



An Roinn Dlí agus Cirt
Department of Justice

The Operation of the *In Camera* Rule in Family Law Proceedings

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Acknowledgements	2
List of tables and figures	7
Executive summary.....	8
Chapter 1: Introducing the <i>in camera</i> rule and study methodology	24
1.1 Introduction	24
1.2 What proceedings does this report examine?	28
1.3 A plain language summary of the <i>in camera</i> rule	29
1.4 Study design	30
1.5 Literature search strategy	31
1.6 Online survey design	32
Inclusion and exclusion criteria	32
Data analysis.....	33
1.7 Interviews and focus groups	33
Interviews	33
Focus groups	34
Data collection.....	34
Qualitative data analysis (interview, focus group and survey data)	35
Ethical approvals and permissions.....	36
1.8 Limitations.....	36
Chapter 2: The <i>in camera</i> rule in Irish law	38
2.1 Introduction	38
2.2 Legislative provision for the <i>in camera</i> rule: a piecemeal approach	39
2.3 Child care proceedings	43
2.4 Family law proceedings	47
2.5 Children's rights	54
2.6 Legislative exceptions.....	57
2.7 McKenzie friend	61
2.8 Breach of the <i>in camera</i> rule in family law and child care proceedings	63
2.9 Other categories of case and the <i>in camera</i> rule.....	64
2.10 Criminal law proceedings.....	64
2.11 Children in conflict with the law and child witnesses	67
2.12 Domestic Violence Act 2018.....	68
2.13 The Family Law Courts, other State bodies and lifting the <i>in camera</i> rule	70
2.14 Summary and analysis	73

Chapter 3: Privacy rules in family law and child care proceedings in other countries	76
3.1 Introduction	76
3.2 Comparative approaches.....	76
Australia	80
Sweden	87
New Zealand	92
United Kingdom (England and Wales)	98
3.3 Summary and analysis	107
Chapter 4: Parents', grandparents' and foster parents' views on the operation of the <i>in camera</i> rule.....	111
4.1 Survey sample and questions.....	111
Sample size and demographics	111
4.2 Findings	113
Case types, court level, and regional data	113
Awareness and knowledge of the <i>in camera</i> rule	117
What participants understand the <i>in camera</i> rule to mean.....	118
Benefits of the <i>in camera</i> rule	119
The negative effects of the <i>in camera</i> rule	120
Breaches of the rule	128
4.3 Suggestions for improving the <i>in camera</i> rule	132
4.4 Summary and analysis	138
Chapter 5: Judicial views on the <i>in camera</i> rule	140
5.1 Sample overview	140
5.2 Judges' understandings of the <i>in camera</i> rule	141
5.3 Communicating about the <i>in camera</i> rule: whose role is it?	143
5.4 Strengths: what is working well with the <i>in camera</i> rule?	145
5.5 Weaknesses of the <i>in camera</i> rule	146
5.6 Accountability and transparency	148
5.7 Breaches of the <i>in camera</i> rule and sanctions.....	150
5.8 Inconsistencies	153
5.9 Remote hearings and the <i>in camera</i> rule.....	156
5.10 Children's rights and the <i>in camera</i> rule	158
5.11 Potential changes to the <i>in camera</i> rule	159
5.12 Summary and analysis	162

Chapter 6: Professionals', community groups', other organisations, and academics' views on the <i>in camera</i> rule	164
6.1 Understandings of the <i>in camera</i> rule.....	164
6.2 Strengths: what's working well with the <i>in camera</i> rule?	167
6.3 Weaknesses of the rule	169
6.4 Children's rights and the <i>in camera</i> rule	182
6.5 Remote hearings	186
6.6 Breaches of the <i>in camera</i> rule and sanctions.....	188
6.7 Communicating about the <i>in camera</i> rule	191
6.8 Differences between Judges and courts in the operation of the <i>in camera</i> rule .	193
6.9 Summary and analysis	195
Chapter 7: Discussion & recommendations for reform.....	197
7.1 Introduction	197
7.2 Renaming the <i>in camera</i> rule.....	198
Recommendation 1: Rename the <i>in camera</i> rule	198
7.3 Parameters of the rule	199
Recommendation 2: Establish a clear definition of the rule	199
Recommendation 3: Facilitate timely and efficient information sharing	201
Recommendation 4: Permit private communications	203
Recommendation 5: Permission to waive anonymity (lift the <i>in camera</i> rule) in cases of domestic violence.....	203
7.4 Balancing privacy and transparency	204
Recommendation 6: Protect the privacy rights of children and parties in family law proceedings.....	205
Recommendation 7: Increase publication of anonymised family law (private and public) judgments.....	207
Recommendation 8: Promote academic research in Irish family law	208
Recommendation 9: Promote a system of open media reporting in private and public child care proceedings	209
7.5 Communication about the rule	210
Recommendation 10: Provide clear communication to litigants about the rule	210
Recommendation 11: Provide training to professionals and Judges.....	210
7.6 Courtroom support for parties to the proceedings	211
Recommendation 12: Remove barriers to accessing support	212
7.7 Children's rights and the <i>in camera</i> rule	212

Recommendation 13: Protect the right to privacy for children and young people.....	213
Recommendation 14: Ensure the best interests of children is central to proceedings affecting them	213
Recommendation 15: Ensure children in State care are not discriminated against.....	213
Recommendation 16: Ensure children are informed and have an input into matters affecting them.....	214
7.8 Breaches of the <i>in camera</i> rule and sanctions.....	214
Recommendation 17: Define breaches and sanctions	215
7.9 Remote hearings and the <i>in camera</i> rule.....	215
Recommendation 18: Guidance on remote hearings and the <i>in camera</i> rule.....	217
7.10 Access to justice and court reports.....	217
Recommendation 19: Facilitate access to justice and court reports.....	218
Recommendation 20: Conduct further research into the <i>in camera</i> rule and GDPR.....	218
7.11 Primary legislation	218
Recommendation 21: Introduce primary legislation	219
References	220
Appendix A: Sample communication strategy checklist	235
Appendix B: Data collection instruments	237

List of tables and figures

Table 1.1: Focus group participants by service/profession

Table 4.1: Gender of survey participants

Table 4.2: Ethnicity/background

Table 4.3: Case types before the courts

Table 4.4: Counties in which your family law cases were heard

Table 4.5: Survey participants' understanding of the rule

Table 4.6: The *in camera* rule as a barrier to accessing supports

Table 4.7: Protection of privacy

Table 4.8: Social media, privacy and the *in camera* rule

Table 4.9: Abolish / reform of the *in camera* rule

Table 5.1: Interview participants

Figure 4.1: Age profile of survey participants

Figure 4.2: Court level

Figure 4.3: Infographic: case types before the courts

Figure 4.4: Number of cases in the family law courts that participants were party to

Figure 4.5: How long did it take to resolve your case?

Figure 4.6: Was the *in camera* rule explained to you?

Figure 4.7: Was the *in camera* rule breached in your case?

Figure 4.8: Who breached the *in camera* rule in your case?

Figure 4.9: How was in the *in camera* rule breached in your case?

Figure 4.10: Should the *in camera* rule be changed?

Figure 5.1: Key themes from judicial interviews

Figure 6.1: Understandings of the *in camera* rule

Executive summary

Introduction

It is a fundamental principle of Irish constitutional law that justice should be administered in public. Chief Justice Hamilton wrote that, “*In a democratic society, justice must not only be done but must be seen to be done*”. This means that members of the public and journalists can sit in open courtrooms and observe and comment on how justice is administered. However, there is an exception to this fundamental principle in that certain types of cases can be heard ‘otherwise than in public’. In other words, certain court proceedings can be held in private without members of the public attending, and there are strict limitations on what can be shared and reported. The *in camera* rule is the privacy rule that places limits on: a) who can attend the category of cases that are held ‘otherwise than in public’, b) what can be shared with others about these cases, c) who can access documents associated with these cases, and d) the exceptions to the rule for reporting and research purposes. The focus of this report is on the operation of the *in camera* rule in private family law proceedings (for example, guardianship, custody and access cases; domestic violence, abuse and coercive control; judicial separation and; divorce cases) and public family law cases (child care and child protection cases involving Tusla, Child and Family Agency). However, reference is also made to the operation of the *in camera* rule in other legal contexts, such as criminal law proceedings and in cases where children are in conflict with the law.

A fundamental issue with the *in camera* rule is that the parameters of the rule have not been defined and delineated in legislation. Exceptions to the rule have been defined in law pertaining to media court reporting and research. However, due to the prolonged absence of a comprehensive legislative framework pertaining to the *in camera* rule, it has been largely left to the judiciary to define the inner and outer limits of the rule as it operates in areas such as child care and family law proceedings, criminal law and company law, as well as special care cases. The benefits of the *in camera* rule are to protect the right to privacy of the parties and any children to whom these proceedings relate, safeguarding potentially vulnerable parties in need of protection from abuse (for example, in domestic abuse cases), protecting the integrity of proceedings, and facilitating the administration of justice. However, there are also well-documented challenges to the operation of the rule. At the apex of these challenges lies the lack of transparency concerning how justice is served behind the closed doors of courtrooms in family law and child care proceedings. Some would argue that the *in camera* rule and the limited exemptions to the rule have restricted knowledge and understanding of how private family law justice is administered in practice.

The *Family Justice Strategy 2022-2025* (Department of Justice, 2022) contains a number of goals and key actions to improve the system. This report on the *in camera* rule was commissioned by the Department of Justice in response to one of the key action points (Goal 2: Services and Supports) of this strategy. The Request for Tender identified a

number of aims and objectives for this research which this report sets out to answer. More specifically, the primary aims of the research were 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.¹

In the current climate of ambitious family law reform, which is currently underway, this presents an opportune time to seriously reconsider the current operation of the *in camera* rule with a view to reform.

How was this study undertaken?

To ensure that robust and safe ethical practices were applied in this research and that the study was designed to the highest ethical standards, permissions were secured from two independent research ethics committees.²

There are four parts to this study. First, a comprehensive review of the literature and legislation was undertaken to examine the law regarding the phrase ‘otherwise than in public’ in Ireland. This involved a comprehensive search of peer-reviewed journal databases for research papers, and online searches of policy and civil society sources for papers relating to the law and operation of the *in camera* rule. The approaches of four jurisdictions concerning their operation of privacy rules were examined. Two jurisdictions, Sweden (a mix of common and civil law) and Australia (common law), currently conduct family law matters in open court. New Zealand and the United Kingdom (England and Wales) are common law jurisdictions which currently operate closed family law systems.

Second, a national online survey of parents, grandparents, foster parents and anyone over the age of 18 years who had an experience of family law or child care proceedings in Ireland was circulated between the 8th of July and the 16th of August 2024. 317 people completed the online survey, with 300 eligible submissions (65% female; 34% male, 1% prefer not to say). The vast majority of survey participants were parents (n= 288, 96%) who were party to family law proceedings. Six grandparents and six foster parents completed the survey. The largest cohort of survey participants were in the 45-54 age bracket (40%).

Third, all sitting Judges in Ireland with experience of family law or child care proceedings and the *in camera* rule were eligible to take part in this study. Thirteen Judges (three High

¹ 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. <https://assets.gov.ie/279081/5081c467-a560-43c5-a009-3cbb669df198.pdf> (Date accessed: 16/04/2025).

² University College Cork, Social Research Ethics Committee and Tusla Research Ethics Committee. Access permission was also sought and secured from the Legal Research and Library Services Subcommittee on Judicial Participation in Research Projects.

Court, four Circuit Court, and six District Court) took part in semi-structured interviews as part of this study (10 female and 3 male) between August and September 2024.

Fourth, 18 focus groups were conducted with professionals (for example, social workers, barristers, solicitors, mediators, etc.), services (for example, Ombudsman for Children's Office staff, Courts Service staff, etc.), civil society groups (for example, Empowering People in Care (EPIC)), media/journalists, and academics to explore their views on the operation of the *in camera* rule. 84 participants took part in these focus groups (74% female, 26% male) between July and September 2024. To be eligible to take part in the study, participants needed to have a working knowledge and/or experience of the operation of the rule in family law and/or child care proceedings.

The primary limitation of this study is that children and young people were not included in the data collection. This study set an ambitious data collection strategy to be completed within a very short timeframe. The careful planning, ethical considerations, and the design of age-appropriate data collection methods for children and young people would not have been possible within the allocated timeframe. Invitations were sent to support groups for fathers and men; however, they were unable to participate in the study during the data collection period. The number of participants from ethnic groups/backgrounds other than white in the survey was small at 2%.

Key findings

Irish Law

Irish case law concerning the phrase 'otherwise than in public' has made it abundantly clear that exceptions to the public administration of justice should be very strictly construed both in the context of the subject matter to which it applies, but also in relation to the procedures that are applied. Every departure from the rule should do no more than is required to protect the countervailing interests in the proceedings, such as the proper administration of justice and the protection of family life. However, a review of the case law and the relevant legislation would suggest that the *in camera* rule and its application have over time come to be interpreted in a manner that has resulted not only in transparency in certain types of legal proceedings being limited but has arguably negatively impacted the rights of children and family service users. Moreover, strikingly absent from the existing case law and legislation concerning the operation of the *in camera* rule is any reference to children and children's rights. It is significant that while the international and domestic legal frameworks concerning the protection of children's rights in the context of both private and public family law proceedings are well established, the only real acknowledgement of children in this context is that the rule must protect their privacy. While Article 42 A, and the need to consider the best interests of children as paramount in private and public law cases, has been firmly rooted in our constitutional and legislative frameworks since 2015, the extent to which the current manner in which the rule operates impacts the best interest of children in Ireland has received limited attention. This is concerning given the fact that decisions concerning the best interests of

these children are made every day behind the closed doors of the courtroom (particularly in the lower courts) in the absence of any public scrutiny.

Approaches of Other Jurisdictions

An integral aspect of this study was a consideration of how other common law and civil law systems dealt with the issue of transparency in family law cases. Australia and the UK have recently introduced family law reforms with a view to enhancing transparency in the administration of family justice. While taking opposing approaches in terms of openness, a unifying thread for both jurisdictions has been the explicit regulation of what can and cannot be published/reported in private and public family law cases. The fact that communications between family members are not considered public communication is significant since it not only takes into account the reality of everyday life of children and families, but it facilitates family members receiving family support without the constant worry of breaking the law. Operating a closed system similar to Ireland, New Zealand advocates an approach whereby any restriction on publication is “...no wider than is necessary to achieve the purpose for which it is imposed”.³ A well-resourced, systematic and firmly embedded system of reporting of anonymized family law judgments at all levels exists in both New Zealand and Australia, an essential component to a transparent family law system.

As far as information sharing between the courts and other institutions as well as State agencies is concerned, both the UK⁴ and Australia⁵ have tightened up and clarified the rules which help to ensure that no family member or child is left at risk due to lack of disclosure of pertinent information in a timely fashion. From a children’s rights perspective, this is crucial to prevent privacy from being used as a tool to restrict or put at risk other fundamental rights of the parties to the proceedings. Similarly, a pragmatic approach akin to that adopted by Australia and the UK with respect to sharing of experiences within the context of a family law case with close family members and/professionals is one that is more realistic, welcome and supportive of litigants who may be undergoing a very traumatic life experience.

