RCNI Submission to the Family Justice Oversight Group Consultation Topics - Phase 1 Consultation

1.0 Introduction - **Rape Crisis Network Ireland clg** (RCNI)

Rape Crisis Network Ireland (RCNI) is a specialist resource and information centre on rape and all forms of sexual violence. The RCNI role includes the development and coordination of national projects, working an interagency manner with all statutory and other stakeholders. using our expertise to influence national policy and social change, and supporting and facilitating multi-agency partnerships. We are owned and governed by our member Rape Crisis Centres who provide free advice, counselling and other support services to survivors of sexual violence in Ireland.

1.1 This Consultation

RCNI welcomes the opportunity to contribute to this Consultation, and looks forward to further involvement with the work of the Family Justice Oversight Group as it develops its vision for a new national family justice system. This work is linked to the development of new Family Court Bill, of which the General Scheme was published late last year.

This submission will begin by explaining how sexual violence is part of the background to many Family Law cases. It will then discuss each one of the specific topics listed in turn as they are relevant both to the task of identifying the commitments which are necessary in order for all relevant agencies and professionals to work together to develop the new national family justice system, and to the two themes in the invitation letter, namely training (including interdisciplinary training) and the culture of family justice and its challenges.

At the end of the document, RCNI will include brief submissions on specialist training for professionals and on the culture of family justice and its challenges.

1.2 Survivors of sexual violence and the family law system

Survivors of sexual violence in family and other intimate contexts, whether they are adults or children, have been victims of crimes of the utmost gravity. These crimes have devastating, wide-ranging and often very long lasting consequences for victims whose trust in their close family members and intimate partners has been betrayed. It is clear from SAVI[1], the last large-scale and detailed study of the prevalence of sexual violence in Ireland, that sexual violence is all too common: it does not seem likely that its prevalence has diminished since then. Our own RCNI statistics from 2019[2] tell us that child victims of sexual violence are most likely to be the victims of a family member (38%), while 4% of child victims, and 11% of adult victims, identify their partner or ex-partner as the perpetrator. This means that sexual violence is likely to be part of the background in a significant proportion of family law cases. It should be noted that although this RCNI submission deals only with sexual violence we cannot ignore that sexual violence within the family will also likely coincide with domestic violence. Our family law courts must recognise and address this reality. They should not ignore or discount

[1] The Savi Report: Sexual Abuse and Violence in Ireland (2002), McGee, H & ors, (Royal College of Surgeons in Ireland), commissioned by Dublin Rape Crisis Centre. Available online via this web-link: https://www.drcc.ie/assets/files/pdf/drcc_2002_savi_report_2002.pdf

[2] Accessible online via this web-link: https://www.rcni.ie/wp-content/uploads/RCNI-Statistics-2019.pdf

evidence about familial child sexual abuse or sexual coercion by an intimate partner but instead facilitate victims of sexual violence to share their experiences of sexual violence with the court with the least possible risk of being re-traumatised by aspects of the justice process itself. The family law process should be equipped to not only hear but respond appropriately to those highly significant elements of a family law matter.

Victims of the severe trauma that is sexual violence need to have the benefit of an expert-led approach in order to participate as fully as possible in family law proceedings. This means that specialist training in the prevalence, nature and impacts of sexual violence should be provided to all professionals working in the family law courts, by experts. RCNI would be happy to work with others to help provide such training. Please see the section headed Training at the end of this submission for more detail on this theme.

1.3 Individual Topics:

Optimising the delivery of family justice via:

- **The use of modern technology;**

RCNI recommends that the current intensive focus should be sustained into the future on:

- Systems to support the holding of remote hearings, including good broadband services. These will become even more important when the number of local District and Circuit Courts hearing family law matters reduces as the Family Court Bill is implemented, to ensure that families across the country, even those in the most remote areas, have the same level of access to Family Courts.

