



An Roinn Dlí agus Cirt
Department of Justice

Request for Tender for Research Services

Research examining the operation of the in camera rule in the context of family law proceedings



Request for Tender for Research Services

Applications for tenders must be returned to research@justice.ie by **5pm Irish time on the 26th of January 2024.**

Section 1. Background information and invitation to tender

1.1 The Department of Justice

The Department of Justice (“the Department”) is a department of the Government of Ireland. The Department’s mission is to work to make Ireland a safe, fair and inclusive place to live and work. It has a wide range of responsibilities including, state security, the protection of life and property, the prevention and detection of crime, maintaining and promoting fairness, providing services for the buying and selling of property, managing inward migration to the State, providing a Courts Service, updating our criminal and civil laws, developing the Insolvency Service and various other regulatory services.

1.2 Background to the tender

Ireland’s first Family Justice Strategy was published in November 2022. The Strategy’s vision is for a coordinated, consistent and user-focused family justice system, which helps children and families, obtain earlier, appropriate resolutions in a simpler, fairer, more effective way. The Strategy contains nine goals and over 50 actions, the implementation of which will create the foundations for a reformed system. Part of the reforms will be the creation of family courts. The Family Courts Bill 2022 will provide for the establishment of a Family Court as divisions within the existing court structures. There will be a Family High Court, a Family Circuit Court, and a Family District Court, each dealing with family law matters as appropriate to its jurisdiction.

Goal six of the Family Justice Strategy is Data Information and Management. The actions in this goal are focussed on developing better ways to manage, collect and share information within the family justice system to allow for better case management, statistical reporting and evidence based decision making, while at the same time maintaining privacy for and dignity of children and parents. Under this goal, one particular action is to examine the operation of the in-camera rule.

The purpose of the in camera rule in family law proceedings is to protect the identity of the parties and any child to whom the proceedings relate. While the general principle set out in the Constitution is that justice be administered in public, the underlying rationale for the in camera rule is that family law proceedings relate to matters which are sensitive and private to the parties, and there is no public interest in requiring that the identities of the parties be published.

The in camera rule offers protection to family members from the publication or broadcasting of information relating to them, which would affect the anonymity of the parties or any child concerned. The rule was modified by the Courts and Civil Law (Miscellaneous Provisions) Act 2013 to allow bona fide members of the press to be present in court during family law and child care proceedings and to report on such proceedings subject to strict conditions. This reform of the in camera rule was made to enable the media, researchers and legal professionals to gain access to information on the operation of the law in this area. The rule was further modified by the Civil Liability and Courts Act 2004 which allows for the preparation and publication of reports of family law proceedings by a barrister or solicitor or a person specified in regulations while continuing to respect the confidential nature of family law cases.

The findings of the consultation undertaken for the development of the Family Justice Strategy noted the views held by some that the operation of the in camera rule has had an adverse effect on transparency in family law proceedings as well as limiting the potential for evidence-informed policy development. Submissions made also suggested that there is a lack of clarity and understanding about the operation of the rule for parties involved in proceedings, resulting in them being unclear about what (if anything) they



can say outside of court, for example to (clinical) professionals. This is viewed as having a negative impact on access to and delivery of services for some parties. The operation of the rule is also viewed as limiting research in family justice through impacting the ability of parties to participate in focussed, qualitative studies.

Data from the consultation with children and young people is also relevant to this area. Those who participated in that consultation noted a desire to know more about the particular proceedings which concern them.

A further difficulty with the in camera rule is that there is a lack of clarity around when information can be shared across different court jurisdictions and across different types of court proceedings, namely private family law, public child care law and criminal law proceedings. This causes particular difficulty in cases where there is domestic and/or sexual violence and families are involved in different proceedings in different courts. The findings of recently published research (Egan and O'Malley Dunlop, 2023¹) are noteworthy in this regard.

It is intended that this research will build on and add to existing research in order to provide a robust evidence base for any future policy and legislative changes which may be required in the area.

1.3 Research aims

The primary aims of this research are to (a) review the current operation of the in camera rule in its entirety, (b) analyse issues with the current operation, including but not limited to identifying the challenges and benefits of the law, and the statutory exceptions which permit research and reporting on cases, and (c) make recommendations relating to reform of the law which can enhance clarity and transparency, and offer the necessary protections for those involved in proceedings.