Sanctions for breach of the reporting protections are clearly identifiable for each of the jurisdictions considered. However, the literature suggests that in Australia, New Zealand and the UK in particular, the initial lack of clarity around the boundaries of the rule, together with very clear sanctions, may have served as a deterrent for reporting of family law and child care cases. Thus, clear regulation of how the privacy rule operates should be accompanied by clear sanctions in the event of breach. Indeed, Sweden provides a good example of how to differentiate or take a graded approach to those sanctions according

³ *Jones v Television New Zealand Ltd* [2007] NZFLR 456 (HC) at [29]; as cited in Mark Henaghan & Pauline Tapp, “Privacy in the Courts” in Chamberlain, N. & Penk, S., eds., *Privacy Law in New Zealand* (Wellington: Thomson Reuters, 2023) at 497, available from: <https://researchspace.auckland.ac.nz/items/079b83e7-ab41-4aff-ac1f-76c54b1e22b2> (Date accessed: 10/08/2024).

⁴ Courts and Tribunal Judiciary, *Disclosure of Information between Family and Criminal agencies and Jurisdictions: 2024 Protocol*, available from: <https://www.judiciary.uk/wp-content/uploads/2024/03/2024-Protocol.pdf> (Date accessed: 10/02/2025).

⁵ Family Law (Information Sharing) Act 2023.

to the potential damage the breach could cause or the negligence or malicious nature of the person breaching the rule.

National survey

The survey data found that there was a strong sense from survey participants, who were mostly parents, that the *in camera* rule is attempting to achieve something positive. For example, participants felt that it protects children, it provides privacy and protection for litigants, and precludes members of the public from attending proceedings, allowing participants to tell their story. While participants believed there were benefits to the rule, many simultaneously expressed reservations about it, with some querying its application. A large cohort of participants were very critical about how the closed, private nature of family law proceedings, due to the *in camera* rule, led to a perceived reduction in transparency and accountability. While the media can report anonymously in such cases, this practice is not common. Slightly over half of the participants (55%) said that the *in camera* rule was not explained to them during their family law case. Close to 50% of participants said that they did not have a clear understanding of what the *in camera* rule allowed at the time of their case. When asked should the *in camera* rule be changed, close to eight in ten participants (79%, n=236) recommended that it should be changed.

The survey data also found that close to half of the participants (47%, n=140) indicated that the *in camera* rule was breached in their case; in most cases, the person responsible for the breach was a former partner/spouse. The most common way for the *in camera* rule to be breached was for case details to be shared with people not involved in the case (n=109), followed by their case being discussed in the corridors outside of the courtroom (n=60). In slightly over six in ten cases (61%, n=85), the breach was not brought to the Judge's attention. A surprisingly small number of the breaches (n=27) indicated that the *in camera* rule was breached either through social media or an online blog/podcast. However, slightly over four in ten (43.7%) participants agreed or strongly agreed that social media has made keeping privacy in family law cases harder. Survey participants advocated for a clear pathway to be able to bring a support person into court with them. Greater clarity on what they can share with external support agencies was sought with the data indicating a clear barrier for parents seeking support from external services for fear of breaking the rule.

Interviews with Judges

All of the Judges interviewed agreed that the main strength of the rule lies in its ability to protect the privacy of parties to the proceedings, and more importantly, any children impacted as a result. In addition, all Judges were very much aligned in their understanding of where the rule begins: that is, when proceedings are instituted. However, the strength of agreement amongst Judges deteriorated as more aspects of the rule's operation were explored. There was less agreement amongst Judges as to when the rule's application ends.

In relation to understandings of the rule, there were some Judges who took a very strict and technical interpretation of the rule's application. For example, some judges were of the view that if someone wanted to talk about their experiences of the family law proceedings, they were prohibited from accessing such support without the leave of the court. Most Judges, however, took the view that it was not problematic for people accessing the family courts to speak to their experiences with close family members as long as they didn't disclose the content of the proceedings. The challenge here for someone is being able to make the distinction between the content of the legal proceedings and one's experiences thereof.

While fewer weaknesses were identified by the Judges as compared to the other stakeholders in this study, drawbacks to the current operation of the rule were highlighted, including: restricting parties access to support services, the use of initials for parties to the proceedings, the inadequate infrastructure of the family court buildings and the lack of public reporting in private family law. Judges were aware that the operation of the rule can restrict parties' ability to have copies of section 32 reports even though the legislation recognises that the parties shall be given a copy of the report as well as any child (when appropriate to do so). Their views differed in relation to the release of these reports to parties to the proceedings.

The picture painted of sanctions for breach of the *in camera* rule was that it is a mechanism that lacks teeth. However, there was a clear distinction made between unintentional breaches and intentional breaches. Ironically, for a rule that is taken so seriously within the family law system, the consequences for a breach of that rule are at best vague and weak, and at its worst, non-existent. There was general agreement that a light touch approach tends to be taken by Judges to breaches of the rule, with admonishments and undertakings being the response of choice, which appear to work in most cases.

There was an overall preference to hear family law matters in person with an acknowledgement that there may be some circumstances – such as the hearing of professional evidence or victims of domestic violence, moving cases along in a more efficient manner for case progression, where a remote hearing may be a better option.

Focus groups with professionals, community groups, organisations, and academics

There was little consensus amongst professionals concerning the scope of the *in camera* rule in terms of its operation. One area where there was agreement was with respect to the need to clarify the rule in terms of nature and scope for both public and private family law proceedings. Professionals spoke about a collective lack of clarity and understanding of the *in camera* rule that extended to a misinterpretation and misapplication of the rule in some instances in practice.

Participants indicated that there was a disproportionate emphasis on the need to protect the privacy of individuals to the potential detriment of other rights of parents and children. Many participants also expressed the view that the right balance needs to be struck

between protecting families and children's privacy, while also ensuring the public's right to know how justice is administered. Professionals noted that strict applications of the *in camera* rule can result in individuals not being able to freely access necessary therapeutic supports; parties can be denied the support of a court accompaniment or an interpreter due to potential for the third party to breach the rule; and withholding copies of court reports (allowing a person to have time to digest its contents in a non-pressurised environment). Taken in isolation, these are all examples of potentially serious infringements of the right of access to justice.

For children and young people impacted by proceedings, examples were provided by focus group participants, which pointed to the potential negative impacts on their enjoyment of rights and freedoms. In the context of child care proceedings, a lack of clarity regarding when the rule ends was of particular concern, with some participants believing that the protection ends at the age of 18 years, while others understood that it has to be maintained for a lifetime. The lack of clarity concerning sanctions was also highlighted by professionals and community groups as particularly problematic, with a largely inconsistent approach adopted by the courts in such cases. The lack of clarity creates unnecessary worry, stress, and uncertainty for the professionals working within the system, often resulting in particularly narrow interpretations of the rule for fear of breaching it.

Recommendations

The data outlined in this report confirms the benefit of having a rule that protects the rights of children and parties to the proceedings. Whilst the issues concerning the operation of the *in camera* rule are well documented, this is the first report that presents comprehensive research and an evidence base to underpin changes which may be made to the rule. The following reforms are recommended.

Re-naming the rule

While the phrase under the Constitution and legislation "otherwise than in public" is technically the correct term, this does not provide sufficient clarity concerning what the rule encompasses.

- **It is recommended that a new title be given to this rule which is accessible for all family law court service users. This should be given priority so that there is a clear, concise explanation which is reflective of the actual meaning of the rule. It is recommended that a renaming of the rule to the 'privacy and transparency rule' would maintain a proportionate balance.**

Parameters of the rule

A conclusive finding of this study is that there is a wide variety of definitions of the *in camera* rule between family service users, professional participants and Judges as to what the rule means, and what it permits. This included all those professionals who

implement the rule, right through to those who it directly affected to be provided with clear, accessible guidance concerning what the law is, what it means for them, and what may happen if the law is broken. There was overwhelming support amongst all participant cohorts for clear guidance concerning the parameters of the rule's application as well as consistent and transparent communication as to what the rule encompasses. Under the current legal framework, there is no one source of information which sets out the parameters of the rule. Indeed, as outlined in Chapter Two below, interpretations concerning the application and operation of the rule are scattered throughout various cases and pieces of legislation.

- **It is recommended that the 'transparency and privacy' rule is clearly and consistently defined in law, policy and practice. The same definition should apply across all relevant legal proceedings.**
- **It is recommended that when defining the rule that it does not extend further than is necessary to the extent that its operation impacts constitutional or legal rights, but also constitutional principles of justice which are foundational to a democratic system.**
- **It is recommended that family law proceedings (private and public) should continue to be held 'otherwise than in public' as set out in Article 34.1 of the Irish Constitution, family law legislation, and Child Care Acts (as amended).**

The lack of clarity surrounding the *in camera* rule has, in practice, resulted in a number of "just in case" applications to the court to lift the rule. Indeed, Judges interviewed were clear that if, for any reason, a decision made by the court via court order had to be given to any third party, whether that be a school for the purposes of who can collect a child, or to a mediator, or for communications between the Health Service Executive (HSE) and Tusla for example, then an application should be made for the *in camera* rule to be lifted. Rather than having a requirement to lift the *in camera* rule in all cases where access is required to information relating to proceedings, other jurisdictions clearly set out in legislation what information can be shared with professionals engaged in the proceedings, with State agencies and other relevant bodies. In addition, provision is made in other jurisdictions, such as Australia and the UK (England and Wales), for parties to apply for a copy of their family law transcript at a fee.

- **It is recommended that certain individuals, professions and services (which may include foster parents, those in *loco parentis*, schools, HSE CAMHS services) should have automatic access to redacted versions of the court order akin to the approach of Australia under section 114S(2) which provides that "is not a communication to the public ... (f) a communication of material intended primarily for use by the members of any profession (being part of a series of law reports or any other publication of a technical character); (g) a communication of an account of proceedings to a member of a profession in connection with: (i) the person's practice of that profession; or (ii) any**

form of professional training in which that person is involved”. Eligibility for this purpose should be dependent on membership of a regulated profession (for example, CORU, The Teaching Council, etc.).

- **It is recommended that similar to the positions in the UK (England and Wales)⁶ and Australia⁷, parties to proceedings be permitted to request a copy of the transcript of the Digital Audio Recording (DAR) pertaining to their family law proceedings (or part of those proceedings) without having to get permission from the presiding Judge. This should be subject to strict privacy rules to ensure that the contents of the DAR recording are not made public.**
- **It is recommended, in the interests of transparency and fairness, that an efficient mechanism be introduced so that all cases connected to the parties can be systematically tracked between courts and Judges across the country. For example, a unique reference number, similar to what is used in the Irish Health Service Executive, could be allocated to each party once they first engage with the court system, and this number would attach to them for future reference. This would facilitate a stronger and more robust system of data collection for family law.**

In a variety of ways, family service users felt that the *in camera* rule had a prohibitive effect and operated as a type of ‘gagging order’ which stopped them accessing necessary formal and informal supports. For example, parents and families were of the view that the *in camera* rule can act as a barrier to having support both inside and outside of the courtroom. Add to this a prohibition on parties accessing therapeutic supports, whether formal or informal, and rights of access to justice being detrimentally impacted, and an extremely negative picture of family justice starts to emerge. For children and young people in private family law cases, the *in camera* rule has effectively operated to render the true implementation of their right to be heard unworkable in practice. If children cannot be informed about the decision-making process in a child-appropriate manner, they cannot be expected to be able to provide input which is in any way meaningful. International experiences have demonstrated that clarity in the form of law or rules has proved effective in delivering a pragmatic response for these situations. For example, the *Family Law Act 1975*, ss. 114N, 114S (1) in Australia provides that public communication does not include private communications between a party to proceedings and members of their family or their friends. Similarly, in England and Wales, rule 12.75 of the Family Procedure Rules 2010 provides “...that a party to proceedings may communicate information relating to family law and child care proceedings to any person where

⁶ HM Courts and Tribunals Service, Guidance for requesting a transcript <https://www.gov.uk/government/publications/order-a-transcript-of-court-or-tribunal-proceedings-form-ex107/guidance-for-requesting-a-transcript#private-hearing-transcripts> (Date accessed: 09/05/25).

⁷ Commonwealth Courts Portal, Court recording and transcription services <https://www.fcfsa.gov.au/recording-transcripts> (Date accessed: 09/05/2025).

necessary to enable that party: (a) by confidential discussion, to obtain support, advice or assistance in the conduct of the proceedings”.

- **It is recommended that a pragmatic approach be adopted in Ireland which would allow private communications between parties to public or private family law proceedings and their family members and friends as to what is happening in Court to seek support and/or access to services. These should be defined in the rule as not being public communications. This would be akin to the models in the United Kingdom and Australia.**

Special consideration should be given to the issue of whether litigants in domestic abuse and coercive control cases can seek the permission of the court to lift the rule to waive their anonymity in order to identify their abuser, similar to sexual abuse and sexual assault cases.

- **It is recommended that the Courts retain discretion to lift the *in camera* rule in cases where it is deemed in the interests of justice to do so.**
- **It is recommended that litigants in domestic abuse and coercive control cases should be able to seek the permission of the court to lift the rule to waive their anonymity in order to identify their abuser, similar to sexual abuse and sexual assault cases.**

Balancing privacy and transparency

The current study confirms that at the apex of weaknesses with the *in camera* rule is the lack of transparency concerning how justice is served behind the closed doors of the courtrooms where family law and child care proceedings take place. While the changes to the *in camera* rule in 2004, 2007 and 2013 were long anticipated and welcome, they did not serve the anticipated purpose of sufficiently lifting the lid on what happens behind the closed doors of family law courts. In the interests of the fair administration of justice and compliance with our international human rights obligations, it is critical that we have a robust and systematic reporting mechanism, an increase in the number of published judgments, and comprehensive statistical data that is routinely recorded and accessible, something which is already envisaged under Goal 6 of the *Family Justice Strategy 2022-2025*. This will serve to not only enhance and promote transparency in the administration of family justice, but it will also serve to promote public confidence in the family law system.

- **It is recommended that the privacy rights of children and parties to all types of family law proceedings be maintained with the adoption of other legal measures to ensure transparency.**

A number of measures are being recommended to increase transparency in the administration of public and private family law proceedings:

- It is recommended that a well-resourced, systematic and firmly embedded system of reporting of anonymised family law judgments at all levels of court be established. While it is acknowledged that this is well established in the Higher Courts, there is a need to ensure that a number of judgments are also published from the lower courts in both family and child care proceedings.
- It is recommended that a minimum percentage (10-15%) of judgments from public and private family law cases be published on the Irish Courts Service website from all levels of courts, with priority given to those where there is a final judgment or where a case is of major legal significance.
- It is recommended that an anonymisation team, similar to that established in the UK (England and Wales) is created to support the work of the judiciary to facilitate the publication of these judgments.
- It is recommended that legislative provision be made for *bona fide* academic researchers from third level institutions, to undertake research in the family law courts (public and private). This provision should make clear that academic researchers who have successfully applied for research ethics approval from their academic institutions and have applied for express permission from the Legal Research and Library Services Subcommittee on Judicial Participation in Research Projects, where necessary, are permitted to conduct research in the context of public and private family law proceedings. The same reporting restrictions should apply, as well as sanctions for non-compliance. The types of research in this regard may include, but are not limited to: qualitative research with all parties to the proceedings; surveys and qualitative research with parents, children and young people; and access to documents and files relating to proceedings, an approach that is currently adopted in the UK (England and Wales).
- It is recommended that the current legislative provision to seek Ministerial permission is removed for *bona fide* academic researchers who have secured institutional ethical approval to conduct research in Irish family law. Reporting restrictions relating to privacy would apply.
- It is recommended that there is a presumptive right for all journalists and other authorised members of the media who are members of the Irish Press Council and subscribe to its ethics and standards and/or those of Commission Na Meán, (similar to how this operates in the UK (England and Wales) to attend all private and public family law hearings at all court levels. However, Judges should still retain discretion to refuse access in specific circumstances, but the intention is that members of the media should be able to attend most hearings.