- **The provision of facilities and supports in the family justice locations**

RCNI will examine this point under separate sub-headings below:

Physical Environment in Family Courts:

Family Court users all need these basic facilities and amenities to have effective access to these courts:

- Enough bathrooms, changing areas, access to drinking water, basic catering facilities, adequate broadband;
- Easy physical access to court buildings for people with mobility difficulties. Also, aides should always be available for people with other physical difficulties relating to communication, for example induction loops for court users with hearing difficulties;
- More private, safe rooms at court in which to give instructions, receive, discuss and reflect on legal advice, settlement proposals, etc, and in which they can wait for their case to be heard all day if necessary, away from the sight and hearing of the other party;

Information about Family Court processes:

- All parties attending Family Courts would benefit from Increased availability of information on all aspects of family law court procedure, in formats which are easy to understand and to access, both at court and elsewhere, including online;

Practical, Administrative and Legislative Supports:

- Increased availability of **special measures**, which could consist of new statutory provisions underpinned by rules of court, such as giving evidence by video-link and/or behind screens or through an intermediary. These measures should provide for imaginative, novel and individually tailored solutions which would enable every witness's voice to be heard clearly in family law proceedings, including the voice of the child witness. RCNI sees no reason in principle why the cohort of intermediaries which will be created to assist children and other vulnerable witnesses in our criminal courts[3] should not also advise Family Courts about the best possible way to communicate with any individual child witness, and also, facilitate communication in court in both directions, as a foreign language interpreter would.
- **Increased availability of Legal Aid** would do much to increase effective access to the family court system**,** by raising the financial threshold for access to legal aid and by ensuring that access to legal aid is not restricted by rules limiting the number of certificates which may be granted in a given period. ;
- **A much more formal system of active case management:** RCNI notes that active case management is a guiding principle of the General Scheme of the Family Court Bill (See Head 5(3) (c). RCNI's view is that this principle is an essential one to make the best possible use of available resources in all three new Family Courts. Robust case management can do much to reduce delays and attendant uncertainty about how the case is likely to unfold, particularly if it occurs at the earliest possible stage in the proceedings. This is important because these victims are already living with the effects of severe trauma, so that any initiative which cuts down delays before the case itself or which clarifies how it is likely to proceed, helps to reduce these effects.
- Early case management appointments give the Court and each party the opportunity to raise issues related to special measures, and to take any necessary advice from the appropriate experts in this regard;
- Finally, active case management procedures have the potential to identify and exclude from any ADR process, any family law proceedings in which sexual violence forms part of the background.
- **Greater flexibility about jurisdiction across Family Courts at the same level and from one level of the Family Court to another will make it easier to gain effective access to justice:**
- RCNI broadly welcomes the powers given in the General Scheme of the Family Court Bill to both District Family Court and Circuit Family Court judges to transfer cases both "up" and

[3] A greater focus on the use of intermediaries was the subject of detailed recommendations in the O'Malley Review (2020). Supporting the Victim's Journey, the Implementation Plan which followed the publication of the O'Malley Review of the protections for vulnerable witnesses in the investigation and prosecution of sexual offences, may be accessed online via this web-link:
http://www.justice.ie/en/JELR/Pages/Supporting_a_Victims_Journey

"down", whenever they consider that that is appropriate themselves, or on foot of a request to do so from either party and having regard to the nature of the case.

- RCNI also broadly welcomes the proposed greater flexibility in the Family Court Bill General Scheme with regard to Family Courts at the same level.
- However, the judiciary, the Family Court Rules, family lawyers, and specialist training in the nature and dynamics of abuse - must all do their part to discourage attempts by abusive parties, not least those accused of sexual violence against partners or children, to manipulate the system in order to exhaust the other party's resources, or in order to punish or intimidate them - e g by seeking unwarranted transfers to higher (and more expensive) courts or by making applications in the highest court possible without justification.

