

**What about Me?**  
Prioritising Children  
in Family Breakdown  
Proceedings





# What About Me?

## Prioritising Children in Family Breakdown Proceedings

### Introduction

Children love growing up in a stable familiar family environment so change to their family circumstances can have a huge impact on their lives. It is a very individual experience for every child, but feelings of isolation, confusion and fear of the unknown are common. Children can feel trapped between their parents and afraid of being honest about one parent to another out of sense of loyalty or fear of further anger within the house. This emotional burden on the child can affect their wellbeing, their ability to cope with the transition and their educational and social development both in the short term and into their future. While in some cases the relationship breakdown might lead to a positive impact on the child in other cases the child, can be very distressed out of fear that they will not see their non-resident parent again.

Interestingly, while the majority of children continue to be raised in a traditional nuclear family, one in six children are living in lone parent households<sup>1</sup>. According to the Census 2011, the rate of marital breakdown (number of separated and divorced as a proportion of those ever married) is up from 8.7% to just under 10%. Specifically the number of divorced people rose significantly to 87,770 up from 35,059 in 2006 while the number of separated people levelled off at 116,194 up from 107,263 in 2006<sup>2</sup>.

### Impact of separation and family breakdown on children

Children's lives are invariably changed significantly once their parents make the decision to break up, separate and/or divorce. The extent of this impact, either positive or negative, varies with each child. However, factors such as their age, sex, nature of relationship with each of the parents, custody arrangements and contact, quality of life as a single parent family and parents' new relationships all play a role in how children cope with this change. Sometimes single parent families are better for children as it has been found that conflict between adults can be more damaging to children than the fact of their parents' separation<sup>3</sup>. Interestingly, boys are more vulnerable to the divorce experience than girls as they are slower to adjust to their new circumstances<sup>4</sup>.

What is common though is that family breakdown is not a once off event but the beginning of a process, the nature and severity of which varies at each stage with the most evident occurring in the first year. It is a highly emotive process and children must be supported through this by both their parents but also through family support services and by the court that deals with their family case. Children usually want to maintain contact with both parents yet can feel they have to choose between two loved parents. Maintaining relationships with non-resident parents can be difficult, however research has consistently shown that it is not the quantity of contact which benefits the child, but the nature and quality of parenting by the non-resident parent<sup>5</sup>. In real terms, children have to cope with the losses, practical and intimate, that are associated with parental separation and the accompanying transitions that they must face arising from decisions made by their parents and others on their behalf.

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1 State of the Nation's Children 2012

2 Census 2011 Snapshot, Irish Times supplement, 30th March 2012

3 Cantwell, Brian (2010) The Emotional Safeguarding of Children in Private Law, Fam Law, January

4 Shaffer, H (1993) Making Decisions about children; Psychological questions and answers, Blackwell Oxford.

5 Gingerbread (2011) Family Justice Review, [www.gingerbread.org.uk](http://www.gingerbread.org.uk)

Most parents can sometimes sort out for themselves issues around custody and access but if not the courts have to make those decisions. In cases where there is high conflict between the parents, the process can be lengthy and very acrimonious with the children feeling caught in the crossfire. Child contact is a common source of conflict, exacerbating conflict between parents and causing significant stress to children leading to feelings of powerlessness and helplessness<sup>6</sup>. Also in cases where domestic violence has occurred, separation can pose a significant risk to the abused and children, as the abuser can continue to abuse through a variety of ways such as withholding maintenance unless they have access to the child and emotionally manipulating the child by using them to get at their former partner. Children sometimes are forced to maintain contact with violent and abusive parents even though they have expressed their desire not to do so. A proven link between domestic violence and child protection exists and clear assessments and supports must be put in place to eliminate potential risk of harm to the child.

### Need for Reform

For a child to better cope with family breakdown, it is crucial that parents communicate with their child and are sensitive to their child's needs and feelings. Children yearn for reassurance and certainty for their future and want to be given age appropriate information that allows them to be part of the process without being the decision maker<sup>7</sup>.