- It is recommended that media are provided with clear and comprehensive reporting guidelines and training that support the reporting of family law cases in a proportionate manner. The *UK Jurisdictional guidance to support media access to courts and tribunals: Family courts guide (accessible version)* (Updated 11 March 2025) is instructive in this regard.
- It is recommended that *bona fide* media who are members of the Irish Press Council and subscribe to its ethics and standards and/or those of Commission Na Meán should be permitted to speak to parties to the proceedings in a similar vein to that in the United Kingdom context where they must ensure that anything they publish, or report protects the anonymity of the parties and children concerned.

Communication about the rule

There should be a systematic means of communication of the rule to all relevant parties to the proceedings, whether legally represented or lay litigants, as well as professionals. In practice, Judges in their interviews believed that professionals and support services, in the main, had a good working knowledge of the operation of the rule in their courts, but there are areas where clarity is warranted. Given the large number of people who completed the survey who were not informed about the rule and/or had an incomplete understanding of the rule (see Chapter Four), greater clarity is required on roles and responsibilities of the Courts Service, legal professionals, and Judges to ensure that litigants have sufficient awareness and knowledge of the rule. Once the rule is clearly defined, there is clarity on the boundaries of the rule, and information on sanctions for breaches, there should be a clear and accessible communication strategy. Any changes to the rule which governs transparency and privacy in family law proceedings would need to be supported by targeted training which focuses on how any changes to the rule should be applied in practice. The current research identified the need for training on the part of all professionals to ensure consistency in the application of the privacy rule in family law proceedings. In the UK (England and Wales), the rollout of the Transparency reporting pilot was supported by training videos, manuals and materials for the Judiciary, professionals, as well as members of the public.

- It is recommended that a communication strategy is developed to improve awareness and understanding of the *in camera* rule for all parties involved in family law proceedings.
- It is recommended that all legal practitioners, Judges and professionals that have engagement with family law (public and private) complete mandatory training on the operation of the rule. Where training is being provided in the context of wider family law reform and the rollout of specialised family law courts, training on the changes to the operation of the rule should form part of this, with sufficient time and resources allocated for this purpose.

Courtroom supports for parties to the proceedings

Currently, only parties to the proceedings in addition to legal counsel and the Judge are permitted to be present in the courtroom while an *in camera* hearing is taking place. Survey participants were very clear that being able to bring in a support person during a hearing would be hugely beneficial. While there is provision in law for circumstances where a lay litigant can make a request for a McKenzie friend to be present, this is at the discretion of the Judge. There is also a legal provision under the Domestic Violence Act 2018 for a court accompaniment, but a Judge has the ability to refuse this in cases where the interests of justice so require.

- **It is recommended that an approach consistent with that of Irish domestic violence or criminal law proceedings be adopted so that parties have the ability to bring in a court accompaniment in the form of an independent support person or service where required.⁸**
- **It is recommended that an approach similar to New Zealand⁹ be adopted where the consent of the judge is required for a party to have a support person present with them in family law or child care proceedings. A Judge should only exercise discretion not to allow this person attend where there are very good reasons for doing so.**
- **It is recommended that where a support person attends a family law or child care proceeding, the rule should be explained to them at the start of the proceeding.**

Children's rights and the in camera rule

In keeping with Ireland's international commitments to the implementation of children's rights under the UN Convention on the Rights of the Child 1989 (CRC) and Article 42 A of the Irish Constitution, it is important that the rights of children are not negatively and unnecessarily impacted by the operation of rules concerning privacy. This report makes a number of recommendations relating to the protection of children's rights in family law (public and private law) proceedings:

- **It is recommended that the child's right to privacy should continue to be protected both in the conduct and reporting of public and private family law cases.**

⁸ For example, [Victim Support at Court \(VSAC\)](#) and [Accompaniment Support Services for Children \(ASSC\)](#) provides court accompaniment (Date accessed: 16/05/2025). In the family law context, this support could be provided by existing child and family support services.

⁹ *Family Courts Act 1980*, s. 11A(1)(f).

- It is recommended that the timely exchange of information pertaining to the best interests of the child is facilitated.
- It is recommended that children in the care of the State should not be discriminated against in terms of the exercise of their fundamental rights to freedom of expression and association due to the operation of the *in camera* rule.
- It is recommended that, in accordance with the constitutional and legislative requirements to involve children in decision-making processes in both private and public family law cases, the operation of the *in camera* rule should not prevent children from being kept informed and authentically having a voice in matters affecting them throughout the family law process. As noted above, any communication between children and young people with parents or professionals or relevant services about family law or child care proceedings affecting them should not be considered public communication and should be permitted.
- It is recommended that children and young people impacted by child care or family law proceedings should have an authentic input into any proposed reform process concerning the *in camera* rule. Such a consultation was beyond the scope of the current report.

Breaches of the in camera rule

In the Irish context, it is clear that there is a need for clarity around what constitutes a breach of privacy provisions and what penalties should be applied in various situations. In this context, the four jurisdictions examined have sanctions for breach of anonymity in family law statutorily enshrined. Across jurisdictions, penalties ranged from three months imprisonment or a fine (\$2,000) in New Zealand; to up to two years for contempt of court in the UK (England and Wales); up to one year imprisonment in Australia; and finally, in Sweden where a graded approach is taken to the sentences applied depending on the seriousness of a breach with a fine or up to two years imprisonment where secret information is disclosed and up to four years for more serious breaches.

- It is recommended that there are clear provisions as to what constitutes a breach set down in legislation, which should include breaches as a result of social media posts.
- It is recommended that distinctions should be drawn between inadvertent breaches and those of a more deliberate or malicious nature. This should include reference to sanctions for breaches of the rule that are consistent with existing legislation in this area (for example, journalists).

Remote hearings

The recommendation of this research is that the use of hybrid approaches should be considered where appropriate and should be implemented as a matter of course for progressing cases in a more resource and time-efficient manner. The UK (England and Wales), Australia, and New Zealand have all adopted measures which utilise remote technology in terms of facilitating case progression. Indeed, both New Zealand and the UK (England and Wales) have developed guidance which supports Judges, litigants and practitioners in the use of a hybrid model. Ireland should develop similar guidance to support the courts in developing practices in this regard.

- **It is recommended that remote options, where practicable, should be considered for professionals to assist with progressing cases in a more resource and time efficient manner.**
- **It is recommended that a remote hearing option akin to Australia and New Zealand Family Law Courts, where all the standard court rules, etiquettes etc. would apply. This option should be available to facilitate access to justice for certain categories of individuals, including, but not limited to, persons with disabilities, full-time carers, and domestic violence applicants, where the privacy and integrity of the proceedings can be maintained.**
- **It is recommended that Ireland consider the introduction of similar guidance to New Zealand and the UK (England and Wales), which would identify typical court procedural applications and practices that could be conducted using a remote option and would further support the courts in developing practices in this regard. The new Irish guidance should address how the *in camera* rule would operate with remote hearings.**

Access to justice and court reports

In relation to section 32 reports, it was clear from the findings of this report that for the most part, parties (whether represented or not) are only given access to the report under supervision and for a restricted period of time due to concerns that providing a copy of same will result in a breach the *in camera* rule. Arguably, a very narrow interpretation of the *in camera* rule is being applied here in a way that negatively impacts the rights of parties to access to justice, and it is also potentially contrary to the intention behind the legislative provision.

- **It is recommended that parties should be permitted to retain a copy of any court-ordered report (including s.32 and s.47 reports) that contains information relating to them and/or their family's circumstances provided it is made clear that the contents of that report should not be made public. Appropriate sanctions for a breach should be clearly outlined in legislation.**

The in camera rule and GDPR

While beyond the scope of the current report, it was clear from the focus groups with professionals (see Chapter Six) that clarity is needed concerning how the rule interacts with data protection and GDPR legislation.

- **It is recommended that research is commissioned to examine how GDPR legislation intersects with the *in camera* rule.**

Primary legislation

This report recommends that the most comprehensive way of addressing many of the existing shortcomings surrounding the operation of the rule is through primary legislation that would apply to both public and private family law proceedings and takes account of all of the recommendations listed above.

It is a requirement of European Human Rights law that transparency in the conduct of all legal proceedings is maintained. While it is recognised that there are certain cases which demand a level of privacy, this should not result in a lack of transparency on the administration of family law. The introduction of legislation would provide an opportunity to strike the right balance between the privacy of the parties involved and the promotion of transparency in family law proceedings. In this context, it is essential that any changes made to the legal framework governing the operation of the *in camera* rule, are informed by the views and perspectives of children and young people who are impacted by both private and public family law proceedings.

- **This report recommends that the most comprehensive way of addressing many of the existing shortcomings surrounding the operation of the rule, including a redefinition of what it covers, information sharing, breaches and sanctions for breach, is the creation of primary legislation that would apply across all relevant proceedings held otherwise than in public which takes account of the recommendations listed above.**
- **It is recommended that any legislation drafted for this purpose would define what constitutes a breach and what sanctions apply in minor, and more serious cases of breach.**

Chapter 1: Introducing the *in camera* rule and study methodology

1.1 Introduction

The *in camera* rule has been a prominent and, at times, a much discussed feature of Irish family law and child care proceedings with consistent calls for a review of the rule and its operation in practice.¹⁰ Originally, born out of a requirement to hold family law and child care proceedings ‘otherwise than in public’, arguably, the interpretations given to the rule have expanded over time.

Over 25 years ago, it was suggested that a

... relaxation of the application of the rule which could lead to greater accountability and consistency in the application of family law principles; increased written reporting of cases which would develop a body of family law jurisprudence; the availability of statistics in relation to child care based issues such as custody and access which in turn could assist with assessment of need for support services; and for both practitioners and clients, the removal of some of the element of surprise in respect of what lies ahead.¹¹

Unfortunately, despite the fact that the *in camera* rule has been relaxed through legislative changes since 2004, none of these anticipated benefits have come to fruition, which would suggest that a more ambitious approach is warranted. It has been acknowledged that the use of judicial discretion in family and child care proceedings in the lower courts in particular, in addition to a lack of written reasoned judgments which explain how that discretion is exercised, unsurprisingly, contributes to a lack of public confidence in the entire family law system.¹²

However, the Irish family law system has for a long time grappled with how to balance much-needed transparency in family and child care law with the rights to privacy of the children impacted as well as the adults involved. Indeed, in more recent times, the challenges introduced by the Covid-19 pandemic, technological advancements, changes in society more generally, as well as changes in international legal commitments have become increasingly difficult to ignore. For example, with the legalisation of divorce in 1996,¹³ the enactment of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, as well as the incorporation of children’s rights under Article 42 A

¹⁰ See, for example, O'Mahony *et al.* (2016) *Journal of Social Welfare and Family Law*, 38: 3, pp. 302-322; Burns, K. (2019) *Opening Statement, Joint Oireachtas Committee on Equality and Justice*, available from: https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_justice_and_equality/submissions/2019/2019-03-13_opening-statement-dr-kenneth-burns-senior-lecturer-in-social-work-university-college-cork-ucc_en.pdf (Date accessed: 14/11/2024). Parkes A., “We need to reconsider the *In camera* rule in Child law cases”, 6th August 2012. <https://www.irishtimes.com/news/crime-and-law/we-need-to-reconsider-in-camera-rule-in-child-law-cases-1.531276> (Date accessed: 13/02/2025).

¹¹ Stephanie Coggans, *The In camera Rule -Time For Change?* *Irish Journal of Family Law* 2001, 4(1) p. 1-2.

¹² Stephanie Coggans, *The In camera Rule -Time For Change?* *Irish Journal of Family Law* 2001, 4(1) p. 1-2.

¹³ Family Law (Divorce) act 1996.

of the Irish Constitution in 2015, the jurisprudence of the Irish courts is developing at a pace. However, the manner in which these changes are being administered in practice is unclear. With these changes, it is time to shed light on how the *in camera* rule for public and private family law proceedings operates in such an environment. Challenges to the rule's practical operation have been magnified by the often-criticised quality of the physical infrastructure of courts which varies significantly across the country.

In his 2021 annual report, the then Special Rapporteur on Child Protection, Professor Conor O'Mahony, highlighted the lack of clarity associated with the rule. He made reference to the fact that the Heads of the Family Court Bill at the time did not make the parameters of the rule very clear by failing to outline "*what types of communications concerning court proceedings are specifically prohibited by the rule*".¹⁴ He specifically highlighted the fact that Head 36 of the Bill did

...not include an exception that would allow parties to family cases to participate in anonymised qualitative or quantitative research... This limits the scope and depth of research on family law proceedings, which hinders reform processes and teaching and training activities, and undermines transparency.¹⁵

The Joint Committee on Justice and Equality also made reference to the views of Dr. Kenneth Burns in their 2019 report that "*...the in camera rule has ...had a chilling effect on research, thereby silencing the voices of children, young people and parents who are most impacted by proceedings*".¹⁶

The fact that the *in camera* rule extends beyond the bounds of the courtroom copper fastens this position with regard to understanding the experiences of the parties concerned. This is despite the fact that the overall courthouse infrastructure does not maintain the same level of privacy as provided 'in room' or '*in camera*' as behind the courtroom doors. This has been well documented by the Child Law Project¹⁷ as well as the Child Care Proceedings in the District Court Research team at University College Cork (UCC). For example, in a qualitative study by the UCC research team, "*...study participants repeatedly expressed concern and frustration at the manner in which inadequate physical facilities undermine the privacy of the parties*".¹⁸ The Law Society of Ireland has also highlighted the issue: "*There needs to be sufficient space and designated consultation rooms for settlement negotiations as the current practice is simply outmoded,*

¹⁴ Special Rapporteur on Child Protection, Professor Conor O'Mahony, *Annual Report of the Special Rapporteur on Child Protection 2021* (June 2021) at 183 available from: <https://www.gov.ie/pdf/?file=https://assets.gov.ie/214234/9e893871-ecb7-4a28-879a-d0a83d5bc7e2.pdf#page=null> (Date accessed: 14/11/2024).

¹⁵ Special Rapporteur on Child Protection, Professor Conor O'Mahony, *Annual Report of the Special Rapporteur on Child Protection 2021* (June 2021) at 183 available from: <https://www.gov.ie/pdf/?file=https://assets.gov.ie/214234/9e893871-ecb7-4a28-879a-d0a83d5bc7e2.pdf#page=null> (Date accessed: 14/11/2024).

¹⁶ Joint Committee on Justice and Equality, *Report on Reform of the Family Law System* Dublin: Government publications, October 2019) p.26.