Key research questions

This research has a number of key questions. While not exhaustive, the successful bidder is expected at a minimum to address the following:

1. **The current operation of the in camera rule in Ireland (with a particular emphasis on family law):**
 - a. What is the law on the in camera rule in Ireland and how does it operate in different types of proceedings?
 - b. What case law has emerged on the operation of the rule and what is its import?
 - c. What are the main benefits of the operation of the rule (for parties, for the courts, for other professionals involved)?
 - d. What are the main challenges arising from its operation (for parties, for children in family law and in child care proceedings – particularly in relation to their rights, for the courts, for other professionals involved)?
 - e. What has been the impact of the current rule, including but not limited to its impact on privacy and transparency?
 - f. What sanctions are available to the court for breach of the in camera rule? Are these sanctions considered adequate/effective?
 - g. What is the impact of the rule in sharing information across different court jurisdictions and across different types of legal proceedings? (e.g. using information from a private family law case

¹ Egan, N. and O'Malley Dunlop, E (2023) *Report on the Intersection of the Criminal Justice, Private Family Law and Public Law Child Care Processes in relation to Domestic and Sexual Violence*. Dublin: National Women's Council and Department of Justice.



in criminal proceeding)

2. Exploring the issue internationally:

- a. What are the approaches in other jurisdictions* (common law and civil law) to balancing privacy and transparency in family law proceedings?
- b. How are such approaches operated or implemented?
- c. What has been the impact of those approaches, including on privacy and transparency?
- d. What sanctions are available to the court where someone breaches the procedure or rule?
- e. What is known about the sharing of information from private family law proceedings across different court jurisdictions or court proceedings? (e.g. using information from a private family law case in criminal proceeding)
- f. What learning can be identified for consideration and potential application in the Irish context?

3. Identifying areas and processes for reform:

- Based on the analysis of the evidence compiled for questions 1 and 2 above, what areas of reform should be progressed, considering the privacy needs of children and families and the desire to enhance transparency of the family law system?
- How could these areas of reform be progressed?

**It should be noted that the successful bidder will be expected to engage with the Department regarding the final selection of other jurisdictions to be examined.*

Approach

Literature review

A core part of the methodology should be a review of the relevant literature – international and domestic. The review should cover evidence and literature published from 2003 to 2023. The articles reviewed should be in English, within peer reviewed journals and government/agency publications. If other research sources are to be included (e.g. on-line, off-line or other ‘grey’ literature sources), it should be clearly stated in the proposed methodology and a rationale provided, along with a clearly stated approach as to how they will be assessed, analysed and reported.

The tenderer will be required to outline the approach that is proposed to be taken in undertaking this work in the attached submission form. In doing so, the following key questions must be addressed as part of the response to the review of literature:

- Full details of the methodology to be used, including the strengths and limitations of the proposed approach as well as any ethical concerns;
- What the key search terms will be, and the rationale for their selection and use stated;
- What academic databases or other sources will be used to sample from;
- The process for deciding which articles to include for the review and which to exclude;
- The data recording process (essentially, what are the key data points you will record for each study such as author, year of publication, what type of study, evaluation type and its strength);
- The process that will be used to assess the quality and methodological rigour of the articles;
- How the findings within articles will be synthesised.



Any additional methodological approaches, for example on-line analysis, should also be accompanied by an appropriately detailed description to allow for an assessment to be made of its strength.

The review should take into account the Report on the Intersection of the Criminal Justice, Private Family Law and Public Law Child Care Processes in Relation to Domestic and Sexual Violence (Egan and O'Malley Dunlop, 2023) and other relevant research as appropriate.

Primary research

It is also envisaged that primary research will be carried out for the purposes of this work, through focus groups or one-to-one interviews (in person or online) with key informants as identified in consultation with the Department of Justice.

The following key questions must be addressed as part of the response to the primary research:

- Full details of the methodology to be used, including the strengths and limitations of the proposed approach as well as any ethical concerns
- Proposed survey/focus group/interview questions (these will be subject to DOJ approval before engagement with stakeholders)
- The data recording process – how the information will be collected, how data will be anonymised and participant confidentiality maintained, and how information will be stored in line with GDPR requirements
- The process that will be used to assess the quality and methodological rigour of the data
- How the findings will be synthesised

1.4 Research outputs

The target audience for this research includes: Department of Justice Civil Justice Policy Division, the Department of Children, Equality, Disability, Integration and Youth, the Courts Service, practitioners in the field, and the research community. The final report should provide evidence-based recommendations for actions relating to the aims of the research.