The place of mediation in family justice

- The benefits of alternative dispute resolution (ADR) are obvious: it is the best way forward in many kinds of private family law proceedings. It can save significant amounts of court time and public funds, and there is no doubt that in appropriate cases, its use should be encouraged, facilitated and resourced adequately. However, it has its limitations: it may be very problematic and unhelpful in family law cases in which there is a history of sexual violence, as part of a wider pattern of domestic violence and abuse.
- RCNI is relieved to see that both Domestic Violence Act 2018 applications and proceedings under the Child Care Act 1991 are excluded from the ambit of the Guiding Principle found at Head 5(3)(a) of the General Scheme of the Family Court Bill promoting the use of ADR in family law proceedings as far as possible.
- Head 5(3) (a) of the General Scheme of the Family Court Bill promotes the use of "alternative resolution methods" as far as possible to resolve disputes in **any** family law proceedings. The only caveat is in relation to cases where this would not be appropriate "due to the nature of the proceedings". The most obvious interpretation of that phrase is that Domestic Violence Act 2018 proceedings, public law proceedings and domestic violence related criminal proceedings are all excluded, but private family law proceedings with a background of domestic and/or sexual violence are not so excluded. RCNI's view is that some mechanism should be found to ensure that these proceedings are explicitly excluded;
- RCNI's concern is that private family law disputes over custody, access, maintenance, guardianship, judicial separation, divorce and other issues where there are allegations of sexual violence on its own or as part of a wider pattern of domestic violence and abuse, would become the subject of attempts at ADR, if the Guiding Principle is not refined and is strictly interpreted. RCNI's view is that it is vital to ensure that family law cases involving sexual violence and abuse are not directed to ADR in the first instance;
- Where there is a background of sexual violence in a family that is now separating, ADR is at best an ineffective strategy to achieve a fair outcome for the victim(s) of the abuse and at worst, a source of multiple opportunities for continuing abuse through manipulation of the process by the abuser to achieve an outcome which favours the abusive party alone. There is a clear imbalance of power in any abusive relationship based on the fear of one partner of the

other, so that from the outset, there is enormous pressure on the abused partner to accept whatever solutions are put forward by the abusive partner;

- RCNI's view is that the wording of this guiding principle should make it clear that there is no question of a *mandatory* ADR process being imposed on the parties in any family law proceedings. In any proceedings with a background of domestic violence and abuse, any such mandatory ADR process would be contrary to Article 48 of the Council of Europe Convention on preventing and combat violence against women and domestic violence ("Istanbul Convention"), which Ireland has now ratified[4]: "1 Parties shall take the necessary legislative or other measures to prohibit mandatory alternative dispute resolution processes, including mediation and conciliation, in relation to all forms of violence covered by the scope of this Convention".
- RCNI also has some reservations about the stress placed in the General Scheme of the Family Court Bill at both District Family Court and Circuit Family Court levels on ensuring that in most private family law proceedings, the court is notified about the mediation status of the case, and about whether any legal representative has fulfilled their specific statutory obligations to notify their client about the possibility of mediation or conciliation before commencing proceedings – through the application to commence the relevant family law proceedings.
- In RCNI's view, urgent, especially **ex parte**, applications should be exempt from this requirement. In any family crisis, in which time is of the essence, having to find information about any previous mediation attempts may be enormously difficult or even impossible for any court users who need to apply urgently to the court to have a vital concern resolved. This is neither desirable nor necessary.
- More generally, RCNI is concerned that the provisions at both District Family Court and Circuit Family Court levels on ADR are drafted so widely that they may be open to abuse by unscrupulous abusive parties. As drafted, a request may be made by either party at any stage of the proceedings for the case to be suspended to allow the parties to resolve issues by ADR. If the court considers that this would help to resolve "some or all issues in dispute", the court may suspend proceedings. With great respect, this wording means that a final, comprehensive decision in the case may be put off without notice and regardless of how far advanced proceedings are, for an unspecified period, in any case in which a judge agrees to a request from the other party to suspend proceedings so that ADR can be attempted – because even one issue might be resolved by ADR.
- RCNI recommends instead that private family law proceedings should not be suspended to allow the parties to resolve issue by ADR unless and until the court is satisfied that **both** parties are in genuine agreement that this is what they want to do. The court should always bear in mind the possibility that the party who does not request resolution by ADR may be the one who should be spared any (possible further) attempt at it.
- Finally, RCNI recommends that there should be more research on the use of ADR in non-DVA 2018 family law proceedings where there is a background of domestic or sexual violence or abuse;