¹⁷ Child Law Project, *Protocol for Reporting Child Care Law Proceedings*, available from: <https://www.childlawproject.ie/protocol/> (Date accessed: 11/11/2024).

¹⁸ Conor O'Mahony, Aisling Parkes, Caroline Shore, Kenneth Burns, "Child Care Proceedings and Family-Friendly Justice: The Problem with Court Facilities", *Irish Journal of Family Law* (2016), 19(4), 75-81, at p.77.

*unacceptable and rife with potential for breaches of the Data Protection Act 2018 and the in camera” rule.*¹⁹

This chapter aims to set the scene for the remainder of the report. The requirement to hold private and public family law (child care proceedings) court cases ‘otherwise than in public’ will be explored. A plain language explanation of the rule will be provided, which will be followed by a comprehensive legal analysis of the *in camera* rule in the next chapter. The chapter will conclude with an outline of how the research team went about examining how the rule operates on a day-to-day basis in family law courts in Ireland.

At the time of writing this report, the Irish State has undertaken a thorough review of how the family law courts operate in Ireland with a view to making the experience of accessing the civil family justice system a more positive one for those who use it. This culminated in the *Family Justice Strategy 2022-2025*, which contains a number of goals and key actions which are aimed at making the system better. The current report was commissioned by the Department of Justice in response to one of the key action points (Goal 2: Services and Supports) of the *Family Justice Strategy 2022-2025*.²⁰ The Request for Tender identified a number of aims for the research. In addition, a number of specific questions were presented which this report has set out to answer. More specifically, the primary aims of the research were 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.

In addition, the tender specified a number of key questions that were to be addressed including:

1. The current operation of the *in camera* rule in Ireland (with a particular emphasis on family law)

- What is the law on the *in camera* rule in Ireland and how does it operate in different types of proceedings? This is dealt with in Chapter 2 of this report.
- What case law has emerged on the operation of the rule and what is its import? This is addressed in Chapter 2 of this report.
- What are the main benefits of the operation of the rule (for parties, for the courts, for other professionals involved)? This is dealt with in Chapters 4-6 of the report.

¹⁹ Law Society of Ireland (2023) *Family Courts Reform: Building a World Class Family Courts System*, available from: <https://www.lawsociety.ie/news/news/Stories/family-court-reform> (Date accessed: 13/11/2024).

²⁰ *Family Justice Strategy 2022-2025*, available from: <https://www.gov.ie/en/collection/4790f-family-justice-strategy/> (Date accessed: 1/10/2024).

- What are the main challenges arising from its operation (for parties, for children in family and in child care proceedings, particularly in relation to their rights, for the courts, for other professionals involved)? This is dealt with in Chapters 3-6 of the report.
- What has been the impact of the current rule, including but not limited to, its impact on privacy and transparency? This is addressed in Chapters 4-6 of the report.
- What sanctions are available to the court for breach of the *in camera* rule? Are these sanctions considered adequate/effective? This is dealt with in Chapters 4-6 of the report.
- 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 in criminal proceeding). This information is highlighted in Chapters Four - Six of the report.

2. Exploring the issue internationally:

- What are the approaches in other jurisdictions* (common and civil law) to balancing privacy and transparency in family law proceedings?
- How are such approaches operated or implemented?
- What has been the impact of those approaches, including on privacy and transparency?
- What sanctions are available to the court where someone breaches the procedure or rule?
- 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)
- What learning can be identified for consideration and potential application in the Irish context?

Each of these questions are addressed in Chapter 3 of this report.

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?

This is addressed in the final chapter of this report.

This report should be read in the context of the recently enacted Family Courts Act 2024, the *Family Justice Strategy 2022-2025*,²¹ reports from the Department of Justice,²² and other related developments such as the review of the Child Care Act 1991.²³ Whilst there have been commentaries and publications that have addressed aspects of the *in camera* rule, this is the first report to empirically examine the day-to-day operation of the rule and its impact on children and families. In addition, the report captures the unique experiences of professionals and members of the judiciary who regularly engage with the *in camera* rule as part of their work. The report also draws on international approaches to the issue of transparency in public and private family law proceedings and makes evidence-informed recommendations based on good practices identified.

For the purposes of this report, the terms '*in camera*' and 'otherwise in public' will be used interchangeably.²⁴

1.2 What proceedings does this report examine?

The Courts Service Act 1998 established the Courts Service which provides administration and support services for the courts in Ireland. There are different types of courts in Ireland: District Court, Circuit Court, High Court (civil) / Central / Special Criminal Court (criminal), Court of Appeal, and Supreme Court.²⁵ Each court deals with different types of cases.²⁶

While the primary focus of this report is the operation of the *in camera* rule in both private and public family law (child care proceedings), it will also consider how the *in camera* rule operates in other types of legal proceedings. Family law is the area of law that deals with family matters. Private family law proceedings refer to cases involving: separation and divorce, maintenance, guardianship, custody and access to children, domestic violence and coercive control, nullity, marriage exemptions, gender recognition, and paternity and parentage of children.²⁷ Public family law proceedings (also called child care cases or

²¹ *Family Justice Strategy 2022-2025*, available from: <https://www.gov.ie/en/collection/4790f-family-justice-strategy/> (Date accessed: 01/10/2024).

²² For example, Department of Justice (2024) *Review of the Role of Expert Reports in the Family Law Process*, Department of Justice, available from: <https://www.gov.ie/en/publication/d89bc-review-of-the-role-of-expert-reports-in-the-family-law-process/> (Date accessed: 25/11/2024).

²³ Review of the Child Care Act 1991, available from: <https://www.gov.ie/en/publication/97d109-review-of-the-child-care-act-1991/> (Date accessed: 10/11/2024).

²⁴ Craven-Barry has flagged that there isn't agreement that these terms may mean the same thing. Craven-Barry, Clare, "Transparency in Family and Child Law proceedings: Disentangling the Statutory Techniques and Terminology" (2019) 3 *Irish Judicial Studies Journal*, 88 at 102.

²⁵ Courts Service of Ireland, *What the courts do*, available from: <https://www.courts.ie/what-courts-do> (Date accessed: 14/10/2024).

²⁶ Courts Service of Ireland, *Courts Service Annual Report for 2023 published*, available from: <https://www.courts.ie/content/annual-report-2023-published> (Date accessed: 01/10/2024) and the Courts Service *Strategic Plan 2021-2023*, available from: <https://www.courts.ie/policy-reports-strategic-plans> (Date accessed: 01/10/2024).

²⁷ Courts Service of Ireland, *Family Law*, available from: <https://services.courts.ie/Family-Law/> (Date accessed: 14/10/2024).

child care proceedings) refer to applications by Tusla, the Child and Family Agency for care orders,²⁸ special care, and supervision order applications, and adoption cases.²⁹

1.3 A plain language summary of the *in camera* rule

Being a party to family law proceedings or child care proceedings can be challenging for all involved. Whether one is applying to have a marriage dissolved, or seeking protection from an intimate partner in a domestic violence situation or Tusla, Child and Family Agency, is applying to have a child removed from a family due to suspected child abuse or neglect, all of these are matters which require a degree of privacy and sensitivity.

However, it is also a fundamental principle of Irish constitutional law that justice should be administered in public.³⁰ This means that members of the public may attend court days and observe legal proceedings to see how decisions are made. Case lists are posted with the names of parties, and anyone can view these lists on notice boards in courthouses, and online on the Courts Service website for Circuit Court, High Court, Court of Appeal and Supreme Court cases. However, an exception to this fundamental principle is that certain types of cases can be heard ‘otherwise than in public’. Family law proceedings and child care proceedings are held in private, and it is not open to members of the public to attend. This means that while family members, neighbours and friends can accompany and support someone to the courthouse door, for example, for a barring order, they cannot sit in on the proceedings (inside the courtroom). Sometimes, a Judge will give special permission for a service like a domestic abuse service to sit in to support the applicant.

‘*In camera*’ is a Latin phrase that means in the room and is the term mainly used in the context of family law and child care proceedings to mean ‘otherwise than in public’. The *in camera* rule is the term given to the rule that addresses:

1. What professionals, including legal professionals involved in other cases, can sit in courtrooms while family law cases are being heard;
2. Who can have access to documents that are part of these cases;
3. Who can be told about the outcomes and orders made in family law cases.

The exceptions to the rule are also set out in legislation³¹ and refer to:

1. Permission for members of the media to attend, placing limits on how the media can report on these cases in newspapers and online;
2. The need for researchers and reporters to apply for permission from the Minister for Justice to attend family law courts and undertake research on family law proceedings.

²⁸ Tusla, Child and Family Agency, *Care Orders Explained*, available from: <https://www.tusla.ie/foster-carers-hub/how-do-children-come-into-care/> (Date accessed: 01/11/2024).

²⁹ Courts Service of Ireland, *Family Law*, available from: <https://services.courts.ie/Family-Law/> (Date accessed: 14/10/2024). The Courts Service provides comprehensive information and videos on its website that provide further information on all of these types of cases.

³⁰ Article 34 of the Irish Constitution 1937.

³¹ See s. 40 of the Civil Liability and Courts Act 2004, and s. 29 (5A)(5B)(7) of the Child Care Act 1991.

Members of the public cannot sit in on these court cases, and the full names of parties to the proceedings are not posted in courtrooms (initials are used instead). The *in camera* rule is an important rule that guides the operation of the court: it protects privacy, but it limits transparency. It intends to provide protection - especially for children and young people - but not everyone who is a party to these proceedings may want this type of protection.

The rule limits who can know or be told about what happened inside the closed door of the family law courtroom or in child care proceedings. On a practical day-to-day basis, is a parent permitted to tell a family member or friend who accompanied them to court what happened in the courtroom to debrief or to ask for their support? Can a child in the care of the State under a care order post on social media identifying that they are being cared for by foster parents? Can researchers interview parents who have participated in guardianship or divorce cases about their experiences of the family law/child care process? These are important questions that require clear answers so that everyone can understand the rule and avoid breaching it.

The next section outlines how the study was designed and implemented.

1.4 Study design

This section presents the design of this study and describes a robust methodology that was employed to produce the rich and in-depth empirical data for this report. In summary, this study involved:

1. Applications to two independent research ethics committees for permission to undertake the quantitative and qualitative aspects to this study, and access permission from organisations and the Legal Research and Library Services Subcommittee on Judicial Participation in Research Projects.
2. A national survey of parents, grandparents, foster parents and anyone over the age of 18 years who had experience of family law proceedings in Ireland. 317 people completed this online survey.
3. Semi-structured interviews with Judges about their experiences of making decisions on the *in camera* rule in family law and child care proceedings. 13 Judges from all levels of court participated in these interviews.
4. Focus groups (research meetings with groups of people) with professionals, academics, and community services with in depth knowledge and experience of how the *in camera* rule operates in practice. 18 focus groups were completed, with 84 people taking part.

This study was jointly conducted by academics and researchers from University College Cork and Trinity College Dublin. It was commissioned by the Department of Justice to examine how the *in camera* rule is understood by those who use family law and child care courts in Ireland as well as how it operates in practice. The Department of Justice's request for tender sought 'research examining the operation of the *in camera* rule in the

context of family law proceedings'. The research aims, as set out by the Department of Justice, were to:

1. "review the current operation of the *in camera* rule in its entirety,
2. 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
3. make recommendations relating to reform of the law which can enhance clarity and transparency and offer the necessary protections for those involved in proceedings".

This study includes: a literature review; an examination of the operation of *in camera* / privacy rules in other civil and common law jurisdictions; as well as primary research which for the first time in the Irish context shines a light on how the *in camera* rule operates in private and public family law (child care proceedings) in practice. Research outputs include this report as well as presentations to the Department of Justice and key stakeholders. The full request for tender can be viewed at the link below.³²

Research questions

This study examined the following research questions:

1. What are the strengths and weaknesses associated with the operation of the *in camera* (privacy) rule in family law proceedings in Ireland (public and private)?
2. What are the experiences of parents and those aged 18+ years, Judges, professionals, and community services of working with, and being subject to, the *in camera* rule in family law proceedings in Ireland?
3. Are there differences in understanding, and in the operation of, the *in camera* rule between courts in family law proceedings?
4. What are the experiences of Judges and Professionals of remote hearings and the operation of the *in camera* rule?³³
5. How do the exemptions which permit research and reporting operate?
6. What are the recommendations for reform from those with experience of the operation of the *in camera* rule?

1.5 Literature search strategy

For this study, University College Cork's *ExLibris Summons* library metasearch engine was used. *ExLibris Summons* searches 432 peer-reviewed research databases, including all of the leading databases such as: Academic Search Premier, CINAHL, JSTOR, APA

³² 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*, available from: <https://www.gov.ie/en/collection/fe97a-department-of-justice-requests-for-tender-for-research-services/#current-requests-for-tender-rtf> (Date accessed: 12/12/2024).

³³ Parents and other family members were not asked about their experience of remote hearings in the survey due to the limited extent to which these are currently used in family law cases.

Psycharticles, APA Psychoinfo, NIH PubMed, Scopus, ScienceOpen, and SpringerLink. The search terms used for the literature review were:

‘family law’; ‘child law’ / ‘child care law’; ‘*in camera*’, ‘privacy’; ‘family law proceedings’, ‘child care law proceedings’; ‘child law cases/proceedings’; ‘transparency’, ‘domestic violence cases’; ‘domestic abuse cases’; ‘confidentiality’; ‘media and family law proceedings’; ‘court observation’; ‘qualitative data and family proceedings’.

The rationale for the use of words such as private, privacy, confidentiality and transparency, for example, is that the use of ‘*in camera*’ is uniquely Irish. A search with a wide range of terms would generate relevant international peer-reviewed data from other jurisdictions, like the United Kingdom. A search of online sources was also conducted of relevant governmental, non-governmental, civil society, and not-for-profit organisations reports, which may not necessarily be peer-reviewed, but would be important for this report.

The inclusion criteria for studies and sources were: sources related to the *in camera* rule (or related synonyms/terms); time frame: 2004-2025; published in the English language; all study designs, including doctrinal research. Literature reviews and commentaries were also included. We used the reference lists of relevant articles to identify other sources.

The exclusion criteria were: sources outside of the timeframe indicated; publications and studies unrelated to the *in camera* rule (or related synonyms/terms); studies of family law unrelated to the *in camera* rule.

1.6 Online survey design

An online survey was designed in collaboration with the Department of Justice to learn from parents and family members about their experiences of the operation of the *in camera* rule in Irish family law cases and child care proceedings. Microsoft Forms was chosen as the data collection tool as it is a UCC-approved research data collection platform, it has a strong user interface, and it is mobile-friendly to maximise user participation. The survey was open between the 8th of July and the 16th of August 2024. The survey was publicised through social media, websites, press releases, the researchers’ professional networks, community and voluntary groups, news stories in national newspapers, on Newstalk and during an interview on RTÉ Morning Ireland on the 8th of July 2024.

Inclusion and exclusion criteria

The survey was open to parents, grandparents, relatives, guardians, foster parents, and those aged 18+ years who have experienced the family law or child care courts in Ireland. It sought to understand users’ experiences of the *in camera* (privacy rule) in

certain types of family law court cases: guardianship, custody and access; separation; divorce; domestic violence and abuse (inc. coercive control); maintenance, and public child care cases involving Tusla (for example, child protection, adoption, etc.).