The current court structures are adversarial in style, inherently striving to achieve fairness and justice for the adult parties and subsequently lack the emotional understanding of the impact of these processes on children<sup>8</sup>. In fact, these processes can exacerbate parental conflict and add further emotional trauma to the child. Presently, our legislation favours joint responsibility towards children, with the courts sometimes giving undue attention to resolving the financial and property aspects of the case with less attention on meeting the needs of children. Awarding joint responsibility

has its merits in ensuring that the child can maintain their relationship with both parents but must be done where it is in the best interests of the child. In a 2011 review it was found that the majority of parents (70 out of 81 cases) were awarded joint custody<sup>9</sup>.

Yet despite operating an adversarial court system, Ireland ratified the UN Convention of the Rights of the Child in 1992. Momentum to incorporate key principles of this Convention such as the court having a duty to listen to the views of children and to make decisions in the child's best interest when dealing with proceedings affecting their care, custody, access and adoption have been ongoing. Most recently, this was evident with the passing of Article 42(a) in the Children's Referendum in November 2012. Legislation must now be drafted to make it obligatory for judges to ensure that the child's best interests will be paramount and to take the views of the child into account when making their decisions regarding family law cases. This is a significant development because although relevant legislation exists, its current implementation is limited so in effect the voice of the child is rarely heard in cases dealing with their family breakdown. Under the 1964 Guardianship of Infants Act, Section 25 allows the court where it thinks it appropriate and practicable with regard to the age and understanding of the child, to take account of his or her wishes. Also in Section 28 of the Guardianship of Infants Act 1964, as amended by Section 11 of the Children Act 1997, the appointment of a *Guardian ad Litem* (GAL) to present the views and feelings of the child is provided for but this section is not yet in force<sup>10</sup>. Sometimes, under Section 47 of the Family Law Act 1995, the court may request a social report in respect of the children involved in the proceedings and this can be done by a GAL or other professional such as a social worker. Interestingly, with regard to public law cases, such as child care proceedings, the appointment of a GAL is also discretionary but they are appointed more frequently. In tandem with rolling out these legislative reforms there is a need to tackle the ongoing issue of lack of training for judges on how to assess the views of children in a family dispute situation.

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6 One Family, (2009) Supporting Child Contact: the Need for Child Contact Centres in Ireland, Family Support Agency

7 Timms, Judith (2003) The Silent Majority – The Position of Children involved in the Divorce and Separation of their Parents, *Child Care in Practice*, 9:2, 162-174

8 Cantwell, Brian (2010) The Emotional Safeguarding of Children in Private Law, *Fam Law*, January

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9 Post Separation Parenting: A study of separation and divorce agreements made in the Family Law Circuit courts of Ireland and their implications for parent-child contact and family lives, 2011, Department of Children and Youth Affairs.

10 Shannon, Geoffrey (2010) *Child Law*, Round Hall

Legislative reform is also underway in other areas such as the establishment of a separate family law court structure. This Bill is yet to be published but will aim to create a structure that is more streamlined and less costly with a strong emphasis on mediation as a viable alternative to court proceedings. It will expand on the Scheme of Mediation Bill that was tabled for consideration by the Joint Oireachtas Committee for Justice, Defence and Equality in March 2012. Key elements of the Bill were to make it compulsory for solicitors and barristers to inform clients about using mediation prior to commencing court proceedings. Mediation would be voluntary and up to the parties concerned to decide the terms of agreement. It would also build on the successful initiative between the Courts Service, the Legal Aid Board and the Family Mediation Service which has been operating in the Dublin District Family Law Courts in Dolphin House since March 2011. This project has resulted in a total of 570 agreements being finalised by December 2012. The project was extended further to Naas from September 2012 and to Cork from January 2013. Barnardos would welcome greater use of mediation services. This Bill is planned to be presented to the Dáil before the end of 2013 and Barnardos seeks to influence the shape of the Bill by presenting our model for reform, discussed below.