[4] Accessible online via this web-link: https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168008482e

- **Should mediation be a requisite to initiating or progressing family law proceedings with the court only being required in irresolvable cases or as the last step?**

- RCNI's view is that mediation should not ever be a prerequisite to initiating or progressing family law proceedings, for the reasons outlined above.

Reimagining the structure of civil legal aid in family justice

- **Should a greater focus of the system of civil legal aid be on the promotion and use of non-court based solutions to family issues where these are possible?**
- RCNI's view is that for women and children suffering sexual violence and abuse as part of a wider pattern of domestic violence and abuse, without the means to pay lawyers' fees, it is vital that expert legal advice and assistance, including representation in court, remains accessible so that their need for, and right to, justice can be met despite their lack of means. RCNI respectfully submits that providing legal services to this vulnerable group should remain a priority for the Legal Aid Board, whatever level of resources is allocated to non-court based solutions to family issues.

The Family Courts

- **What issues should always be prioritised for hearing?**
- RCNI's view is that **ex parte applications for an order under the Domestic Violence Act 2018** should continue to be prioritised by the Family Courts (as they are at present under Covid restrictions). However, we think the following should also be prioritised:
- **Breach of a DVA order:** A person arrested for breach of Section 33 DVA 2018 is likely to be brought before the District Court very quickly. If the charge cannot be disposed of at that first appearance, the issue of bail pending the next hearing falls to be decided. RCNI respectfully submits that it should be absolutely clear in the new Family Court Bill that either the District Court judge or the Family District judge can hear and determine criminal proceedings under Section 33.
- **Urgent Family Law Applications which may have to be made ex parte:** It can happen that urgent family law applications must be made **ex parte**, for example to prevent a child being taken abroad or receiving medical treatment in defiance of a prior agreement or order of the court. It should be made absolutely clear in the new legislation that in these very urgent circumstances, a "generalist" District Court or Circuit Court judge can hear and determine **ex parte** family law applications other than those under DVA 2018, that is, where there is no District Family Court judge or Circuit Family Court judge readily available to hear the application in a timely manner.

- **What are the professional supports both privately funded and in the case of eligible persons, publicly funded that most benefit the participants in the process or the court in dealing with family cases (examples include psychologists, social workers, family support services, anger management training etc.);**

Specialist Psychologists and other professionals appointed to write reports for private family law purposes

In RCNI's view, it happens all too often in private family law proceedings that professionals appointed by the court to write reports to guide its decision-making on custody, access and related matters fail to give proper weight to concerns expressed by one party about child sexual abuse occurring at the hands of the opposite party, and/or to disclosures of sexual violence by a partner. These concerns are often dismissed or discounted as mischievous or malicious; rarely are they addressed fully and seriously in the eventual recommendations on future custody and access. If these court-order reports are to be a full and accurate reflection of any family's situation and give due weight to any reports of sexual violence, their authors should have:

- Specialist training, experience and ideally, accreditation, in the nature and effects of sexual violence in the context of domestic violence and abuse – our experience is that few report writers have either one of the first two, and the third is not yet in place;
- Enough resources and expertise to complete a court report within a reasonable, and ideally court-specified, period;
- Nothing more than the most distant or tenuous extraneous personal connection to either party which predates the court order directing the report;
- An acceptance that they must safeguard their independence from either party by refusing to accept, transmit, or create any communication purporting to come from either, which has not been directed by the court;
- An acceptance that they must also do so by refusing to accept or instigate any meeting with one party which is proposed to be held without the prior consent of the court;
- An understanding that any professional must take care to avoid being manipulated effectively by an abuser determined that his or her narrative alone will be reflected in the final report;

Active Case Management of Report Writing Process

- In RCNI's view, these reports would be likely to reflect the true situation of most families better, and therefore be more useful to the Court, if there were much more formalised supervision over the process of their preparation.
- As part of the case management process, detailed court orders should be made restraining the parties from contacting the report writer outside designated appointment times, sending him or her unsolicited material without the knowledge or consent of the other party, and restraining the report writer from discovering one party's sensitive personal data to the other without that party's consent.
- Where a private family law court report includes consideration of criminal matters of domestic and sexual abuse perpetrated within a family it is unacceptable that the assessment of these public harms should have to be privately funded at least in part by the injured party. Court reporting should be publicly funded at least when the case involves domestic or sexual violence concerns.
- The preparation of reports for use in family law proceedings should be taken over as soon as practicable by an independent, State funded agency responsible for ensuring that the highest

standards are maintained, not least as far as extensive knowledge and understanding of all aspects of familial violence and abuse, including sexual violence, are concerned.

Court Reports and the In Camera Rule are linked

- RCNI's view is that the effect of the current in camera rules is to make it difficult if not impossible for anyone affected by the conclusions of a court-ordered report to read the report itself, and as a result, challenge those conclusions effectively, if need be. This affects the weight which should be attached to any of those conclusions;
- RCNI therefore recommends that there should be a thorough overhaul of the current in camera rules, so that all concerned in family law proceedings know exactly what these rules do and do not permit, and also
- So that the court can attach more weight to its conclusions, as those potentially affected by them will have had a full opportunity to challenge them in court.
- The current in camera rules do not make clear whether there are any circumstances in which in camera proceedings can be discussed, or in camera documents shared, other than the limited ones set out in Section 40.
- This means that their interpretation in a particular situation which comes to the attention of the court depends on the view of the judge in that case.
- RCNI's experience is that parties to family law proceedings are uncertain whether they can, or should, discuss any aspect of what was said in court with support workers, their doctor, counsellor or confessor, any friend or family member or at least those not connected directly with the proceedings in question, or even their own children.
- They are even more afraid of disclosing any document produced for the proceedings to any trusted person not concerned in the proceedings, should they be allowed access to a copy of that document.
- Sometimes, they are denied access to reports about themselves and their children by their own lawyers, on the basis that to share the reports would breach the in camera rule. They must rely instead on their legal representative's summary of the contents, or even just the conclusion.
- This means that they are ill-equipped to evaluate either content or conclusion, much less mount an effective challenge to either. They may therefore be denied effective access to justice on issues of the gravest importance in their children's lives as well as in their own.
- So, the result of this general haziness about the exact rights and duties of everyone concerned in family law proceedings with regard to the in camera rules – is that not only are some parties denied a fair hearing, but they may also feel that they have no choice but to deny themselves access to both professional and personal support while the family law proceedings are still "live".
- As we all know, these proceedings take place over months or even years. Having to live with this lack of support, uncertainty about whether any particular action contravenes the rules, accompanying anxieties about possible prosecution and its consequences – all increase stress levels for both parties;

- The uncertainty about the exact reach of the in camera rules also has a dampening effect on bona fide research into what happens in family law proceedings. Findings from such research could inform public policy and service provision in every aspect of family law.
- The existing situation is summed up well in the Joint Oireachtas Committee on Justice and Equality (32nd Dail) Report on Reform of the Family Law System:

  "In essence, any person involved in in camera proceedings in the field of child protection, private family law or elsewhere risks being held in contempt of court every time he or she discusses the proceedings with anyone other than his or her legal representative or the other parties to the proceedings. The law neither clearly allows nor prohibits interviews with children, young people and their parents. In the absence of clarity, researchers, children, young people and parents are at risk of being held in contempt of court. The in camera rule has therefore had a chilling effect on research, thereby silencing the voices of children, young people and parents who are most impacted by proceedings. While the sensitive nature of family law proceedings means that identities of parties should not be disclosed, the general consensus amongst witnesses was that the current application of the in camera rule has contributed to a significant lack of transparency in the system and that legislation clarifying the precise extent of the in camera rule is desirable"[5].

- RCNI recommends therefore that the proposed in camera provisions in the General Scheme of the Family Court Bill are replaced by easily comprehensible rules setting out clearly what can and cannot be discussed or shared (including on social media) outside the court, with whom, and in what circumstances – in *all* family law proceedings, not only the list of "relevant enactments" in the General Scheme.
- These rules could and should preserve the current list of situations in which evidence and documents may be shared legitimately – but
- This list should be reframed so that it is easy to read and understand for anyone affected by its provisions.
- Before all else, it should create as much certainty as possible about what can and cannot be shared outside the court and the circumstances in which such sharing is allowed (or not).
- Where possible, it should permit limited sharing of information, documents, accounts of evidence given etc, for bona fide purposes, subject to conditions, and to the supervision of the court, as appropriate; and
- It should be clear what the sanctions are for breaches of the in camera rule, indeed judges should be obliged to spell these out to all parties, and particularly litigants in person.

Court Accompaniment Services

- Specially trained volunteers and staff from both domestic and sexual violence support services can provide truly effective emotional support to victims of sexual violence in a domestic

[5] See page 27 and following pages of: Joint Oireachtas Committee on Justice and Equality Report on Reform of the Family Law System, published October 2019 and available online via this web-link: https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_justice_and_equality/reports/2019/2019-10-24_report-on-reform-of-the-family-law-system_en.pdf

context who must attend court to give evidence in family law proceedings. Many such victims would find it extremely difficult to undergo these proceedings without such support;

Legal Advisors and Legal Representatives

- Victims of sexual violence in the context of domestic violence and abuse should have ready access to a cohort of family law practitioners with high quality specialist training in the nature, dynamics and impacts of sexual and domestic violence and abuse. The creation of such a cadre of specialist lawyers will do much to increase faith in the family court system for those obliged to use it.

Judges at each level of the Family Court system

- Family Court judges at each level should be supported to attend and complete specialist training in the nature, dynamics and effects of sexual and domestic violence and abuse, including coercive control, in the course of their working hours.

Courts Service staff

- The family court system as a whole would benefit from more **data collection, analysis and evaluation** of all aspects of family law proceedings, especially on the incidence of sexual violence in family law proceedings other than DVA 2018 applications, to inform future policy and practice in this area;
- Courts Service staff should be supported and resourced to help the development of all Family Courts as **hubs of information** about a wide range of services to support families.

Voice of the Child

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

RCNI answers all 3 questions together below:

- **Head 5 (3) (d) of the General Scheme of the Family Court Bill:** This guiding principle is in two halves, each addressing the position of children involved [6]directly in family law proceedings or likely to be affected by their outcome. It repeats the dual principles of ensuring that the best interests of any child involved in or affected by family law proceedings are a "primary consideration" in those proceedings, and ensuring that as far as possible taking the age and maturity of that child into account, the views of any child "who is capable of forming his or her own views", "are ascertained and given due weight".
- RCNI has no quibble with either of these guiding principles, which reflect the provisions of Articles 42A.4.1 and Article 42A.4.2 of the Constitution and which are reflected in many family law statutes. However, RCNI respectfully submits that it is important that these guiding principles express also the need to take the greatest care possible to ensure that as far as

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possible, the **true** views of the child himself or herself are ascertained and considered in any decision making process which affects him or her. Even in cases where reports are prepared by well-qualified and genuinely impartial experts with great care, it is possible for the views of any child to be represented inaccurately.

- In our view, any child old enough to have his or her own views on a particular family law issue affecting his or her future should be offered the choice of speaking to the judge alone in chambers to put forward their own view of those issues before the decision is made, if that is what he or she wants. If it is, he or she should always be facilitated to do so.
- Children should have access to independent child advocates to support them in any legal process if they are mature enough to be able to express their support needs; and
- It should be possible for a court to order that there should be Guardian ad Litem appointed to assist the child(ren) concerned in any private family law proceedings.

RCNI: Recommendations on Specialist Training in Family Law System

Family Court Judges:

- RCNI recommends **specialist training** for all judges concerned with family law proceedings, to be provided by specialist sexual and domestic violence support practitioners and academics, covering:

    - the nature, dynamics and impacts of sexual violence in the context of a wider pattern of domestic violence and abuse including coercive control, including their potential effects on the progress of court proceedings themselves;
    - the full range of available support services from NGOs and from State agencies for victims of domestic and sexual violence and abuse, including those relevant to court proceedings (ie special measures);
    - additional vulnerability of women and children belonging to certain marginalised communities seeking protection from our courts, such as: Roma, Travellers, those whose immigration status is temporary or irregular and/or who do not speak English as a first language, people with a disability or disabilities which may make it harder for them to access and participate fully in, formal civil and criminal proceedings. This is not intended to be an exhaustive list of these communities;
    - Trauma-informed practice in all their interactions with parties and witnesses who may be suffering from severe trauma even as they participate in family law proceedings;
    - Unconscious bias: how to recognise and address it effectively within oneself so that as far as possible, judgements are based on evidence, not on unfounded assumptions about how a "good" or credible victim behaves as party or witness. Anyone may become a victim of sexual or domestic violence or abuse and need the protection of the courts.
    - The truth is that people who have been insulated from poverty and its effects all their lives can be targeted by abusers precisely because of their competence, income, assets, and status – and may find it very hard to get support not only to access support

to get out of an abusive situation, but even to acknowledge fully to themselves and to others that they are indeed victims of sexual or domestic violence and abuse.

Judges in Domestic Violence-related Criminal Proceedings

- RCNI's vision is that ideally, specialist judges would hear not only all civil family law cases, but also all criminal proceedings for domestic violence-related offences. However, this may not be practicable in the short term because there are not enough judges to hear all criminal cases in this category in addition to all family law cases.
- In our respectful submission, District Family Court judges and Circuit Family Court judges should not be *prevented* from trying sexual offences and domestic violence-related criminal offences. There is no doubt that their specialised family law experience and training would assist them in their assessment of the evidence before them.

Family Lawyers:

- RCNI agrees with the recommendation by the Joint Oireachtas Committee on Justice and Equality in their Reform of the Family Law System Report[7], to the effect that specialist training should be afforded not only to judges but to lawyers appearing in family law cases and Courts Service staff working in this area.
- Specialist training as outlined above, is the gateway to increased specialisation not only for judges, but also for legal representatives. High quality training, provided by experts in domestic violence (whether from practice or from academia or both), based on international best practice and on the best available evidence, should not only be provided to legal representatives, but should also be capable of leading to some form of accreditation in the domain of familial abuse in all its forms, for both legal representatives and report writers.
- RCNI recommends **that** all legal representatives who have an interest in the area should be encouraged and facilitated to access this specialist training on all the matters outlined above, and to become accredited;

Report Writers

- As outlined above, high quality training in all the matters set out above under the heading Family Court Judges, which is provided by experts in domestic and sexual violence issues from both practical and academic fields, should be made available to all those who wish to write reports for use in family law proceedings and
- Formal accreditation in all aspects of familial violence and sexual abuse should be made mandatory, as soon as practicable; and
- Only those who have completed such accredited training in the nature, dynamics and effects of domestic and sexual violence and abuse, including coercive control should be appointed to prepare a report for use in family law proceedings.

[7] See recommendation 9 at pages 44-45 of the printed version. The Report is available online via this web-link: https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_justice_and_equality/reports/2019/2019-10-24_report-on-reform-of-the-family-law-system_en.pdf

RAPE CRISIS NETWORK IRELAND

RCNI Submission to the Family Justice Oversight Group Consultation Topics - Phase 1 Consultation

RCNI's View of the Culture of Family Justice and its Challenges

RCNI would describe the current culture of family justice and its challenges in the following terms:

- There is a common perception that some form of access must be granted on any application, even if it is remote, infrequent or unsupervised, and little understanding of the appalling stress on both women and their children living with enduring domestic violence or abuse from their ex-partner, and sometimes also with very good reason to believe that child sexual abuse has been or worse, still is, part of that pattern of abuse - when those children express reluctance or worse, fear, about complying with court-ordered access, and the woman in the middle is faced with a truly appalling choice between enforcement proceedings and the risk of imprisonment and having to force her child(ren) to comply with the access and suffer the consequences, against every parental instinct to protect;
- Many courts and many lawyers are still reluctant to accept the bona fides of women's concerns about the safety of their children during access visits, whether these concerns relate to health and safety matters or to suspicions of child sexual abuse activities;
- Some courts and some lawyers are still reluctant to accept that children who are victims of child sexual abuse or negligence from the non-custodial parent may well be telling the truth as they experienced it, not as how they were supposedly instructed to tell it by the custodial parent;
- Domestic violence, which so often includes sexual violence as part of the wider pattern of abuse, is still sometimes seen as a battle of (violent) equals, not the abuse of one person by another. The insidious consequence of this view is that non-abusive partners are put under pressure to "settle" the case by resolving it by reciprocal or "cross" undertakings, when they have done nothing wrong and pose no risk to the other party. This means that no court order has been made which if breached, can result in an arrest and swift prosecution;
- Children are still not seen often enough as **individuals** separate from both parents, whose evidence about their own experiences, perspectives and hopes and fears for the future, if they felt free to give it, for example in chambers, would be very useful to the court;
- For practically every kind of court application involving two parties, and especially now during the pandemic for perfectly good public health reasons, no-one involved expects a speedy hearing and all resign themselves to living somehow with an unsatisfactory or perhaps even, dangerous, reality meanwhile till the case can be resolved;
- Listing all inter partes family law cases of all kinds together on the same day and often at the same time, results not only in prolonged and frightening proximity to hostile ex-partners, overcrowding, lost income, childcare problems and a host of other difficulties, but also in unrelenting pressure on both parties to settle cases on any unsatisfactory terms just to get out of the court precincts; and
- Sometimes it can happen that lawyers in family courts are so overwhelmed by having to cope with so many cases on one day that they too feel the pressure to try to settle cases out of court against the long-term interests of their clients. RCNI's view is that no-one should be put under inappropriate pressure to settle, nor inadvertently put anyone else under such

pressure, and especially not when the case has a background of sexual and domestic violence and abuse.

- RCNI's hope is that the new Family Court system will allow for every case to have its own, reasonably accurate timeslot so that difficult issues of sexual and domestic violence and abuse can be given the dedicated and careful attention that they need.

Concluding Remarks

The new Family Court Bill, once implemented, will give every survivor of domestic violence and sexual violence within the family a framework within which specialist understanding of their situation is likely to increase over time to the point where each one can be confident that their evidence will be heard and evaluated by expert professionals. This cannot come to pass without substantial and sustained commitment by the State to continuing investment in our courts, judges, legal professionals, mediators, report writers, court staff and domestic and sexual violence support services, to include dedicated time and money for regular training in all aspects of family law, including patterns of domestic and sexual violence and abuse.

Survivors of domestic and sexual violence and abuse should have access to a specialist, multi-faceted family justice system which makes full use of the available expertise held by domestic and sexual violence support services and others with specialised knowledge in this important area.

Dated this 23rd day of February 2021

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