The exclusion criteria for survey participants were: people under the age of 18 years; those with no experience of the cases listed above in Irish family law courts; and all professionals who sought to participate in their professional capacity.

Data analysis

The online survey data was analysed in Microsoft Excel and Microsoft Forms, which are UCC-approved applications and platforms for research data collection and analysis. Each participant was attributed a unique identifier number between 38 and 354.³⁴ A descriptive statistical analysis of the numerical data was undertaken. NVivo, which is a UCC-approved qualitative data analysis software package, was used to analyse the qualitative data from the online survey (see below for a description of how the qualitative data was analysed).

1.7 Interviews and focus groups

All participants who took part in the study gave full, free, and informed consent and could withdraw from the study for up to two weeks post data collection. One focus group participant withdrew due to the quality of their broadband connection which limited their ability to participate.

The initial version of the interview and focus group guides (list of questions) were prepared based on the literature review and consultations with stakeholders. The guides were iteratively developed throughout the process; however, the guides did not change substantially as the adoption of a semi-structured approach allowed for flexibility within the interviews and focus groups to examine themes of interest to individual study participants.

Interviews

14 semi-structured interviews were conducted between July and September 2024; 13 interviews were conducted with members of the Irish Judiciary and one interview took place with a professional who works with victims of domestic violence (who also engaged with the family law courts). Judges from the District Court, Circuit Court, and High Court took part with wide ranging experience of adjudicating matters in family law and child care

³⁴ While 317 participants started to complete the survey, 17 of these were deemed ineligible due to not fully completing the survey.

proceedings. Individual interviews ranged in length from between 40 minutes and 2.5 hours.

Focus groups

18 focus groups were conducted with professionals, support services, media, policy makers, civil society groups, and academics to explore their views on the operation of the *in camera* rule. These focus groups were undertaken between July and September 2024 with a total of 84 participants (3:1 ratio of females to males). To be eligible to take part in the study, participants needed to have a working knowledge and/or experience of the operation of the rule. All focus groups took place over Microsoft Teams, and the focus groups were between 1 hour and 15 minutes and 2 hours in length.

Table 1.1: Focus group participants by service/profession

Focus group	Group	Number of participants
FG 1	Academics and researchers (focus group A)	4
FG 2	Media/journalists	2
FG 3	Community organisations	7
FG 4	Child Law Project	5
FG 5	Mediators	4
FG 6	Courts Service	4
FG 7	Academics and researchers (focus group B)	3
FG 8	Guardian <i>ad litem</i> (Barnardos)	7
FG 9	Social workers, Tusla, Child and Family Agency (focus group A)	7
FG 10	Social workers, Tusla, Child and Family Agency (focus group B)	4
FG 11	Solicitors representing Tusla, Child and Family Agency	4
FG 12	Empowering Children in Care (EPIC)	5
FG 13	Legal professionals (solicitors x 6, barrister x 1)	7
FG 14	Guardian <i>ad litem</i> (TIGALA)	3
FG 15	Ombudsman for Children's Office staff	3
FG 16	Office for Legal Services, Tusla, Child and Family Agency	7
FG 17	Legal Aid Board solicitors	3
FG 18	Policy makers	5
Totals		84 (62 female, 22 male)

Data collection

Post-Covid, the undertaking of research interviews and focus groups over digital platforms has become more popular and straightforward due to the increased maturity of these platforms. The benefits of this approach are that it is possible to collect a large amount of data more efficiently as there is no travel required. Furthermore, online data collection is a more environmentally sustainable approach, with a lower carbon footprint. It is also a

more efficient way of generating transcripts for analysis, and it facilitates easier scheduling for participants. Online data collection was the only approach possible for this study given the relatively short timeframe from start to completion.

Microsoft Teams is the approved online data collection and transcript generation platform approved for research use by UCC. This platform was one of the more popular platforms in use amongst the professionals who took part in the study.

The downside of this data collection approach can be user access issues, perceived lesser quality interaction compared with face-to-face data collection, and a more impersonal approach. However, this is balanced by the fact that for some participants, the online format may have helped them feel more comfortable sharing their thoughts at a distance from others compared to a face-to-face format. This data collection strategy was approved by the research ethics committees and was successful in practice, with only one person in one focus group with a connection issue that impacted their participation.

Qualitative data analysis (interview, focus group and survey data)

Analysing qualitative data with open questions and unstructured/semi-structured data requires the development of a structured codebook to organise the data into categories and themes. Prior to analysing the interview and focus group qualitative data, an initial coding framework was developed by the researchers. The codebook was based on an initial review of the research literature. Examples of codes which emerged included 'understandings of the rule', 'applications to lift the rule' and 'balance of rights'. Each transcript was coded in the industry-standard NVivo qualitative analysis software by at least two members of the research team. To promote consistency and consensus between researchers (or in the context of statistical analysis, the phrase inter-rater reliability is used for the same process), a definition of what each code meant was created in a codebook in the NVivo software. To further promote consistency and consensus, the first two transcripts were coded by all team members together. This meant that all team members were collectively trained on the use of the code book. This facilitated the iterative development of the initial research codes based on the actual research data in the first two transcripts, the deletion of some unused codes, and some further definitional updates for codes. Towards the end of the coding process, all team members met again to share their views on the code books and themes, which led to the merging of several codes where there was overlap.

All transcripts were coded using Braun and Clarke's thematic analysis framework, which is a popular interpretative approach to qualitative data analysis.³⁵ This framework is known to promote consistency when coding qualitative data. However, while consistency and consensus are important, it also accentuates the interpretative, rich and reflexive nature

³⁵ Braun, V. & Clarke, V. *Thematic Analysis: A Practical Guide*. (UK: SAGE Publications, 2022).

of qualitative data analysis. In this framework, data analysis is a collaboration rather than a pursuit of reliability with one 'true' version as to what the data means.³⁶

In the presentation of qualitative data, the inclusion of counts/frequencies are problematic.³⁷ One of the key issues associated with the inclusion of frequency and counts in qualitative data is that they can be inconsistent due to the semi-structured nature of the data collection. For example, some participants will talk about an issue that was not significant or relevant to others, and sometimes participants are not definitive in their interpretations and/or recommendations. Qualitative data is meant to provide rich, in-depth descriptions of issues and phenomena, focusing on exploration, meaning-making and experiences.³⁸ The socially constructed nature of the interpretation of this qualitative data means that it is difficult, if not methodologically inconsistent, to present numerical distributions.³⁹ Where feasible in this report, a count of how many participants were of particular viewpoints on issues has been included. However, caution is recommended in drawing definitive conclusions from these counts due to the purposive nature of the sample. Where practicable, data is presented in cohorts: one group of people argued that, but on the other hand, another group of participants understood/ believed something different.

Ethical approvals and permissions

Approvals from research ethics committees were secured from the following institutions, prior to the commencement of the data collection:

1. Social Research Ethics Committee, University College Cork (all phases)
2. Tusla, Child and Family Agency (qualitative data collection with Tusla staff).

Access permission was also secured from the Legal Research and Library Services Subcommittee on Judicial Participation in Research Projects (qualitative data collection with Courts Service participants).

1.8 Limitations

The primary limitation of this study is that children and young people were not included in the data collection. This study set an ambitious data collection strategy to be completed within a relatively short timeframe. The careful planning, ethical considerations, and the design of age-appropriate data collection and analytical methods for children and young people would not have been possible within the allocated timeframe.

³⁶ Byrne, D. 'A worked example of Braun and Clarke's approach to reflexive thematic analysis', (2021) *Quality & Quantity*, 56, pp. 1391-1412.

³⁷ Ritchie, J. & Lewis, J. *Qualitative Research Practice: A Guide for Social Science Students and Researchers*, (UK: Sage, 2003).

³⁸ Flick, U. *The SAGE Handbook of Qualitative Data Analysis*, (UK: Sage, 2014).

³⁹ *Ibid.*

Invitations were sent to a number of support groups for fathers and men; however, they were unable to participate in the study during the data collection period. The number of participants from ethnic groups/backgrounds other than white was small at 2%. The researchers made attempts to address this under-representation during the data collection by contacting civil society groups, with little success.

An anonymous survey was the most efficient and practicable way to collect data from family members on their experiences of the operation of the *in camera* rule in family law and child care proceedings. It was also deemed the most appropriate way to collect this type of information to ensure compliance with the *in camera* rule itself. While an online survey affords privacy and convenience for participants - especially in sensitive family law and child care cases - there are also some drawbacks. First, potential participants with literacy issues may have been unintentionally excluded from the study. Second, a survey supported by qualitative interviews/focus groups with participants would have been optimal in terms of reflecting the authentic experiences of family members of the courts. The research team were contacted by several members of the public who were willing to participate in qualitative interviews; however, this was not pursued for two reasons. First, the study time limit considerations narrowed data collection approaches. Second, the research team were concerned about potentially breaching the *in camera* rule (see data from experienced academics in Chapter Six which supports this concern).

It is not possible to determine the maximum sample size of this population. Overall, the sample size for public family law (child care) cases in this research sample is small, which limits any analysis of this subgroup. Due to the factors listed here and the potential for self-selection bias, no claims are made about the representativeness of the survey data reported.

Finally, for the comparative literature chapter, while there was material available in English on how the law operates in Sweden, it is possible that some of the nuances of the system's operation were unavailable to us, as many of the publications were in Swedish.

Chapter 2: The *in camera* rule in Irish law

2.1 Introduction

Justice is best served in an open court where the judicial process can be scrutinised. In a democratic society, justice must not only be done, but must be seen to be done. Only in this way can respect for the rule of law and public confidence in the administration of justice, so essential to the workings of a democratic society, be maintained.

Per Chief Justice Hamilton, *Irish Times Limited v. Ireland, The Attorney General and His Honour Judge Anthony G. Murphy*⁴⁰

Being a hallmark of a democratic society, the importance attached to having a justice system that is both open and transparent is well recognised. As far back as 1994, the Irish Law Reform Commission in its *Consultation Paper on the Family Courts* noted:

It is increasingly recognised that the absence of any opportunities for external scrutiny of family proceedings, even if it does not in fact affect the quality and consistency of judicial behaviour, creates an unhealthy atmosphere in which anecdote, rumour and myth inform the public's understanding of what goes on in the family court.⁴¹

Before the enactment of the 1937 Constitution, Judges had discretion concerning whether or not a case should be held in public, but only in cases where they were satisfied that either total privacy for the whole or part of any case was absolutely essential to enable justice to be done. As acknowledged by Walsh J. in *re R. Ltd* [1989] I.R. 126,⁴²

It had to be shown that a public hearing was likely to lead to a denial of justice before the discretion could be exercised to hear a case or part of a case other than in public.⁴³

Indeed, an underlying principle of Irish constitutional law is that justice shall be administered in public.⁴⁴ However, the text of Article 34.1 of the Irish Constitution also envisages that there will be exceptional, special and limited cases where a case may not be heard in public which will be 'prescribed by law', a phrase which is largely understood to require express statutory authority. Indeed, a departure from the general rule is also possible under the 'common law power of the Court to regulate its own proceedings' as referred to in *Gilchrist & Rogers v Sunday Newspapers Limited & Ors* [2017] 2 IR 284.

Encapsulated by the words 'otherwise than in public', is a well-established and accepted exception to the general rule, which is reflected in the operation of the *in camera* rule. This section of the report tracks the development of Irish law – both legislation and case law, concerning the phrases 'otherwise than in public' and '*in camera*' in both public and private

⁴⁰ [1989] ILRM 757.

⁴¹ Consultation Paper on Family Courts (Dublin: Government of Ireland Publications, March 1994) para. 7.09.

⁴² *In re R. Ltd*. [1989] I.R. 126, at pp.134 and 135.

⁴³ *Ibid*.

⁴⁴ Article 34 of the Irish Constitution provide "Justice shall be administered in courts, established by Judges, and save in such special and limited cases as may be prescribed by law, shall be administered in public".

family law proceedings with a view to setting the context within which the rule currently operates.

2.2 Legislative provision for the *in camera* rule: a piecemeal approach

The need to keep certain legal matters before the courts out of public view has a long history in Ireland.⁴⁵ While “[t]he rule was designed with the legitimate objective of protecting the privacy of individuals and children involved in family law litigation”, it was never intended that it would “...erect a shield of total secrecy capturing other extraneous interests”.⁴⁶ In the context of public and private family law, a largely piecemeal approach to legislative provision for cases being heard ‘otherwise than in public’ has been taken. Indeed, one of the first pieces of legislation to recognise that family law cases and cases concerning children should be heard in private was the Courts (Supplemental Provisions) Act 1961. According to this Act, justice may be administered otherwise than in public in specified and limited circumstances. In particular, section 45 (1) of the Act states:

Justice may be administered otherwise than in public in any of the following cases:

- (a) applications of an urgent nature for relief by way of habeas corpus, bail, prohibition or injunction;
- (b) matrimonial causes and matters;
- (c) lunacy and minor matters;
- (d) proceedings involving the disclosure of a secret manufacturing process...

Significantly, the wording used by the Oireachtas (Irish Parliament) here suggests that cases which fall under section 45, ‘may’ be held otherwise than in public, implying that the court has discretion as to whether or not to do so. However, before exercising its discretion to exclude the public, the court must decide, based on the merits of each case, as to whether a hearing in the absence of the public is warranted.

One of the earliest leading authorities on this issue was the case of *In Re R Ltd.* [1989] I.R. 126, a company law matter, where High Court orders were made in favour of the respondent company and one of its Directors to have the proceedings heard *in camera* pursuant to section 205, sub-s. 7 of the Companies Act 1963⁴⁷ were successfully challenged in the Supreme Court by the applicant shareholder in the company. The

⁴⁵ After the enactment of the 1937 Constitution, the Emergency Powers Act 1939 (s7) was the first Act which referred to limitations on a public hearing, in that, it allowed for the exclusion of the public from hearings and prohibited the publication or disclosure of information in relation to such a hearing. The long title of the Emergency Powers Act 1939 was an “Act to make provision for securing the public safety and the preservation of the State in time of war, and, in particular, to make provision for the maintenance of public order and for the provision and control of supplies and services essential to the life of the community, and to provide for diverse other matters (including the charging of fees on certain licences and other documents) connected with the matters.” Section 7(1)(a) of the Emergency Powers Act 1939 States that a court may in the public interest “exclude the public or any particular portion of the public or any particular persons or persons from such Court during the hearing or during any particular part of the hearing of such proceedings”. Section 7(1)(b) States that the court may “make an order prohibiting entirely the publication or disclosure of information in relation to such proceedings or any particular part thereof”.

⁴⁶ Rosemary Horgan, Editorial, *Irish Journal of Family Law* 2010, 13(4), 81-82, p82.

⁴⁷ The respondents also obtained a further order prohibiting publication of the contents of the originating documents and affidavits.

Supreme Court refused the application and emphasised the constitutional importance of court proceedings being heard in public except in the most exceptional of circumstances. In such exceptional cases, there should be legislative provisions which make this possible. In elucidating what comprises exceptional in cases of this nature, the Court set down a two-step test:

1. Whether the disclosure of information would be seriously prejudicial to the interests of the company and, if so,
2. Whether a public hearing of the whole or part of the proceedings would prevent justice being done.

