during the crisis, the priority must be on re-connecting them with the teachers they know and who know them as soon as practicable. It is likely those teachers will need additional social work / psychological / counselling advice and support.

Essentially, we are proposing that in the sequencing of re-openings, the child welfare and child protection role of schools and early years settings should be given priority over their educational/child care function. In addition, creative ways will be needed to continue to engage vulnerable children during the traditional summer holidays.

### **2) Concern Regarding the Ability of Social Workers to Carry Out Home Visits**

We have heard from social workers that there are significant practical difficulties in conducting home visits. One social worker told me that before they visit a home they must check with the family if anyone has symptoms and 'suddenly every house has someone with a cough'. While we fully appreciate that this is just an anecdotal comment, a similar concern was raised by John Finn in the 'The Irish Social Work Blog' <https://bit.ly/3eOxltu>. We have also heard an NGO describe engaging with a vulnerable child by talking to them through a window. If a social worker cannot talk in person to a child and gain access to the family home, we query the effectiveness of the engagement or assessment.

This raises the question of the viability of the CFA function to identify children who are not receiving adequate care and protection (s.3 of the Child Care Act), and the validity of a supervision order (s. 19) or a care order (s. 18) where a child is at home. We have no solutions to offer but feel this issue needs to be further explored and communicated to Government as a reason why vulnerable children

need to be prioritised in the re-opening plan. Any community-based centre that can support vulnerable/at risk children – schools, early years, Family Resources Centres, youth and sports clubs – needs to be prioritised for re-opening over and above commercial activities that provide services to the general adult population.

### **3) Alternative Dispute Resolution**

We acknowledge that the operation of the courts falls outside the remit of the DCYA and, of course, the CFA, but we understand also that this crisis is bringing about greater collaboration across Government departments, which is to be welcomed. Once the courts resume normal service, they are likely to face long lists in both private family law and child care, resulting in delays lasting months if not years. Such delays mean vulnerable child and their families will not have access to timely and effective remedies.

In a 2019 report we prepared for DCYA (<https://bit.ly/2VVpVMo>) we set out the merit of using alternative dispute resolution (ADR) mechanisms to divert some aspect of child care proceedings out of the courts. This could include some issues of access (usually heard under s.37) and issues affecting the welfare of a child in care (usually heard under s.47). Private family law does not fall under our remit, but we know from attending mixed family law lists (accounting for over 50 per cent of District Court lists hearing child care law) that maintenance disputes take up a huge proportion of court time. These should be taken out of court and placed in the hands of a specialist agency for mediation and, where that is not possible, arbitration. While acknowledging that this is the responsibility of the Department of Justice rather than the DCYA, and that it may take time to review existing ADR mechanisms and amend and expand their availability in the context of child care proceedings, we believe the resources invested now will reap rewards in terms of shorter court lists, more stable care placements, improved relations between the CFA, children, parents and carers, and less time spent in court by social workers, as well as reducing the stress of court proceedings for private family law litigants.

### **4) Communications / Information**

In relation to children in care, clarity would be helpful on the following:

- What factors determine if face-to-face access visit are considered “essential” and how is access affected by the 2km from home restriction?
- Is CFA in a position to (financially and practically) support children in care, their families and carers with connectivity (phone credit, stamps/writing material, access to technology and internet access)?