Another legislative development is the review of the *'in-camera rule'* that operates in family law and public child care proceedings. This rule has been widely criticized, most recently by the Independent Child Death Review Group, for ensuring that the outcomes of these cases are shrouded in secrecy, with little regard to transparency, accountability and consistency in how cases are dealt with. The Courts Bill, presented in March 2013, proposes to allow journalists and other members of the public to be in court when family law and child care cases are being heard but there will be strict rules to ensure anonymity of the case is maintained. Enabling journalists to report on the cases will lead to greater consistency in how proceedings are handled as well as greater public understanding of the issues families face and the impact on children. Judges will have the power to exclude reporters or restrict their attendance if they think it is necessary to preserve the anonymity of a party to the proceedings or a child, or that it is considered to be in the interests of justice.

Barnardos welcomes this Bill and the launch of the Child Care Reporting Project website which will make the court reports dealing with child care proceedings public for the first time. However, Barnardos stresses the importance that these reports are not only anonymous but also presented in such a way that no-one involved, especially the child, can recognise their case. Overall, these developments coupled with the establishment of specialised family law courts will lead to more child centred processes and practices. It will be a positive development from the current system which sees significant time delays in getting cases heard, these delays can be even longer if a judge seeks the child's views, which as mentioned earlier is not common practice in all cases. In reality, each court is dealing with over 30 cases daily so there is very little time to engage in the details of each case. These delays together with the high volume of cases are certainly not in the best interests of child. Also mediation is not regularly offered in the court room so parental conflict can continue and deepen, thus having a further negative impact on the child<sup>11</sup>.

Barnardos believes that this Bill and all other pending legislative reforms for dealing with family breakdown must learn from the models in operation in other countries and be underpinned by the following guiding principles.

### Guiding Principles

**Best interests:** Article 3 of the UN Convention on the Rights of the Child places a duty on all public bodies of various kinds when dealing with actions concerning children that the best interests of the child shall be a primary consideration.

**Listening to children:** Article 12 of the UN Convention on the Rights of the Child states that Parties must ensure that wherever the child has a view that this be heard regardless of the child's age or maturity.

The insertion of Article 42(a) into the Irish Constitution, arising from the Children's Referendum, will mean these two principles must be enshrined in law and adopted in public law and private law practice.

**Meaningful participation:** Children appreciate being involved and informed of the processes that their family will undergo during a separation/

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<sup>11</sup> Children and Contact in the Private Family Law Setting: Resolving Disputes in Practice, 2011, Department of Children and Youth Affairs

divorce case. Preparing them for what is to come is crucial. Allowing a child to attend court and speak to a judge or representative allows them to feel involved and be reassured that the burden of responsibility for deciding the outcome rests not with them but with the judge. Children need to know that both parents are allowing them to give their own views to the court and not to feel caught in a loyalty trap between their two parents. However, a child's right to participation needs to be balanced with an awareness of their right to protection within the legal process, including the interview process. For instance, many professionals undertaking different interviews with the same child is not advisable. Listening to children means that the right of children to decline to have contact with a parent should be respected once it is clear that the child's view is being freely expressed and the child knows that they can change their mind at any time in the future.

**Parenting Positively:** Trying to set aside parental conflict and feelings of bitterness and resentment is extremely difficult but it is worth the effort in helping children cope with the change in their lives. Seeing their parents working together, despite having their own differences with each other, gives reassurance to children that they are still loved and that their needs are still a priority for their parents. Undertaking mediation should be the first step before going to court. Also maintaining a positive attitude towards the other spouse, emotional stability of both parents, consistent parenting styles and having open forms of communication are essential cornerstones for moving forward. Having quality contact between the non-resident parent and child has been associated with a more positive adjustment in the child<sup>12</sup>.

**Amenable Facilities:** The court facilities should be designed to promote familial relations, even highly conflicted relationships. In court buildings, having communal waiting rooms, no child friendly rooms and parents hanging around corridors for excessive waiting periods can place additional strain on already acrimonious relationships and can make the child feel further isolated, conflicted and unsure of their future.

## Supporting Children in Court: Different Court Based Models around the Globe

Ireland is beginning to recognise the impact on children of relationship breakdown and given the recent referendum and proposed legislative changes there is a real opportunity to make significant structural change in how children are dealt with in the courts. The following are different models for how children are represented in court across various countries and can inform our developments. It mainly focuses on children involved in family law cases and is interesting to see the range of models in use to present the child's best interests as well as their views and feelings.

### Child and Family Courts Advisory Support Service

In England and Wales, the Child and Family Courts Advisory Support Service (CAFCASS) was established in 2001. Its aim is to look after children's interests both in private law proceedings and in public child care cases. This agency brought together the family court services previously provided by the Family Court Welfare Service, the *Guardian ad Litem* Service and the Children's Division of the Official Solicitor's Office.

In the majority of private law cases the child is not a party to the proceedings unless there are particular circumstances that make the case complex. The court can request a welfare report under Section 7 of the Children Act 1989, either from the local authority or from a Children and Family Reporter who is an officer appointed by CAFCASS. The report will usually inform the court of the child's wishes and feelings, but the officer will make a recommendation based on what they think is in the child's best interests rather than just report on the child's wishes. The report is based on discussions directly with the child but may also include input from parents, family and teachers.

In specific private law cases, the court may order that the child is made a party to the proceedings. A Children's Guardian (who again is an officer of CAFCASS) is appointed to represent the child in the proceedings and the Guardian will appoint a solicitor. This links the legal and social welfare expertise and ensures that the child is regarded as a significant player in the case. If the child and Guardian do not agree on what recommendations to make to the court and the child is of sufficient age and understanding, they will be able to instruct a solicitor directly to represent their views and the

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12 Ellis, E (2000) Divorce Wars



Guardian will present their own independent views to the court.

In public child care cases, the appointment of a Guardian is mandatory and CAFCASS provides comprehensive supports for all Guardians through implementation of national standards and assessments, practice guidance on training, recruitment and retention.

The development of CAFCASS was welcomed as a positive step for offering a holistic and child centred service ensuring that children are supported both in private law and public child care cases. However, it has been criticised for placing a greater emphasis on determining the child's best interests (Article 3 of UNCRC) over listening to their views (Article 12 of UNCRC)<sup>13</sup>. It has also been criticised for overlooking the impact of emotional abuse on children as CAFCASS offers little by way of specific best practice guidance on how casework with high conflict families should be conducted<sup>14</sup>.

### The Safeguarder system in Scotland

Where disputes surrounding arrangements for the care and upbringing of children following their parent's separation or divorce exist, they can be dealt with in Child Welfare Hearings. These were introduced in 1996 to resolve applications under Section 11 of the Children Act (Scotland) 1995 to facilitate the prompt resolution of child related disputes separate from other issues such as finance and property by taking place at an early stage in the court process. The intention of these Hearings is to provide a more conciliatory and informal forum than that provided by the traditional adversarial court system. These Hearings are presided over by a Sheriff who is mandated to expedite the resolution of child related disputes.

There is little statutory direction on how to conduct Child Welfare Hearings so it is up to the discretion of the Sheriff how to resolve child related disputes. The Sheriff can decide where and when and whether to hold them in private or order any independent reports for children. Engaging with children can take different forms such as seeking written views from the child, speaking directly with the child or appointing a Safeguarder.

Safeguarders are on a panel for selection and their role is to provide a written report for these hearings reflecting the child's best interest. Once this information is gathered, the Sheriff can decide whether to keep this information confidential to aid the courts decision or to share it with all parties. With such discretion at the Sheriff's disposal it is unsurprising that there is widespread variation in the roll out of Child Welfare Hearings<sup>15</sup>. Likewise, there is disparity in the experience of individual Safeguarders and limited accountability of their work.

### Lawyer model in New Zealand

In all guardianship, custody or access and child protection cases a lawyer must be appointed to represent the child. While the lawyer's role is to be an advocate for the child it is unclear whether they are advocating for child's views or for their welfare or both. This model of representation has the advantage of lawyers being effective in court because they know how the court system operates but it is expensive and lawyers have been criticised for being poor listeners to the children involved<sup>16</sup>.

### Volunteer Model in USA

Although not operating in private family law cases, this model which operates in public child care cases in the USA is another example of supporting children through the court process. It is the appointment of Court Appointed Special Advocates or volunteer guardians. Under the Child Abuse Prevention and Treatment Act 1974, a volunteer guardian is appointed in all cases involving an abused or neglected child. The appointment of these volunteer guardians is linked to States receiving federal grant funds for use in the prevention and treatment of child abuse and neglect. Their duties are primarily to represent the best interests of the child rather than advocating their wishes and feelings. These volunteers receive training and technical assistance but there is no guidance on who should serve as a volunteer guardian, their qualifications or responsibilities<sup>17</sup>. This raises questions regarding the levels of competency to determine a child's best interests

13 Bilson, A and White, S (2005): Representing Children's Views and Best Interests in Court: An international Comparison, Child Abuse Review, 14: 220-239

14 Cantwell, Brian (2010) The Emotional Safeguarding of Children in Private Law, Fam Law, January

15 Mays, Richard and Christie David (2001) The role of the child welfare hearing in the resolution of child-related disputes in Scotland. Child and Family Law Quarterly. 13(2), 2001, pp.159-163.

16 Ibid

17 Bilson, A and White, S (2005): Representing Children's Views and Best Interests in Court: An international Comparison, Child Abuse Review, 14: 220-239

without sufficient level of training in child welfare and development matters. While this model has been deemed effective on engaging with children, these volunteer guardians have been criticised for not being strong enough in presenting their information in the court setting.

### **Supporting Children Outside the Courts: Non-Court based settings**

An overstretched court system often finds it difficult to set aside the amount of time that many complex family conflicts require. They are also unable to offer a range of services including mediation, counselling and therapy that can be effective in helping parents resolve their issues and provide space for children to discuss their feelings. While some families may not need these services, they should be more widely available particularly for highly conflicted cases. Addressing these cases more holistically will expedite resolution of cases and reduce the vulnerability to harm that some children feel once their parents separate.

#### **Child contact centres**

These centres offer a safe, friendly and neutral place where children can spend time with their non-resident parent. It is a child centred environment which allows the child to form or develop a relationship with the parent at their own pace and in their own way, usually through play and child centred activities. These centres are aimed at families who have been unable to agree safe and appropriate arrangements for the child to have contact with their non-resident parent. Some of these families have a history of domestic violence, abuse or mental health issues. Therefore consistent assessment procedures to ensure that contact decisions and contact visits do not jeopardise the safety of the children or parents concerned is crucial. Where maintaining contact does not work or the child is distressed by the visit, it is crucial that the courts act swiftly to either stop the contact or modify arrangements in the best interest of the child. Currently, there is no court welfare service in place in Ireland and the courts often have to make decisions without the benefit of professional assessments.

It has been identified that there is a need for child contact centres in Ireland with an estimated 37 such centres being required<sup>18</sup>. Presently,

Barnardos and One Family run a pilot service operational in three locations in Dublin. The service includes:

- supervised contact where contact between child and parent is supervised by trained professionals;
- supported contact where a number of families have contact at the same time supported by volunteers with a professional available on site;
- handover contact to facilitate the handover of the child between parents without them having to see each other.

Also a range of family support services are offered to help parents move beyond their conflict and towards organising contact themselves in the future. These can include programmes that address individual difficulties such as anger management, counselling, parenting skills, or resolving disputes between parents (mediation and conciliation). There are also therapeutic interventions for children.

Evaluations of child contact centres in other countries show that parents and children welcome access to a child centred and safe space enabling contact to continue where it might not otherwise have occurred<sup>19</sup>. The research stresses the importance of fostering quality contact between parent and child along with access to therapeutic services and the need for ongoing assessments and reviews all contribute to achieving greater positive outcomes for children.

#### **Mediation Services**

The expansion of family mediation services and the benefits that can be garnered through them has become more evident. The intention of undertaking mediation is for parents to resolve conflict and reach shared decisions, essentially empowering them to move from being emotionally attached to emotionally separate so that they can concentrate on meeting the needs of their children. Usually participation in mediation is voluntary and the agreements are not enforceable but it does assist towards faster resolution of cases and can lead to greater adherence to agreements as both parents have agreed on them<sup>20</sup>.

18 One Family (2009) Supporting Child Contact: the Need for Child Contact Centres in Ireland, Family Support Agency

19 Sheehan, G et al(2005) Children's Contact Services: Expectation and Experience, Australian Government Publication, Australia.

20 Glover, Jane (2008): Mediation in a Family Court Setting: Does it Work?, Child Care in Practice, 14:3, 293-310



Internationally, in response to spiralling court costs and delays in resolving cases, there has been a push for greater use of mediation services and different models of mediation services are emerging. In **Australia**, mediation is compulsory for all parents before being able to lodge a court application, unless there are domestic violence and/or child protection concerns. It has been found that up to 40% of parents who undertook mediation did reach agreement. However, forcing mediation on parents who already have a serious level of antipathy or lack of trust can yield less positive outcomes for the entire family including children<sup>21</sup>.

In **England and Wales** since 2011, all couples are assessed for their suitability for mediation and if there are any issues of domestic violence or child protection concerns, these cases are deemed unsuitable and are referred directly to the court for resolution. It is this assessment undertaken by a mediator that is crucial in protecting children and reducing their risk of harm. The couple undertakes four or five mediated sessions to sort out issues related to their children, finances, property etc. It has been found that the cost per client of mediation is £535, compared with up to £7,000 for court costs. Mediation was also quicker – 110 days, compared with 435 days for court cases<sup>22</sup>. Further efforts to curb court costs and encourage use of mediation services has led to the recent withdrawal of legal aid in private family law cases, including child contact arrangements unless a client can demonstrate that they have experienced domestic abuse, forced marriage or child abduction. As a result, when cases are now heard in court it places an onus on the parents to pay the legal costs or represent themselves. This came into effect in April 2013 so it is too early to assess its impact but it does seem that this development is largely driven by desire to save money rather than what is in the best interests of the separating parents and in particular their children.

Another element to mediation services is the role of the Court Welfare Officer which is operating in a number of **Northern Ireland** Trusts. This role provides a crucial link between the mediation services, the court and the Trust. The Officer, usually a qualified social worker, can be present during a court sitting and can respond to any questions regarding mediation undertaken by the couple, can encourage solicitors or barristers to promote mediation to new clients and can communicate relevant information from the court to the mediation team<sup>23</sup>. This connection between mediation service and court is extremely beneficial especially when issues arise such as non-adherence to the mediation agreement or the child expressing a desire not to continue to see an abusive parent.

In **Ireland**, the development of a court assisted role has been recommended by many including those administering the TAFIT project – Therapeutically Assisting Families in Transition<sup>24</sup>. This project, which ran in 2011, provided therapeutic intervention for families who were referred from the family courts in the Dublin Eastern Region. The project provided a neutral, non judgemental listening space where unresolved parenting dispute issues such as contact, decisions on education, alleged abuse, custody, finance and other matters were discussed and mediated. Children formed an integral part of the therapeutic work with the family. Their evaluation report noted that while the intervention was successful in engaging parents and children through mediation/therapy and providing a space to look objectively at their issues, the court liaison element was missing. A recommendation for a Court Affiliated Family and Child Assistance service was made. This service would offer a mix of therapy and mediation interventions as well as advice for parents on the challenges of the separation process on themselves and their children. The service, through a court liaison officer, would have a fully accountable relationship to the courts. Parents would know from the outset that their mediation efforts would be subject of feedback to the court.

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21 Gingerbread(2011) Family Justice Review, [www.gingerbread.org.uk](http://www.gingerbread.org.uk)

22 'How Mediation Takes the Sting Out of Divorce', Guardian Saturday 9<sup>th</sup> March 2013

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23 Glover, Jane (2008): Mediation in a Family Court Setting: Does it Work?, *Child Care in Practice*, 14:3, 293-310

24 Therapeutically Assisting Families in Transition (2012) Family Therapy Department, Child and Adolescent Mental Health Services, Mater Misericordiae University Hospital, Dublin

## Barnardos Vision for Reform

Barnardos believes that much can be learnt from awareness of the current flaws in our systems and from experiences abroad. There is a need to capitalise on the emerging understanding of the short and long term implications of family breakdown on the emotional well being of children. This greater awareness and knowledge can assist in creating a structure that will ensure that all families and children coping with family breakdown and separation are appropriately supported both within the court processes and alternative processes.

Barnardos hopes to influence the forthcoming legislative reform of family law practice to ensure that a more seamless structure is created underpinned by the guiding principles outlined above; including Articles 3 and 12 of the UN Convention on the Rights of the Child and striving for positive parenting. Using such principles when dealing with cases both in and out of the court process will create a more child-centred system, despite these cases being primarily focused on adult disputes. Also ensuring greater use of mediation, therapy and child contact centres will result in disputes being resolved quicker, familial relationships being less conflicted and will, overall, reduce the cost to both the families and exchequer, both in the medium and long term. Reforming the system in such a way acknowledges that family separation is not a once off event and that children need to be supported throughout the process. For children who often feel powerless when trying to cope with familial conflict without adequate support, it can have an adverse impact on their mental health, educational achievements and overall social development.

Barnardos recommends that the Government adopt Figure 1 as the architecture for the reform of the family law process. This integrated approach links existing services as well as facilitating greater availability of support services to assist families. The essential components to the reform are as follows:

- Widespread availability of information in different mediums to parents who decide to separate outlining the options open to them, availability of support services and how to inform their children and involve them in the process.
- Widespread availability of age appropriate information for children to help them cope with learning their parents are to separate and availability of support services and what to expect from the legal and non-legal processes that their family will be dealing with.
- All separating couples be assessed for their suitability for mediation and screened for domestic violence and child protection concerns. Such assessments must be conducted by appropriately trained professionals. The mediation undertaken must also allow for input from children and include a focus on the child's interest either done individually or through group family work whichever will yield the greater child engagement and involvement.
- While participation in mediation must continue to be voluntary, it should be strongly encouraged and the outcome or reasons for not using it should be reported to the court if court proceedings occur. The finalised agreement between the parents must have greater legal basis to enhance levels of compliance. Presently, agreements reached between parents through mediation can be referred back into the court system but to formalise this a Court Welfare Officer role must become standard.

- Cases deemed unsuitable for mediation should be dealt with within the court process. All family law cases should be expedited to avoid lengthy delays. In light of Constitutional change, all children should have an appropriately trained professional assigned to them whose role is to ensure the child's views are fully articulated to the court and to provide the court with an independent professional recommendation of the child's best interests. This service should be structured as a court based Child and Family Welfare Service which among other things would commission a *Guardian ad Litem* service. This in turn will aid the judge to make a decision in the best interests of the child.
- Within this, the *Guardian ad Litem* service should be formalised with clear guidance and standards covering all aspects of their work. Depending on the nature of the case, the role of the *Guardian ad Litem* could vary from facilitation of the child's attendance at court in order to convey their wishes, to providing a comprehensive report on the child's wishes and interests in more complex cases. Presently there is a clear absence of regulation, transparency and accountability in the work of GALs.
- In tandem with families undertaking mediation or going through the court, supportive services must be widely available, where required. These include access to child contact centres to facilitate supervised and supported contact and safe handover and access to therapeutic services to assist with parenting skills, addiction issues and/or anger management issues. For children who are struggling to cope with the impact of separation and/or family conflict ongoing support services including therapeutic services must also be available, where required, to assist them cope with this significant trauma in their lives. These services should be easily accessible through accessing the family mediation and family law court system as should domestic violence and child protection services. Referral to specialist services such as addiction treatment and mental health services should also be facilitated.

**Figure 1**