Thus, *In Re R* made it clear that in cases which are not of a family law nature, the test to be applied when deciding whether they should be heard otherwise than in public is a strict one and legislation must exist which permits this.⁴⁸ However, this interpretation was developed further in the later case of *Irish Times v Ireland* [1998] 1 IR 359, where the Irish Supreme Court adopted a more flexible approach and found that the existence of a legislative provision is not an absolute prerequisite to a court, in exceptional cases, directing that a matter be heard otherwise than in public. Indeed, the exceptional circumstances which were being considered in this case related to a criminal law matter, where the constitutional right to a fair trial (Article 38) was at issue as highlighted by Hamilton C.J.:

I am satisfied that the exercise of the rights conferred by Article 34.1 can be limited, not only by Acts of the Oireachtas but also by the courts where it is necessary in order to protect an accused person's constitutional right to a fair trial.⁴⁹

This approach was also recommended by the Law Reform Commission in 1998 where it stated that:

...any legislation providing for the civil torts and criminal offences should confer discretion on the relevant court to order that proceedings be held otherwise than in public and/or to place tailored restrictions on publication where, on balance, privacy so warrants.⁵⁰

More recently, the Supreme Court in *Gilchrest and Rogers v Sunday Newspapers Ltd* [2017] 2 IR 284 extended this jurisdiction to include civil cases.⁵¹ O'Donnell J., in considering whether or not the potential harm to another right or interest protected by the Constitution might justify a departure from the general principle that justice be administered in public, looked at the provisions of Article 6.1 of the European Convention on Human Rights 1950 (ECHR). Article 6(1) ECHR provides that a person is, in principle, entitled to a "fair and public hearing" of cases concerning their civil rights and obligations,

⁴⁸ This two-step test has recently been strictly applied in the case of *Re Glenman Corporation Limited* 2024 [IEHC] 304 where an application that proceedings under section 212 of the Companies Act 2014 (oppression of a minority shareholder) should be heard otherwise than in public. It appears from this judgment that only reasons which are extraordinary will be enough to convince the Court that the *In R* test has been satisfied.

⁴⁹ *Irish Times v Ireland* [1998] 1 IR 359 at para. 52, per Hamilton CJ.

⁵⁰ Law Reform Commission, *Report on privacy: Surveillance and the Interception of Communications* (1998), available from: <https://www.lawreform.ie/fileupload/Reports/rPrivacy.htm> (Date accessed: 11 November 2024), p. 117.

⁵¹ This case involved the publication of a newspaper article about the witness protection programme which is operated by An Garda Síochána. The newspaper argued that the *Irish Times* judgment was confined to criminal cases only and the proper test to be applied in civil cases was that found in *In Re R Ltd*. In *Re R*, the court held that a case could only be heard *in camera* if the administration of justice in public, i.e. publicity, would prevent the proper administration of justice between the parties.

with the exception being “where... the protection of the private life of the parties so require” that it be held in private. O’Donnell J. commented:

The formulation in the ECHR makes it clear that while interference with the administration of justice is a ground for permitting a hearing other than in public, it is not the sole ground. There are other areas where it can be said that the exclusion of the public is justified, normally because publicity for proceedings or even access to them would offend important values, many of which are also protected by the Convention and Constitution. The headings in s.45 of the 1961 Act do not themselves identify subject matter where it will be impossible to do justice if a hearing is conducted in public: instead, they identify areas where it is generally believed that a hearing in public provides justice at too high a price for other values considered important. Under the Convention at least, it is not necessary to force cases involving intimate relationships, the affairs of children, or those of people under a disability into the restrictive rubric of demonstrating that justice cannot be done in the individual case, even if that may be a component of a valid and justifiable decision to exclude the public from whole or part of the case.⁵²

O’Donnell J. looked at the rationale underpinning the inclusion of matrimonial causes and minor matters in section 45 of the 1961 Act. O’Donnell J. was of the view that the administration of justice, while ‘certainly a thread running through many of the cases’ cannot explain all the listed exceptions. In particular, in the context of private family law proceedings, he noted:

A couple should not have to go to the lengths of contemplating withdrawing an application for a divorce, separation, or custody of children, to secure a hearing in private, of personal matters. It is true that the interest of administration of justice between the parties is engaged in such a case, but so too is the importance of protecting family life and of avoiding the insult to the dignity of the individual by requiring that intimate matters be aired in a public hearing, with a risk of wider publicity. Conversely, one party to a relationship ought not to be able to bring pressure to bear on the other and perhaps more sensitive, partner by demanding a hearing in public as a constitutional entitlement. In a case where justice cannot be done or cannot be done without damage to important constitutional values, it is appropriate to provide for the possibility of a hearing other than in public, albeit that is a matter for the court to decide whether any departure for the standard of trial full trial in public is required and if so, what measures are the minimum necessary.⁵³

When deciding whether a case should be heard otherwise than in public, O’Donnell J. helpfully outlined a number of guiding principles:

- (i) The Article 34.1 requirement of administration of justice in public is a fundamental constitutional value of great importance.
- (ii) Article 34.1 itself recognises however that there may be exceptions to that fundamental rule;
- (iii) Any such exception to the general rule must be strictly construed, both as to the subject matter, and the manner in which the procedures depart from the standard of a full hearing in public;
- (iv) Any such exception may be provided for by statute but also under the common law power of the court to regulate its own proceedings;
- (v) Where an exception from the principle of hearing in public is sought to be justified by reference only to the common law power and in the absence of legislation, then the interests involved must be very clear, and the circumstances pressing...
- (vi) While if it can be shown the justice cannot be done unless a hearing is conducted other than in public, that will plainly justify the exception from the rule established by Article 34.1, but that is not the only criterion. Where constitutional interest and values of considerable weight may be damaged

⁵² *Gilchrest and Rogers v Sunday Newspapers Ltd* [2017] 2 IR 284 at para 23.

⁵³ *Ibid* at para 41.

or destroyed by a hearing in public, it may be appropriate for the legislature to provide for the possibility of the hearing other than in public, (as it has done) and for the court to exercise that power in a particular case if satisfied that it is a case which presents those features which justify a hearing other than in public.

(vii) The requirement of strict construction of any exception to the principle of trial in public means that a court must be satisfied that each departure from that general rule is no more than is required to protect the countervailing interest. It also means that court must be resolutely sceptical of any claim to depart from any aspect of a full hearing in public. Litigation is a robust business. The presence of the public is not just unavoidable, but is necessary and welcome. In particular this will mean that even after concluding that a case warrants a departure from that constitutional standard, the court must consider if any lesser steps are possible such as providing for witnesses not to be identified by name, or otherwise identified or for the provision of a redacted transcript for any portion of the hearing conducted *in camera*.

As recently confirmed by O'Malley J. in the Irish Supreme Court case of *The People (DPP) v. P.B. and The Attorney General* [2025] IESC 12, the absence of any legislative measure in relation to a particular area of law means:

... that the court should only exercise an inherent jurisdiction to depart from a full hearing in public where it was shown that the interests involved were "*particularly important*" and the necessity was "truly compelling". Any departure from the principle of open justice under Article 34.1 must be exceptional, and therefore strictly construed and applied.⁵⁴

Hogan *et al.* had expressed concerns in relation to the general application of the *in camera* rule in family law matters in the context of Article 34.1 and the need for justice to be administered in public:

Notwithstanding any potential inherent jurisdiction to waive the *in camera* rule, concerns surrounding the usual application of the *in camera* rule in family law proceedings, including on the basis that the practice of hearing of all family law cases in private even where a mere discretion to do so has been conferred by statute would not seem to conform with the requirements of Article 34.1 as interpreted by such cases as *Re R* and *Irish Press*. These cases suggest that the court must make its own independent judgment as to whether the facts of the case before it require that the hearing (or part of the hearing) be *in camera*.⁵⁵

However, it is important to note that section 45 of the Courts (Supplemental Provisions) Act 1961 predates modern family and child law legislation, which for the most part provides that such matters must be heard 'otherwise than in public' and, as such, does not provide that element of initial discretion to the court.⁵⁶

⁵⁴ *The People (DPP) v. P.B. and The Attorney General* [2025] IESC 12 at para.77.

⁵⁵ Hogan, Whyte, Kenny and Walsh, Kelly, *The Irish Constitution* (5th edition) (Dublin: Bloomsbury, 2018), para 6.1.347. They also note that more recent legislative reform has ameliorated this position *ibid*, para 6.1.348.

⁵⁶ In the context of private family law proceedings, Section 25 of the Family Law (Maintenance of Spouses and Children) Act 1976, provides that proceedings under that Act "shall be heard otherwise than in public". Similarly, s. 33(2)(b) of the Family Law Act 1995, provides that a court may hear and determine an application to dispense with the age of marriage or notice of marriage requirements "otherwise than in public". Section 34 of the Judicial Separation and Family Law Reform Act 1989 provides "Proceedings under this Act shall be heard otherwise than in public." "Divorce proceedings are required to be heard otherwise than in public" by virtue of section 38(5) of the Family Law (Divorce) Act 1996, which applies section 34 of the Judicial Separation and Family Law Reform Act 1989 to such proceedings. Section 54(6) of the Adoption Act 2010 States "Proceedings under this section shall be heard in private". Section 23 of the Domestic Violence Act 2018 provides (1) Subject to section 40 of the Act of 2004 and section 26 (1), civil proceedings under this Act shall be

2.3 Child care proceedings

The requirement that child care proceedings are to be held otherwise than in public is believed to serve the best interests of the children involved so that they are protected from the harmful effects of publicity. However, Shannon and Gibbons have observed that the

... maintenance of a shroud of secrecy around child care cases does not necessarily mean that the interests of minors are always protected as well as they can be as practices which may need overhauling are shielded from scrutiny.⁵⁷

Moreover, the family and personal rights of parents and guardians are also engaged, as is the integrity of the child care proceedings system more generally. In respect of child care proceedings specifically, section 29(1) of the Child Care Act 1991 provides: "Proceedings under Part III, IV or VI shall be heard otherwise than in public".⁵⁸

The body of case law concerning the operation of the *in camera* rule in child care proceedings is varied, as it seeks to provide some clarity on the operation of the rule in different contexts. For example, the issue of accessibility to court-ordered reports was considered in the case of *S (M) v. Judge Gibbons* Judicial Review M.S. V. Judge Conal Gibbons & A. C. & The Health Service Executive [2007] IEHC 218. This case arose from a judicial review where the applicant was seeking an order of mandamus from the court to compel the Health Service Executive (HSE) and others to give him a copy of a 16-page s.20 report prepared for the District Court in the context of applications for custody and access made by him. During the course of guardianship, custody and access proceedings, the court ordered that a s.20 report as to the welfare of the children be compiled for the court to assist in the context of its decision-making. The applicant, a lay litigant, was facilitated in viewing the report for two hours under the supervision of a member of staff in the District Court office. He was not permitted to take notes, and he alleged that the staff member who was present was typing loudly which affected his ability to view the document. The applicant successfully applied for judicial review, seeking to compel the respondent to provide him with a copy of the report and seeking to prohibit the respondent from making a decision until the applicant was provided with a copy of the

heard otherwise than in public. Sections 56 (12), 119 and 122 of the Succession Act 1965, provide that disputes pertaining to the appropriation of the family home, provision for spouses and children and dispositions for the purposes of disinheriting spouses and children, "shall be heard in chambers".

⁵⁷ Shannon, G. and Gibbons, N., *Report of the Independent Child Death Review Group 2000-2010* (DCYA, 2012) available from:

https://www.dcy.gov.ie/documents/publications/Report_ICDRG.pdf (Date accessed: 17/09/2018), p.394.

⁵⁸ The Rules of the Superior Courts took effect from 21st March 2018 and inserted a new Order 65A entitled "Special Care of Children". Order 65A, rule 2 appears to provide for a judicial discretion as to attendance at hearings of special care proceedings (emphasis added):-

2.(1) Only officers of the Court, the parties and their legal representatives, witnesses and such other persons as the Court may allow shall be permitted to be present at the hearing of special care proceedings.

(2) The Court may, if it thinks it proper to do so, order any witness who is not a party to the special care proceedings to leave the Court either until his or her evidence is required or after his or her evidence has been given." Order 65A, rule 13(1) further provides as follows:-

"A person referred to in section 29(5) of the 1991 Act intending to attend any special care proceedings in the Court to which the 1991 Act applies or to seek access to any relevant court documents, for the purpose of the preparation of a report of such proceedings, the publication of a report prepared in accordance with section 29(5)(a) and, where relevant, section 29(5A), of the 1991 Act or the publication of a decision of the Court in any such proceedings in accordance with section 29(5) and, where relevant, section 29(5A), shall, prior to or at the commencement of the hearing of any special care proceedings at which such person wishes to attend, identify himself or herself to the Court and apply for such directions as the Court may give under section 29(5) or section 29(5A) of the 1991 Act."

report. Murphy J., in confirming that the *in camera* rule extended to documents, such as reports prepared for a court, granted the applicant access to the report. However, he refused to allow him to have a copy of the report. In doing so, the Judge made clear that for the purposes of being given copies of reports, a distinction had to be made between lawyers acting for parties who were subject to professional disciplinary proceedings if they breached the *in camera* rule and lay litigants, who were not. He determined that lay litigants are entitled to reasonable access to the report before and on the hearing date and this included being allowed to take notes as well as some degree of privacy.⁵⁹ The Judge also suggested that a lay litigant should be able to cross-examine the author of the report in such cases as well as be able ‘... to have the report examined by an expert or other interested party on application to the Judge hearing the matter’.⁶⁰

The case of *HSE v LN & others*⁶¹ is instructive on several fronts. It arose as a result of a case stated from O’Leary J. in the District Court to the High Court.⁶² Birmingham J. in the High Court confirmed that the publication of material which leads to children being identifiable as having been the subject of care proceedings is a breach of the *in camera* rule under section 31 of the Child Care 1991 Act⁶³, regardless of whether or not there was an intention to breach the rule:

⁵⁹ The Judge confirmed that the level of privacy given in such cases should equate to an invigilator in an examination context. The supervision was to ensure that the documents did not leave the confines of the courthouse. While specific to guardianship, custody and access proceedings, where child welfare or child’s views reports are prepared under s32 (1(a)) and s32(1)(b) respectively, s32(4) of the Guardianship of Infants Act 1964 provides that the parties ‘shall be given’ a copy of the report as well as the child, subject to certain considerations. However, in practice, this provision has been limited in the main to reading reports a) under the supervision of a member of staff of the Courts Service for a period of time in cases where the party is a lay litigant or b) together with legal counsel. Parties are generally not allowed to take a copy of the report to read in their own time. There are exceptions to this practice however, at the discretion of the Judge concerned.

These provisions were inserted into the Guardianship of Infants Act 1964 by Section 63 of the Children and Family Relationship Act 2015. A copy of a report under Section 32 (1)(a) [in respect of a court-ordered welfare report or child’s views report] may be provided in evidence in the proceedings and shall be given to—

(a) the parties to the proceedings concerned, and
(b) subject to subsection (5), if he or she is not a party to the proceedings, to the child concerned. (5) In determining whether a report obtained under subsection (1)(a) should be furnished to the child to whom it relates, the court shall have regard to the following:

(a) the age and maturity of the child and the capacity of the child to understand the report;
(b) the impact on the child of reading the report and the effect it may have on his or her relationship with his or her parents or guardians;
(c) the best interests of the child;
(d) whether the best interests of the child would be better served by the furnishing of the report to the parent, guardian, next friend of the child or an expert appointed under subsection (1)(b), rather than to the child himself or herself.

District No. 20 Mallow, Fermoy & Midleton: In The Matter Of Section 32.1 (A /B) Of The Guardianship Of Infants Act 1964 & In The Matter Of S.I. 587 Of 2018; Practice Direction DC25 For District No. 20 Mallow, Fermoy & Midleton District Courts, In The Matter Of Section 32.1 (A /B) Of The Guardianship Of Infants Act 1964, In the Matter of S.I. 587 Of 2018, <https://www.courts.ie/content/district-no-20-mallow-fermoy-midleton-matter-section-321-b-guardianship-infants-act-1964> (Date accessed:13/11/24).

⁶⁰ [2007] 3 IR 785 at p. 790. [2007] IEHC 218.

⁶¹ [2012] IEHC 611. In February 2011, Judge O’Leary from Cork District Court found that the editors of three newspapers were in breach of the *in camera* rule for publishing material tending to disclose the result of child care proceedings that were brought by the HSE in relation to twins. A fine of €1000 was imposed upon each despite the fact that the editors had acted in good faith by seeking legal advice on whether they could publish the material or not. When the editors sought to appeal the decision, Judge O’Leary sought the opinion of the High Court on a number of questions, including whether or not intention was a requirement to be found in breach of the *in camera* rule. Justice Birmingham in the High Court confirmed that mens rea was not an essential element to find someone guilty of breach.

⁶² This case Stated was pursuant to section 2 of the Summary Jurisdiction Act 1857 as amended by s51 of the Courts Supplemental Provisions Act 1861, Judge O’Leary of the District Court – 8th June 2011.

⁶³ Section 31 of the Child Care Act 1991 provides:

...it is clear beyond argument that it would be quite unacceptable to publish that the twins identified there by name, had been the subject of child care proceedings in the District Court and as a result of the outcome of the proceedings were now in the care of the HSE. Such publication would clearly breach s31 of the Child Care Act 1991, which prohibits the publication of any material likely to lead members of the public to identify a child who is or has been the subject of child care proceedings and would also be a contempt of court. It seems to me quite unreal to regard publication of the fact that a child had been taken into care as the publication of a purely formal matter. Whether a child is or is not taken into care as a result of court proceedings is a matter of profound significance and cannot possibly be regarded as material that was purely formal.⁶⁴

Birmingham J. was of the opinion that, given the amount of other information relating to the twins that had been disclosed, it would be possible for the general public to piece together all of this information to identify the twins, something which is currently referred to amongst professionals as jigsaw identification.

In relation to the issue of breach of the *in camera* rule more generally, Birmingham J. was of the view that, of the reported cases that the courts have dealt with, contempt was dealt with very leniently. Indeed, where an apology is given and an additional assurance that there will be no repetition as well as an acceptance that an error has been made by the guilty party, a court would take no further action. However, in cases where this is not the case, the court must apply a more serious penalty.

The case of the Health Service Executive v McAnaspie [2011] IEHC 477⁶⁵ was one of the first cases in the context of child care proceedings to explore the potential for lifting the *in camera* rule and paved the way for a more flexible approach in respect of sharing information which is subject to the *in camera* rule. Birmingham J. confirmed that there was no absolute embargo on the publication of information from *in camera* proceedings and the court was ultimately bound by the concept that the paramount consideration is to do justice. In his judgment, Birmingham J. quoted Barr J. in *Re: R. Ltd.*:

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- (1) No matter likely to lead members of the public to identify a child who is or has been the subject of proceedings under [Part III](#), [IV](#) or [VI](#) shall be published in a written publication available to the public or be broadcast.
 - (2) Without prejudice to *subsection (1)*, the court may, in any case if satisfied that it is appropriate to do so in the interests of the child, by order dispense with the prohibitions of that subsection in relation to him to such extent as may be specified in the order.
 - (3) If any matter is published or broadcast in contravention of *subsection (1)*, each of the following persons, namely—
 - (a) in the case of publication in a newspaper or periodical, any proprietor, any editor and any publisher of the newspaper or periodical,
 - (b) in the case of any other publication, the person who publishes it, and
 - (c) in the case of a broadcast, any body corporate who transmits or provides the programme in which the broadcast is made and any person having functions in relation to the programme corresponding to those of an editor of a newspaper, shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,000 or to imprisonment for a term not exceeding 12 months or both.
 - (4) Nothing in this section shall affect the law as to contempt of court.
 - (5) In this section—"broadcast" means the transmission, relaying or distribution by wireless telegraphy of communications, sounds, signs, visual images or signals, intended for direct reception by the general public whether such communications, sounds, signs, visual images or signals are actually received or not; "written publication" includes a film, a sound track and any other record in permanent form (including a record that is not in a legible form but which is capable of being reproduced in a legible form) but does not include an indictment or other document prepared for use in particular legal proceedings.

⁶⁴ [2012] IEHC 611 at para.45.

⁶⁵ This case emerged in the aftermath of the tragic death of Daniel McAnaspie in 2010 and a concern by his next-of-kin, Cathriona McAnaspie, that the reports that had been prepared by Daniel's guardian *ad litem* during his time in the care of the Health Service Executive may have shed some light on why he died. Cathriona, his sister, sought to have access to the guardian *ad litem* reports which were subject to the *in camera* rule.

In considering a conflict between the public interest or the interest of a person seeking disclosure on the one hand, and the interest of an individual in retaining the full benefit of the *in camera* rule on the other hand, the court is bound by the concept that the paramount consideration is to do justice.⁶⁶

In this case, the HSE accepted that children and families who participate in child care proceedings have a legitimate interest in understanding how decisions that affect their welfare are reached and that there is a legitimate public interest in ensuring that the bodies responsible for taking children into care are accountable. Nonetheless, on the facts of this case, the HSE argued that the District Court does not have jurisdiction to waive or modify the *in camera* rule. The rule that proceedings are to be held otherwise than in public is there to protect the rights of the child and to ensure that details of the private life of the child may not find their way into the media, perhaps to be dealt with in a sensationalist or even salacious fashion. Nonetheless, Birmingham J. confirmed that the District Court has a general power to lift the *in camera* rule in such cases where the interest of justice requires it. This is an approach that is arguably in accordance with the jurisprudence of the European Court of Human Rights as it ensures that the least restrictive approach is taken in respect of privacy, and it facilitates judicial oversight of matters.

More recently, in the context of special care proceedings, the Child Care (Amendment) Act 2011 (Section 10) introduced a system for detention in special care by the High Court.⁶⁷ This amended the Child Care Act 1991 by inserting Section 23 NH under Part IVA. It provides: "Proceedings under this Part shall be heard otherwise than in public." In the case of *The Child and Family Agency v T.N. & Anor* [2018] IEHC 568, Justice Reynolds had to consider whether or not, as a matter of statutory construction, s. 23NH of the 1991 Act, as amended, imposes a mandatory obligation that the proceedings be held *in camera*, or whether the Court retains a residual discretion to permit the attendance of non-parties.⁶⁸ This case arose as the amendments to s29 of the 1991 Act (which provide for some exceptions to the *in camera* rule) do not apply to High Court special care proceedings, and the court had to consider the jurisprudence of the higher courts to determine whether or not it had discretion to allow third parties to attend. S. 23NH of the 1991 Act, as amended, provides that proceedings under this part "shall be heard otherwise than in public." The parties to the underlying action, (The Child and Family Agency, the mother of the child subject to proceedings, and the Guardian *ad litem*), had no objection to the application and agreed the court could use its discretion to permit *bona fide* members of the press and reporting legal practitioners to attend the proceedings. In granting access, Judge Reynolds confirmed that the best interest of the child was paramount in such proceedings, but it was also important and in the public interest that there be transparency, particularly in terms of how the Child and Family Agency discharges its functions. Reynolds J. held that the court retained discretion to lift the *in camera* rule and that the provisions of s. 23NH of the 1991 Act, as amended, did not impose a mandatory obligation that such proceedings be held *in camera*. Reynolds J. held

⁶⁶ [1989] IR 126 cited in [2011] IEHC 477 at para. 30

⁶⁷ S. 10 substituted a new Part IVA for the one inserted by s. 16 of the 2011 Act.

⁶⁸ In the case of *The Child and Family Agency v T.N. & Anor* [2018] IEHC 568, an application was brought by the Child Care Reporting Project (now Child Law Project) and an academic researcher to permit their attendance in court for proceedings under Part IVA of the Child Care Act 1991, as amended, in order to facilitate them in conducting research into child care proceedings.

that the Court must have the power to lift the *in camera* rule in such proceedings in order to deliver an interpretation that was in accordance with Article 6 ECHR.

In the case of *The Child and Family Agency v K.B.* [2018],⁶⁹ the High Court was asked to consider whether an application for a special care order must be heard “otherwise than in public” or whether it could be dealt with by way of reporting restrictions. Humphreys J. took the view that the importance of public justice as a constitutional principle is such that a court should be slow to read a statutory provision like the one at issue in an absolute manner incapable of legitimately flexible and discretionary application, while always remaining sensitive to the confidential nature of the subject matter of the proceedings. On that basis, the court decided to read the relevant provision set out in s. 23NH of the 1991 Act allows a court to have discretion to impose reporting restrictions rather than requiring an *in camera* hearing. Humphreys J. held that this approach involves reading “otherwise than in public” as meaning “otherwise than fully in public”, so as to allow the possibility of the protection of the confidentiality of the proceedings to be secured in a particular case by means, such as reporting restrictions, rather than closing the doors of the court, even if the latter is the general approach in practice in a particular category of cases.

2.4 Family law proceedings

Family law cases have long been seen as ‘shut off from the world at large’.⁷⁰ The Joint Committee on Marriage Breakdown in its 1985 report gives some insight into the key motivations behind having family law cases otherwise than in public:

The reasons why family proceedings are dealt with in private, sometimes referred to as *in camera*, is that frequently evidence in the cases refers to personal and intimate aspects of the parties’ lifestyle. If such matters were dealt with in open court, many who have a just cause of action might be deterred from proceeding further. One of the fears often expressed to lawyers at an initial consultation is that the marital difficulties will become public knowledge. *In camera* hearings do, however, have a detrimental side-effect. Public scrutiny is the natural enemy of arbitrariness and injustice in a legal system. Our courts, while hearing family cases, have operated without this salutary check. When decisions are made in private, members of the general public can often misunderstand what takes place in the court. This can diminish confidence in the fairness of the administration of justice in this particular field.⁷¹

The ongoing practical challenges associated with the operation of the rule with respect to information concerning family law proceedings were signalled in the *Sixth Report of the Working Group on a Courts Commission* in 1998:

...the operation of the *in camera* rule has hidden from the public at large the extent of marriage breakdown and consequent family law litigation in our society. This can, for instance, prevent public

⁶⁹ IEHC 513; High Court, Humphreys J; 17 September 2018.

⁷⁰ *K v K* [2004] IESC 21, 5, 12. McGuinness J.

⁷¹ Committee on Marriage Breakdown, *Joint Committee Report on Marriage Breakdown*, 1985 at para. 9.16. available from: http://archive.oireachtas.ie/1985/REPORT_27031985_1.html (Date accessed:11/11/24).

representatives and the public at large from evaluating properly the situation, such as the need for the provision of support services to aid couples whose marriages are in difficulty.⁷²

The working group recommended that a qualified solicitor or barrister should record and report on family law decisions with a view to compiling family court statistics for publication on a regular basis. The reporter, who could attend cases with the consent of the parties only, could not publish any identifying information of the parties in the proceedings and they would report to the Courts Service.⁷³ Significantly, while the requirement to gain the consent of the litigants partly rendered this project unworkable in practice, it was the legal advice of Senior Counsel at that time that the legislative regime actually did not permit third parties attend family law proceedings, even with the permission of the parties. The latter led to the project coming to an end.⁷⁴

The operation of the *in camera* rule has often been justified by those that support it on the basis that it provides strong protection and assistance to the family and children's rights within the family. Suggestions have been made that publicity, or the threat of publicity, could serve to inhibit access to justice and justice between the parties to the proceedings. Furthermore, "[v]ictims of domestic violence would be inhibited in seeking protection if they had to run the gauntlet of publicity in seeking a remedy from the courts".⁷⁵ The argument has also been made that publicity, or the threat thereof could affect the dynamics of some disputes and be used as a tactic in negotiations to the detriment of the vulnerable party and the children of the marriage. Indeed, Horgan has argued that "[t]he total removal of the *in camera* rule in favour of a presumption of "openness" would seriously deter vulnerable litigants from exercising their right of access to the courts to seek protective remedies in family law situations".⁷⁶ Interestingly, in a 2005 qualitative study conducted by Egan⁷⁷ which sought to explore anecdotal evidence that fathers are not treated fairly in the Irish family courts system, it was found that only a minority of participants felt the *in camera* rule should be abolished:

The majority believed that the sensitivity of family law proceedings makes it important to retain the privacy element, although a majority also suggested that it was important that reporting of proceedings takes place. Therefore, it is not the holding of proceedings in private that they have issue with but rather the lack of reporting of cases and lack of information available that appears problematic.⁷⁸

⁷² Working Group on a Courts Commission, *Sixth Report* (Dublin: Government Publications, November 1998) 72, available from: <https://courts.ie/acc/alfresco/e5c33f6d-5c57-4bf0-b586-92c66746ff29/6th%20Report%20WGCC%20conclusion.pdf/pdf#view=fitH> (Date accessed: 11/11/24).

⁷³ Working Group on a Courts Commission, *Sixth Report Conclusion-Summary*, p.35, available from: <https://courts.ie/acc/alfresco/d871dde4-c70f-419d-80b3-2a27289e8fad/6th%20Report%20WGCC%20summary.pdf/pdf#view=fitH> (Date accessed: 11/11/24).

⁷⁴ This was the first ever family law reporting initiative conducted in Ireland prior to that conducted by Carol Coulter in 2006.

⁷⁵ Coulter C., *Family Law Reporting Project: Report to the Board of the Service* (Dublin, Courts Service, 2007) p. 5.

⁷⁶ Horgan R., Shannon, G. and Gallagher B., *Reform Of The In camera Rule - A Sensitive Balancing Act*, *The Bar Review* 2002, 7(5), 278-281 at p. 279.

⁷⁷ Rosemary Horgan, Editorial, *Irish Journal of Family Law* 2010, 13(4), 81-82 at p.82.

⁷⁸ Dr Anne Egan, "The *In camera* Rule: A Barrier to Transparency or a Necessity in Irish Family Law?", *Irish Journal of Family Law* 2012, 15(3), 59-70. 40 interviews were conducted over a period of one year which involved 11 solicitors, three barristers, two mediators, 10 fathers and 14 mothers, both separated and unmarried.

⁷⁹ Dr Anne Egan, "The *In camera* Rule: A Barrier to Transparency or a Necessity in Irish Family Law?", *Irish Journal of Family Law* 2012, 15(3), 59-70, p.67.

Abbott J. in the High Court case of J.D. v. S.D. [2013] IEHC 648 outlined a number of reasons for the existence of the *in camera* rule in divorce proceedings specifically:

- (1) To protect the privacy of the parties in circumstances where matters of a private and sensitive nature are disclosed in the evidence.
- (2) To protect the welfare of minor children who are often affected by divorce proceedings.
- (3) To protect the assets of the parties which might be adversely affected by the disclosure of the proceedings through the heading, manoeuvring, bad faith or sheer panic of those who may have commercial relations with them (including creditors).
- (4) To ensure that a confidential atmosphere is maintained which has the effect of improving disclosure of details of assets and income.

Case law concerning the *in camera* rule and family law proceedings has provided some insights into understandings of the parameters of the rule. For example, in the case of M.P. v A.P. [1996] 1 I.R. 144, the defendant's father had made a complaint to the Psychological Society which resulted in confidential matters arising out of judicial proceedings being shared.⁷⁹ Laffoy J. held that the phrase,

Section 34 of the Act of 1989 is mandatory and, in accordance with that provision these proceedings, ... being proceedings under the Act of 1989, have been held otherwise than in public. In submitting to the Society the documentation he submitted with his letter dated the 9th May 1995, in my view, the defendant divulged to a section of the public, the staff and officers of the Society, confidential matters which arose in the proceedings and which s. 34 requires should be kept confidential and private to the parties to the proceedings and the court, and in doing so contravened section 34.⁸⁰

Thus, the defendant's complaint to the Psychological Society contravened the *in camera* rule as a result.

In the case of PSS v JAS & Independent Newspapers (Ireland) Ltd (unreported, HCt, Budd K) 22nd May 1995,⁸¹ Budd J. referred to "...an established practice at common law recognised in England and in this jurisdiction" which permitted the dissemination of material from an *in camera* hearing. Such dissemination was discretionary where it was in the interests of justice to do so, and where due and proper consideration had been given to the interests of the person or persons intended to be protected by the conduct of the proceedings *in camera*. He acknowledged that, in given circumstances, a crucial public interest such as the prosecution of a crime or the protection of vulnerable children could outweigh the importance of the *in camera* rule. Barr J. later confirmed this in the case of Eastern Health Board (EHB) v. Fitness to Practice Committee of the Medical

⁷⁹ The background to the case is that a husband and wife, as part of a settlement arrived at in judicial separation proceedings, agreed that future disputes regarding access to their children would be mediated by the applicant, a psychologist. A dispute then arose regarding access, with the result that court proceedings were taken by the defendant-husband. The applicant wrote a letter in which he expressed certain views to which the defendant-husband took exception. The defendant-husband then made a complaint to the Psychological Society of Ireland. The Society asked the applicant to provide his comments on the complaint.

⁸⁰ M.P. v A.P. [1996] 1 I.R. 144 at p.154.

⁸¹ The defendant in this case was found to be in contempt of court for breaching the *in camera* rule and also for scandalising the court by circulating a false, emotive and mischievous impression of a judgment given in an *in camera* Child abduction case. The court found that lack of intention or knowledge is no excuse, though it may have a great bearing on the punishment which the court will inflict. The test is whether the matter complained of is calculated to interfere with the course of justice, not whether the authors and printers intended that result.

Council [1998] 3 IR 399⁸² which is recognised as the leading case on whether the *in camera* rule is absolute or if there are circumstances in which the court can permit disclosure. Barr J. was of the opinion that even a mandatory imperative contained in family law legislation did not prevent the Court from exercising a discretion to permit disclosure of protected information in circumstances where justice requires that disclosure be made. This case arose as a result of an inquiry from the Medical Council's Fitness to Practice Committee which made orders directing the EHB to make available to it the medical records relating to the children in question. The EHB was granted leave to seek judicial review on the grounds that these medical records were the subject matter of *in camera* proceedings before the Court and so couldn't be released. Barr J. refused the EHB the relief it had sought and directed it to make discovery of the documents. He held that a statutory imperative that proceedings of a particular nature be held in private did not imply that there was an absolute embargo on the disclosure of evidence in all circumstances. In the course of his judgment, he distinguished the case of *M.P. v. A.P.*, specifically pointing out that the issue in that case concerned unauthorised disclosure and, as a result should not be interpreted as implying that there was an absolute embargo on a professional body preventing it investigating matters protected by the *in camera* rule. Barr J. then went on to set out ten principles of general application which he believed to represent the law in Ireland, having regard to Irish and U.K. case-law including, in particular, the seminal decision of the Supreme Court in *Re R. Limited* [1989] I.R. 126:

(1) Court proceedings relating to the alleged abuse of children are normally held *in camera*. This is authorised by Article 34.1 of the Constitution of Ireland, 1937, as an exception to the general rule that justice shall be administered in public.

(2) The primary reason for the *in camera* rule in such cases is to provide protection for minors from harmful publicity arising out of the disclosure of evidence and other related matters in protected proceedings.

(3) A statutory imperative that proceedings of a particular nature be held in private (as provided, for example, by s. 5 of the Punishment of Incest Act, 1908) does not imply that there is an absolute embargo on disclosure of evidence in all circumstances. Such an embargo requires specific statutory authority to displace judicial discretion at common law to permit disclosure in appropriate circumstances. If an absolute embargo on the publication of evidence adduced in the course of *in camera* proceedings in all circumstances were implied from a mandatory requirement that such proceedings be held in private, then grievous harm could be done to public and private interests and to the pursuit of justice. For example, if in the course of proceedings *in camera*, it was established that a witness was guilty of perjury or some other crime, the trial Judge would be unable to refer the matter to the Director of Public Prosecution with a view to having a criminal prosecution brought against the wrongdoer. Likewise, if it emerged in evidence protected by the rule that a professional witness, or a lawyer acting in the case, was guilty of professional misconduct, the trial Judge would be inhibited in referring the matter to the offender's professional body for investigation. It would also follow if there was an absolute embargo that a child concerned in such proceedings would be spencealed in pursuing claims which he or she might have for damages arising out of evidence protected by the *in camera* rule, notwithstanding that the primary purpose of the rule in such cases is to protect the minor. A major far-reaching change in the law, which sets aside established practice, could not arise merely by implication derived from a mandatory statutory requirement that certain proceedings shall be held in private but, in my view, would require specific statutory authority.

⁸² This case arose out of a decision by the Medical Council's Fitness to Practice Committee to carry out an investigation into the fitness to practice of Dr Maura Woods against a background of alleged professional misconduct or incompetence on her part, following her examination of a number of children who had allegedly been sexually abused.

(4) I [Barr J.] have been unable to discover any specific statutory provision in Irish law which provides that there is an absolute embargo in all circumstances on the publication of information deriving from proceedings held *in camera*.

(5) There is an established practice at common law recognised in England and in this jurisdiction (see *P.S.S. v. Independent Newspapers (Ireland) Ltd.* (Unreported, High Court, Budd J., 22nd May 1995) that the Court in proceedings held *in camera* has a discretion to permit others on such terms as the Judge thinks proper to disseminate (and in appropriate cases to disseminate himself/herself) information derived from such proceedings where the Judge believes that it is in the interests of justice so to do, due and proper consideration having been given to the interest of the person or persons intended to be protected by the conduct of the proceedings *in camera*. In given circumstances the Judge may find that a crucial public interest, such as the prosecution of crime or the protection of vulnerable children, takes precedence over the interest of the protected person in non-disclosure of the information in question.

(6) In considering a conflict between the public interest or the interest of a person seeking disclosure on the one hand, and the interest of an individual in retaining the full benefit of the *in camera* rule on the other hand, the court is bound by the concept that the paramount consideration is to do justice – see *In re R. Ltd.* [1989] I.R. 126.

(7) The use of evidence emanating from an *in camera* hearing in other legitimate proceedings where the public interest or the interest of the protected person or some other interested party requires, includes not only related litigation in court but also other non-judicial proceedings such as a statutory inquiry by a professional body into complaints made to it about a professional negligence or incompetence of one of its members – see *A County Council v. W.* [1997] 1 F.L.R. 574.

(8) It is a contempt of court for any person to disseminate information derived from proceedings held *in camera* without prior judicial authority.

(9) Some of the legislative provisions relating to *in camera* proceedings require mandatory privacy and in others it is a matter for the presiding Judge to decide whether the proceedings shall be heard in private. In my opinion that distinction relates only to the particular proceedings and whether or not the presiding Judge has any discretion therein in deciding on the imposition of the *in camera* rule. It does not affect in either case the exercise by the court of its discretion to permit the subsequent disclosure of *in camera* information in the interest of justice, the achievement of which, as previously stated, is its paramount obligation. In short, whether the *in camera* rule applies mandatorily or by way of judicial discretion does not affect the authority of the court to permit disclosure of protected information where justice requires that disclosure should be made.

(10) If justice requires disclosure of information protected by the *in camera* rule, the court should take all reasonable steps to protect the interest of minors and others who are intended to have the benefit of the rule in the given case. The court has power, as an incidence of its discretion to permit disclosure of protected information, to impose such terms in that regard as it deems necessary in the circumstances.

Murphy J., in the case of *R.M. v D.M.* [2000] 3 I.R. 373, adopted a stricter interpretation in the context of judicial separation proceedings. He held that the law did in fact imply an absolute embargo on the production of information which derived from, or was introduced in, proceedings protected by section 34 of the Judicial Separation and Family Law Reform Act, 1989. As a result, such information could not be the subject matter of investigation in an inquiry by a professional body without the consent of the court. Murphy J. concluded that while there was some discretion given to the court in relation to the *in camera* rule in minor matters, the rule in relation to judicial separation was mandatory.⁸³ Thus, this case outlined a distinction between private and public family law matters in terms of the application of the *in camera* rule. The position concerning the use of *in camera* material

⁸³ [2000] 3 I.R. 373 at 386.

in other legal proceedings,⁸⁴ has since been clarified under sections 40 (6)⁸⁵ to section 40 (9) of the Civil Liability and Courts Act 2004.⁸⁶

In *D.X. v Judge Buttimer* [2012] IEHC 175, Hogan J. explained section 34 of the 1989 Act in the following terms:

... the exception prescribed by s.34 of the Act of 1989 must be taken as reflecting a desire by the Oireachtas to protect other constitutional values in the context of family law proceedings such as the right to privacy (Article 40.3.1), the authority of the family (Article 41) and the protection of the constitutional rights of children (Article 42.5). It is in that context that s. 34 of the act 1989 falls to be interpreted.⁸⁷

The more recent case of *D.O.R. v B.O.R.*,⁸⁸ saw O'Hanlon J. in the High Court apply the paramouncy test of doing justice as determined by Barr J. in *Eastern Health Board v Fitness to Practice Committee* [1998] 3 I.R. 399. The paramouncy test refers to a situation where while a Judge may determine that a crucial public interest takes precedence over the interest of the protected person in non-disclosure of the information in question, in such circumstances, the paramount consideration of the court is to do justice.

Hague Abduction Proceedings

The *in camera* rule also applies in the context of Hague Abduction proceedings and covers any orders made and documents produced in respect of these proceedings. This raises

⁸⁴ This includes the production of documents, the giving of information or evidence and order disclosure of documents, and the use of information or evidence connected with or arising in the course of the proceedings to third parties.

⁸⁵ (6) Nothing contained in an enactment that prohibits proceedings to which the enactment relates from being heard in public shall operate to prohibit the production of a document prepared for the purposes or in contemplation of such proceedings or given in evidence in such proceedings, to—

(a) a body or other person when it, or he or she, is performing functions under any enactment consisting of the conducting of a hearing, inquiry or investigation in relation to, or adjudicating on, any matter, or
(b) such body or other person as may be prescribed by order made by the Minister, when the body or person concerned is performing functions consisting of the conducting of a hearing, inquiry or investigation in relation to, or adjudicating on, any matter as may be so prescribed.

⁸⁶ S40 (7) provides that "Nothing contained in an enactment that prohibits proceedings to which the enactment relates from being heard in public shall operate to prohibit the giving of information or evidence given in such proceedings to—

(a) a body or other person when it, or he or she, is performing functions under any enactment consisting of the conducting of a hearing, inquiry or investigation in relation to, or adjudicating on, any matter, or
(b) such body or other person as may be prescribed by order made by the Minister, when the body or person concerned is performing functions consisting of the conducting of a hearing, inquiry or investigation in relation to, or adjudicating on, any matter as may be so prescribed".

S40 (8) provides that "A court hearing proceedings under a relevant enactment shall, on its own motion or on the application of one of the parties to the proceedings, have discretion to order disclosure of documents, information or evidence connected with or arising in the course of the proceedings to third parties if such disclosure is required to protect the legitimate interests of a party or other person affected by the proceedings". S40 (9) provides that "A hearing, inquiry or investigation referred to in subsection (6) or (7) shall, in so far as it relates to a document referred to in subsection (6) or information or evidence referred to in subsection (7), be conducted otherwise than in public and no such document, information or evidence shall be published".

⁸⁷ *D.X. v Judge Buttimer* [2012] IEHC 175.

⁸⁸ [2017] IEHC 429. The applicant wife brought divorce proceedings against her husband, the respondent. At the same time, other proceedings were in being concerning the family home of the parties—including equity proceedings and others involving the respondent and Ulster Bank Limited. It was agreed that these terms of settlement were subject to a confidentiality clause over and above the principles provided in the *in camera* rule, to the extent that the terms would not be referred to or be made known at any stage in the proceedings relating to the family home. The respondent later issued a motion seeking relief pursuant to s.40(8) of the Civil Liability and Courts Act 2004. He sought liberty to disclose the abovementioned settlement terms from the divorce case to his legal advisors in the proceedings between him and Ulster Bank Limited—allowing him to discuss these terms with the separate solicitors he had instructed in the equity and banking suits.

interesting questions in cases where the other jurisdiction involved has no equivalent to the *in camera* rule, with family law proceedings being heard in open court. This situation arose in the case of *K. v. E.* [2024] IEHC 43 and was recently addressed by Gearty J.. The father in this case made a second application for the return of his two children to Sweden – his daughters were already the subject of family law proceedings in Sweden and in that context, the children were routinely identified.⁸⁹ The respondent mother in the proceedings argued that the father had breached the *in camera* rule by giving a copy of the judgment from the first case before the Irish courts to the Principal of the school where the girls were attending. This resulted in the identities of the children and the parties being revealed to the school Principal. Significantly, Gearty J. noted that “the privacy afforded by an Irish court hearing is lost when the same children are habitually resident in Sweden where the related facts must, necessarily, be heard also”.⁹⁰ She also noted that while the court does not condone such actions, it does seek to understand the impact on the children as a result of the breach. In this particular case, the children were already identifiable in related Swedish proceedings and, as a result, “the horse has bolted”.⁹¹

Non-matrimonial family law case

Finally, in the case of *S.M. v. S.L.* [2022] IEHC 44, a case not of a matrimonial nature, Butler J. had cause for examining the scope of the *in camera* rule’s application. Butler J. confirmed that “the court has an inherent or common law jurisdiction to hear a matter in private notwithstanding the general constitutional principle that justice should be administered in public”. Justice Butler noted that this jurisdiction may only be exercised in special cases where the interests are very clear and the circumstances very pressing. