Child Care Law Reporting Project

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Submission to Working Group on Direct Provision

From Carol Coulter, Director, CCLRP, 20th Jan 2015

The Child Care Law Reporting Project (CCLRP) has been reporting on child care cases in the District Court since December 2012. We have published two Interim Reports, based both on the reports which are published on our website, www.childlawproject.ie, and the data we collect while attending court, including from cases that were not reported on the website.

We have estimated that we are capturing approximately 20 per cent of all the cases that go before the child care courts, so our figures need to be viewed in this light.

It must be stressed that the CCLRP only reports on court proceedings. We do not go outside those proceedings to examine the background of cases, where there may be information highly relevant to a deeper understanding of the cases than that which is presented in court. Nor do we pursue the outcomes beyond the court decision. We do not know, therefore, unless it comes back to court, what happens to children after a court order is made.

In setting out to collect data, we attempted to establish the main reason, according to the evidence given in court, for the HSE (since January 2014, it is the Child and Family Agency-Tusla) seeking a Care Order. This is normally preceded by an Interim Care Order and occasionally by an Emergency Care Order. We set out a number of headings, which are not exhaustive, but have enabled us to make some observations about these reasons.

We also set out to establish the kind of families most at risk of facing care proceedings, according to marital status, single parenthood (for various reasons) and ethnic background. Such data has never been collected before. Again, this is based on evidence either given in court or self-evident. We do not make assumptions about people's ethnic background based, for example, on surname or accent.

Clearly ethnic background is not related to experience of the asylum system in many cases. Many members of Ireland's ethnic minorities have come here from other EU countries, and indeed we have seen a significant number of parents from the new EU member states in the child care courts.

However, it is very difficult for people from African, Asian and Middle Eastern countries to come to Ireland other than through the asylum system. It is fair to assume, therefore, that the majority of people from these backgrounds who appear in the child care courts have spent some time in direct provision. In a certain number of cases we have seen proceedings brought where a parent (in these cases, the mother) has been brought from direct provision to a

psychiatric institution and the children must then go into care. We give two such examples in the Appendix below. We know from talking to legal practitioners in the child care courts that these are not isolated examples, but we only report on the cases at which we are present.

In analysing the data one of our findings that surprised us was the disproportionate number of migrant, and especially African, families coming before the child care courts. In our first Interim Report we collected data on 333 cases. A third of these, 104, were from ethnic minorities (including 3.6 per cent Irish Travellers). Thirty-eight, or 11.4 per cent, were African. In the Dublin cases this was 14.2 per cent. This is clearly many multiples of the proportion of African families in the population as a whole.

Our first report had a disproportionately high number of Dublin cases, which was corrected in our second year of work. In our second Interim Report the proportion of ethnic minority families was lower, but still higher than in the population as a whole. Of the 486 cases examined, 136 were from ethnic minorities and eight were not recorded, so again just over a third (35 per cent) were from ethnic minorities. The proportion of African families among them was lower than in the previous year, 26 in all, or 5.3 per cent. However, 11.8 per cent of the parents in the Dublin cases were from African backgrounds. This reflects the higher number of African families in the Dublin child care courts overall.

Over the two year period we saw four families from Middle Eastern and four from Asian backgrounds before these courts.

Another unexpected finding of our work was the relatively high incidence of cognitive impairment and mental health problems among the parents where the HSE/CFA sought care orders. In our first report the proportion was 12 per cent; in the second it was 15 per cent. Again, this may reflect the fact that the second report was representative of the distribution of the cases nationally.

In our first report, we noted mental health problems as the main reason for the Order being sought in seven of the 38 African families. In our second report this was noted in four of the 26 cases, an average of 17.2 per cent over the two years, higher than that for the overall sample. In addition, we have seen that a high proportion of the Irish parents who have been identified with intellectual or mental health problems also have problems with alcohol or substance abuse, which we have not observed among the African families.

The Child Care Law Reporting Project is not in a position to comment on the direct provision system overall. However, from what we have seen in the child care courts it is clear that African families, in particular, are over-represented among families facing child care proceedings; that mental health problems, without accompanying alcohol or substance abuse, are more common among the African families in these cases; and that in a minority of these cases child care applications are brought for children living in direct provision. It can be assumed, given their ethnic background and our immigration law, that in other cases the families have spent some time in direct provision prior to the proceedings being brought.

We cannot conclude that the experience of direct provision is the major cause of African families facing child care proceedings. With all families the reasons for entering the child protection system are multiple and complex, and the complexity is increased by cultural difference and social isolation, which are experienced especially by members of ethnic minorities.

However, as the Rapporteur on Child Protection, Dr Geoffrey Shannon, has pointed out, the conditions in direct provision are not conducive to safe and effective parenting and must put strains on parents that will have a detrimental impact on their children. In a certain number of cases this is likely to lead to the State having to intervene to take those children into care, which not only carries further risk for the children and great distress for the parents, but imposes a cost to the State of over €17,000 a year for each child taken into foster care; and much more if the child has to go to a residential centre.

Appendix

From the Archive of the Child Care Law Reporting Project

Case Histories 2013, Vol 1, report 19.

Emergency care order for children in direct provision centre

An Emergency Care Order was granted for two young children whose mother was involuntarily detained under the Mental Health Act following her removal from a direct provision centre for asylum seekers.

A Garda gave evidence of being called to the centre by the manager, who said a woman was being aggressive to other residents and staff members. The Garda went to the woman's room with a staff member. There was a baby in the room, which was very messy. The child was crying and half dressed. The woman said the child was sick and she had given her African remedies. She said she had seen a doctor the previous week, who said the child was all right. The Garda was told of incidents where the woman had threatened other residents with a bread-knife while the child was strapped to her back. She (the Garda) considered the woman was not in a position to care for herself or the child.

The manager of the centre said the woman had been there for about six months. She was "always somewhat manic". The previous day she had been quite aggressive, with the baby on her back and a three year old with her, who was about to go to the on-site crèche. She used to come down at night and harass the other residents. Asked by the solicitor for the HSE if he was aware whether the woman was undergoing any mental health treatment, he said he thought she was on medication for bi-polar disorder, but had stopped taking it when pregnant.

The social worker said the mother had been involved with the family support services. The team had no details about the children's father. Asked by the judge what enquiries she had made, she said the woman did not want to discuss the matter.

The judge said he was satisfied an *ex parte* application could be made, given the urgency of the matter and the mother's detention under the Mental Health Act. He said he was also satisfied that there was reasonable cause to believe there was a risk to the health and welfare of the children if they were not removed, and he granted the Emergency Care Order.

Case Histories, 2013, Vol 3, report 3

ECO for 8-year-old born and reared in direct provision centre

An Emergency Care Order was granted in for an eight-year-old child asylum-seeker living in a direct provision centre, where she had been born. She was later reunited with her mother. In making orders in the case the judge commented that the child had spent her entire life in direct provision, which "seemed inappropriate".

Her mother, also an asylum-seeker, was in the process of being involuntarily admitted into a psychiatric hospital under Section 5 of the Mental Health Act. The woman's mental health state had been of concern for some time, she had been in hospital before and had stopped taking her medication, the court heard.

Initially her admission was to be voluntary, but then she locked herself into a room with the child, refusing to let her go. Her anxiety became more heightened and the child had become frightened. The court heard there was no other parent or guardian in the State who could take care of the child.

"The mother was at risk to herself and possibly the child if she was to stay there," said the Garda who intervened in the case. Section 12 of the Child Care Act was invoked by An Garda Síochána, and the child was taken away by the social workers, while the mother was transferred to the hospital by the Gardaí. "She didn't care much about the child's well-being … we had to handcuff her, we were worried she was going to run away," said the Garda.

She had not made any threats against herself or the child, but was agitated, she was "ranting and raving," said a second Garda. "She was unsteady in her mind, straight away we thought the child would be at risk from the actions of the mother when we were present, so we invoked the Section 12."

The social worker had been contacted by the public health nurse (PHN), as the consultant psychiatrist was considering admission of the mother into a psychiatric hospital and alternative arrangements were needed for the child. The mother's mental health had recently deteriorated, she had stopped taking her medication and was having delusions that people were conspiring against her, that she and her child would be found dead in the flat. They decided to contact the Gardaí as the mother did not have the capacity to consent to the child being taken into care. The psychiatrist felt she should be in a psychiatric facility for a period so she could get better.

The family was known to the HSE, said the HSE solicitor. They had been referred late last year by the PHN in relation to the mother's mental health, there had also been a referral from the child's school in relation to concerns about the mother's ability to meet the child's needs due to her mental health issues. The child had been referred to Barnardos where she was receiving emotional support and attending a summer project. She would now be placed in a foster home in the local area for as long as was needed and would be able to continue attending Barnardos.

The judge granted the Emergency Care Order for reasons of "immediate and serious risk to the child, due to recent deterioration in mother's mental health, involuntary detention and no family members available to help."

When the case returned to court a few months later the HSE said a phased reunification of the child with her mother was planned. She had recommenced her medication and her mental health had greatly improved. A psychiatrist had begun working with her during the last two weeks of her programme. The mother was also going through the process of applying for residency status but continued to live in direct provision, where the child, who was now eight, had been born.

The social worker told the court that the child had been given information on understanding mental illness, so she could comprehend what had happened to her mother. She was still accessing the support service in Barnardos, which did not require funding. They walked to it from the direct provision centre. The social work department were also looking at accessing community supports for the family that would be free, as well as some after-school activities that could provide a meal for the child.

She said the HSE would take into account the food the child and parent would like to eat as they had no access to cooking facilities in direct provision and could only eat what they were given. A family support service of two sessions per week had been proposed, but was not yet allocated. The HSE solicitor said there would be no difficulty putting that support service in place.

The judge asked how much money the mother was in receipt of in direct provision. "€28.70, with the dependent child," said the solicitor for mother.

The judge asked if the after-school activities were cost-neutral. "If you play football you need equipment and gear, if you go to a youth club you are asked to make a donation of a few euros a week." Any activities that the child was to access had "to be cost nil in this situation," he told the social worker. If the plan and cost base of the activities did not come through the judge said there would be liberty to apply. He assumed the family support worker would be allocated before final reunification took place.

The judge said: "I am struck in this case by the fact the child has resided *her entire life* in direct provision and the mother has been in it for that time. Eight years speaks volumes, it seems to be inappropriate, these are matters that are outside the remit of this court, matters perhaps for the Ombudsman, I'm not sure if their remit runs to direct provision.

"Section 3 (of the 1991 Child Care Act) extends to children in direct provision, even if there is a deficit of care that results from the child being in direct provision," continued the judge. The guardian (ad litem) was to remain appointed until the expiry date of the interim care order and was to be informed about whatever provisions were made.

The HSE solicitor asked the judge for the existing direction regarding medical treatment for child be continued.