

Speaking Notes Legal Aid Board Conference

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Barnardos Guardian ad Litem Service

The Barnardos Service was established in 1997, originally with one pilot worker based in Dublin. We now have 32 Guardians working throughout the country and in 2012 we worked with 712 children, up from 545 in 2011. The majority of our work is conducted in Child Care Proceedings in the District Court and in Applications for Detention of children in Special Care in the High Court. We do a small amount of Section 47 reports in Private Family Law that focus on the child's position and their wishes and we have a small - tiny! Pro bono fund for exceptional cases. We will even do these for the legal aid funding offered!

Does the present process of childcare cases in the courts system serve the best interests of the child?

Apparently the first draft of the slide this morning said 'sever' not 'serve'. Indeed.

We all know what the problems are.

Trying to get your case on in the once monthly family list of 80 in courts in Wicklow, Kildare and Meath.

The delays in arranging for timely legal representation with long waiting lists in many areas, and delays in appointing solicitors, leading to inequity between the state and the parent, and inequity between the parent with means who

can afford representation and the one who cannot and therefore must wait.

The 'free for all' unregulated Guardian ad Litem system.

The ability of the persistent litigant or complainant to use the court system itself to perpetuate disruption, and in the worst cases, abuse.

The lack of the child welfare process within the family law system.

The invisibility of the child within the system, or on the rare occasions when the child is considered, they are the passive object of adult concern, rather than having a voice and a say in matters which will truly affect the rest of their lives.

The reluctance to talk to children and the fear of having to listen to what they might say.

This is a golden opportunity to reform the family courts systems both in Private Law and Public Law. It is important not to waste a good recession.

We are in the fortunate position of not having a huge infrastructure to dismantle. We can look abroad to Europe, the UK, Australia and the US to learn lessons about what works and to learn from their mistakes.

We have the opportunity to go back to basics. As a social worker by profession I come at this, not from a legal

perspective, but from a social work perspective. The 'getting the hands dirty' approach. So starting from first principles.

Firstly, we're all in this together. Conferences like this allow us to get out from behind our own desks and meet each other. Discuss issues. Understand each other's perspectives. Resolve conflicts. Reflect. Allow ourselves to examine the part that we each play in the current chaos and think about how we might approach matters differently next time round.

So, can we imagine a process that understands and seeks to minimise the trauma that children and families experience in the family law courts? Remembering always that for them, this is personal and about their lives. For us, it is our workplace. We get to leave in the evenings and go home. For them, they carry the consequences of our day's work into the rest of their lives.

What might happen as routine in our perfect system?

The Right of the Child to a Voice

At all stages in family law, we consider the best mechanism for considering the voice of the child. We ensure that the child has information about the process and understands how they can participate. We protect children from involvement in conflict.

From the outset, we screen how and when the child's views can be taken into account with a range of options to allow us to do so.

In the majority of situations, parents will tell us the best way to consult with their children.

However where this is in contention, consider:

- The opportunity of the child to address the judge directly, where they are of an age and understanding to do so, and support Judges in meeting with children.
- The availability of a neutral facilitator to assist with this process.
- The establishment of a child welfare facility to provide a range of reports to the court
- The requirement of the court to consider the child's interests and how this is best met. We heard at a recent Barnardos conference about the child court welfare service operating in Northern Ireland, providing child court officers to assist in family negotiations, with the ability to refer on for mediation, family therapy, supported contact arrangements, and social work intervention. The child welfare reporter was able to visit the child in their home and provide welfare reports to the court.
- The establishment of the Guardian ad Litem facility for children in the most contentious of proceedings.
- The understanding of the difference between Voice and Choice.

The Right to Family Life

At all times protecting and promoting the relationship between the child and both parents, unless it is unsafe to do so.

When considering access arrangements in care proceedings or in family law matters, applications for adjournments would address the impact of delay if there are no interim arrangements in place.

When considering difficult family access arrangements, the child has the option to see their parent in a safe and neutral space, and where parents could be supported to improve their time with their children.

Remembering that the courts decisions do not only effect their relationships with parents, but understanding that early events can set the scene for the child's future relationships with their parents, grandparents, aunts uncles, cousins.

The Right of the Child to Safety and Protection

All in the process are aware of child safety and the impact of all forms of child abuse, including domestic violence.

Where domestic violence has been a feature, the court would consider the impact on the child when arrangements for access are being made.

eg Professor Dale Bagshaw has pointed to some of the lessons learned in Australia, where an assumption towards joint custody and joint time with both parents, has led to an increase in child protection concerns and indeed child deaths, as there has been insufficient screening for domestic violence.

A consistent working mechanism between the courts and the HSE so that matters involving the welfare of children can be easily referred and quickly assessed.

The knowledge that ongoing conflict is toxic to a child's welfare. At all steps in the process, care is taken to reach agreement and opportunities are taken to divert from conflict.

And that conflict is recognised as a high risk situation to a child.

In child care cases, the necessity of the protection of children sometimes requires one of the most severe interventions that the state can make. It is crucial for the child and for justice that this decision is not one that is taken lightly. The courts must be satisfied that this is the best option for the child and that the care that is offered to the child away from their family is not just to a high standard, but which repairs damage that has been done.

THat the child is better off as a result of that care.

The state provides a standard of Care which gives the child a positive experience of childhood and family life, while understanding their life experiences and respecting the role of their family.

Last but not least – Holding the Child in Mind.

We consider the child at each stage of the process, within mediation, within ADR, in court and afterwards. I did a

course way back when, it was on assessment of parenting. One of the key elements that has remained with me since was about continuously assessing the ability of the parent to 'Hold the Child in Mind'.

As a social worker working with vulnerable families in Inner London, we dealt with hardship, poverty, neglect, deprivation and loss. The children who had the best chance, were those whose parent had the ability to hold that child in mind as they worked through the difficulties that they had in their life. The vast majority of parents faced with adversity will struggle – but will hold their children in mind the whole time. They will worry about how their situation affects their children and will seek to minimise the impact on them. With rare exceptions, it's what parents do.

The importance of holding the child in mind is not just one for the parent to consider. At all stages of a court process, we too can hold the child in mind.

We can consider the impact of delay and the impact of assessment on children.

Fiona McAuslan's book 'Living with separation and divorce' challenges parents to ask themselves the question:

What do you want your children to say about their parents when they are young adults?

"My mum and dad split up when I was young and they...."

How do you want that sentence to finish?

We reformed our family court system in the early 21st Century, and as a result the children affected by the courts

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How do we want that sentence to finish?