The research outputs should include:

- A presentation to Department of Justice officials, and possibly members of the Family Justice Implementation Group, highlighting key emerging findings and preliminary analysis from the literature review. This can be presented as a slide pack.
- A final draft report, identifying findings, analysis and implications, as well as recommendations to be submitted to the Department of Justice no later than six months after the awarding of the tender.
- A presentation on the final report to officials from the Department of Justice.

1.5 Time frame

The Department is eager that the tenderer will be ready to start as soon as possible and asks that tenderers specify how soon they would be in a position to commence the work. Duration of the tender will be 6 months after the signing of the contract with the successful applicant.



The estimated budget for this study is €40,000 (excluding VAT).

Section 2. Instructions to Tenderers

2.1 Format of tenders

Tenderers should complete and submit the application form. Tenders submitted in formats other than the application form will not be considered.

2.2 Compliant tenders

To better ensure compliance with the tendering process, tenderers should read this document in full including Section 5 'Terms and conditions'. If a tenderer fails to comply in any respect with the requirements of this paragraph, the Department reserves the right to reject the tender as non-compliant or, without prejudice to this right and subject to its obligations at law, to take any other action it considers appropriate including but not limited to:

- Seeking written clarification from the tenderer;
- Seeking further information from the tenderer; or
- Waiving a requirement, which in the Department's view, is non-material or procedural.

Tenderers are required:

1. To submit all documentation which this Request for Tender (RFT) requires to be submitted with their tender;
2. To conform to and comply with all instructions and requirements set out in this RFT;
3. To submit the statement required under Appendix 1;
4. Not to alter or edit this RFT in any way.

2.3 Submission of tenders and closing date for application

Completed application forms must be sent by email to research@justice.ie with subject line "in camera rule research".

Completed application forms must be received no later than **5pm Irish time on the 26th of January 2024** (the 'tender deadline'). Application forms received after the tender deadline will NOT be considered.

Section 3. Queries and clarifications

All queries related to any aspect of this RFT must be directed to research@justice.ie. The Department reserves the right to issue or seek written clarifications. The Department reserves the right at any time before the tender deadline to update, cancel or amend the information contained in this document and/or to extend the tender deadline. Participating tenderers will be informed of any such clarification, amendment or extension by email.

Section 4. Evaluation of tenders and award of contract

4.1 Criteria for award of contract

The contract will be awarded out of a total of 100 marks on the basis of the most economically advantageous tender as identified in accordance with the following criteria:

- Proven and demonstrable track record, project description and demonstrated understanding of the work involved in conducting the research (35)



- Feasibility of the approach suggested to the research (20)
- Ability to deliver key outputs on time (10)
- Cost – broken down to show description of costs, justification for proposed costs and best use of resources (35).

Award of the contract to the highest ranked tenderer (as determined by the above paragraph) will be conditional upon the tenderer submitting the following evidence in respect of the tenderer (including any subcontractor as applicable) to the extent not already provided, within seven days of request by the Department (i) a Declaration in the form attached as Appendix 1 at “TENDERER’S STATEMENT” and (ii) all or any of the supporting documents specified in the section 2.1 on ‘Format of tender’.

The Department does not bind itself to accept the lowest priced of any tender. This RFT does not constitute an offer or commitment to enter into a contract. No contractual rights in relation to the Department will exist unless and until a formal written contract has been executed by or on behalf of the Department.

The tenderer will be required, if necessary, to outline and agree the approach which it proposes to take to the research with the members of the Department's Research Advisory Group/Research and Data Analytics Unit.

4.2 Payment conditions

- i. All prices quoted must be all-inclusive of all expenses anticipated inclusive of VAT. The VAT rate(s) where applicable should be indicated separately.
- ii. Tenderers must confirm that all prices quoted in the tender will remain valid for three months following the tender deadline.
- iii. Payment for the delivery and implementation work will be on foot of appropriate invoices. Invoicing arrangements will be agreed with the successful contractor, following the award of contract.
- iv. The provisions of the Prompt Payment of Accounts Act 1997, as amended or revised, and the European Communities (Late Payment in Commercial Transactions) Regulations, 2002 shall apply to all payments. Incorrect invoices will be returned for correction with consequential effects on the due date of payment.

4.3 Taxation requirements

It will be a condition of any contract pursuant to this RFT that the successful tenderer shall, for the term of such contract, comply with all applicable EU and domestic tax laws. Tenders are referred to www.revenue.ie for further information. Prior to the award of any contract arising out of this RFT, the successful tenderer shall be required to supply its Tax Clearance Access Number and Tax Reference Number to facilitate online verification of their tax status by the Department. By supplying these numbers, the successful tenderer acknowledges and agrees that the Department has the permission of the successful tenderer to verify its tax cleared position online.

4.4 Subcontractors

Tenderers should note that where a tenderer is relying on the capacity of other persons or entities (for example subcontractors) for the purposes of fulfilling any of the award criteria set out below, it must ensure that each such person or entity, when requested by the Department, will submit proof, to the satisfaction of the Department, that it will place the necessary expertise at the disposal of the tenderer.

If a tenderer does not, upon request by the Department, provide evidence which is considered by the Department as sufficient to demonstrate the fulfilment by any subcontractor on whose capacity the tenderer relies of the award criteria (or any one of them) in accordance with this RFT, it shall be



excluded from further participation in this tender process unless it replaces the subcontractor with one which meets all relevant requirements of this RFT. Any such replacement cannot affect the price submitted.

Section 5. Terms and conditions

5.1 Liability and warranty for tender information

While every effort has been made to provide comprehensive and accurate information in this request for tender, the Department does not accept any liability or provide any express or implied warranty in respect of any such information. Tenderers must form their own conclusions about the solution needed to meet the requirements set out in this RFT and may wish to consult their legal advisers as appropriate.

5.2 Data protection

With effect from 25 May 2018, a new Europe wide data protection regime has come into place under the General Data Protection Regulation (GDPR). The GDPR significantly increases the obligations and responsibilities for organisations and businesses on how they collect, use and protect personal data. All data will be processed in accordance with GDPR and relevant data protection law. Applicants are required to comply with the requirements of data protection legislation and the General Data Protection Regulation (GDPR).

5.3 Tendering costs

All costs and expenses incurred by tenderers relating to their participation in this RFT shall be borne by the tenderers exclusively.

5.4 Confidentiality

All documentation, data, statistics and information furnished by the Department to tenderers during the course of this RFT:

- i. are furnished for the sole purpose of replying to this RFT only;
- ii. may not be used, communicated, reproduced or published for any other purpose without the prior written permission of the Department;
- iii. shall be treated as confidential by the tenderer and by any third parties (including subcontractors) engaged or consulted by the tenderer; and
- iv. must be returned immediately to the Department upon cancellation or completion of this RFT if so requested by the Department.

5.5 Publicity

No publicity regarding this RFT or any contract pursuant to this RFT is permitted unless and until the Department has given its prior consent to the relevant communication.

5.6 Ownership

Ownership of any reports or material produced relating to any contract awarded as a result of this RFT rests with the Department.

5.7 Copyright and publication

Copyright of any reports or material produced shall rest with and be assigned to the Department. The Department shall have the right to publish, or not as the case may be, and to disseminate the report in both its original and in a modified form, without further reference to the tenderer. The tenderer will not be entitled to further payment if this occurs. The tenderer and the individual researchers will be entitled to be credited with the work that they have done on this project in any publication.



5.8 Registrable interest

Any registrable interest involving any tenderer or subcontractor and members the Department, members of the Government, members of the Oireachtas, or employees and officers of the Department and their relatives must be fully disclosed in the tender or, in the event of this information only coming to the notice of the tenderer or subcontractor after the submission of a tender, must be communicated to the Department immediately upon such information becoming known to the tenderer or subcontractor.

The terms 'registrable interest' and 'relative' shall be interpreted as per section 2 of the Ethics in Public Office Acts 1995 and 2001, copies of which are available at www.irishstatutebook.ie. The Department will, at its absolute discretion, decide on the appropriate course of action, which may in appropriate circumstances include eliminating a tenderer from this RFT or terminating any contract entered into by a tenderer.

5.9 Anti-competitive conduct

Tenderers' attention is drawn to the Competition Act 2002 (as amended, the '2002 Act'). The 2002 Act makes it a criminal offence for tenderers to collude on prices or terms in a public procurement competition.

5.10 Freedom of information

Tenderers should be aware that, under the Freedom of Information Act 2014, information provided by them during this RFT may be liable to be disclosed.

Tenderers are asked to consider if any of the information supplied by them in their tender should not be disclosed because of its confidentiality or commercial sensitivity. If tenderers consider that certain information is not to be disclosed because of its confidentiality or commercial sensitivity, tenderers must, when providing such information, clearly identify the specific sections of their tender containing such information and specify the reasons for its confidentiality and commercial sensitivity.

5.11 Conflicts of interest

Any conflict of interest or potential conflict of interest on the part of a tenderer, subcontractor or individual employee or agent of a tenderer or subcontractor must be fully disclosed to the Department as soon as the conflict or potential conflict is or becomes apparent. In the event of any actual or potential conflict of interest, the Department may invite tenderers to propose means by which the conflict of interest might be removed. The Department will, at its absolute discretion, decide on the appropriate course of action, which may in appropriate circumstances include eliminating a tenderer from this tender process or terminating any contract entered into by a tenderer.

5.12 Withdrawal from the RFT process

Tenderers are required to notify the Department immediately by email to research@justice.ie if they decide to withdraw from the RFT process.

5.13 Insurance

The successful tenderer shall be required to hold for the term of the contract the appropriate level of insurance cover in order to carry out work associated with this project.





Feasibility of proposed project:

Include a brief project summary. Please include aims and objectives, methodology, background and significance of the research question/problem.

Proposed Cost and Value for Money:

Demonstrate appropriate allocation of resources and demonstrated value for money (full description of costs, justification for these costs and a plan to ensure best use of resources).

Conflict of Interest Declaration:

Outline any conflicts of interest.



Timelines:

Outline the timeframes for commencement and completion of the project.

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Ethics Statement:

Applicants are required to submit a written statement that full consideration has been given to the ethical implications of the research proposal.

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By signing the tenderer's statement, tenderers confirm that, if awarded a contractor under this RFT, (i) they will, from the effective date of the contract (as defined in the contract), obtain and hold the types and levels of insurance specified above (ii) the territorial limits and jurisdiction of tis insurance policies include the Republic of Ireland and (iii) they are not aware of any exclusions, restrictions, conditions or warranties or, in the case of policies with an aggregate limit of indemnity, any outstanding claims, which could have a material adverse impact on the level of coverage specified above. A formal confirmation from the tenderer's insurance company or broker to this effect may be requested from the successful tenderer prior to the award of any contract.

TENDERER'S STATEMENT

Tenderers shall complete and return the following form of Tenderer's Statement signed by the Tenderer.

Tenderer's Statement

Having examined your Request for Tender (RFT) including the instructions to tenderers, the selection and award criteria, the requirements and specifications, I hereby agree and declare the following:



- i. I understand the nature and extent of the research required to be delivered as described in the RFT;
- ii. I accept all of the terms and conditions of the RFT;
- iii. I accept all the award criteria as set out in the RFT;
- iv. I agree to provide the Department of Justice with the research requested in the RFT;
- v. I agree that, if awarded a contract, I shall, in the performance of such contract, comply with all applicable obligations in the field of environmental, social and labour law.
- vi. I confirm that I have complied with all requirements as set out in the RFT.
- vii. I confirm that all prices quoted in my tender will remain valid for the period of time commencing from the tender deadline.
- viii. I shall, if awarded any contract under the RFT, have in place on the effective date of the contract all insurances (if any) as required by the RFT.
- ix. I confirm that all data subjects whose personal data is provided in my tender have consented to the processing of such personal data by me, and by the Department of Justice and by the evaluation team for this tender or that I otherwise have a legal basis for providing such personal data to the Department of Justice for the purposes of my participation in this tender and that I will provide evidence of such consent and / or legal basis to the Department of Justice upon request.

SIGNED

Print name

Address

Date

Signature of Lead Researcher: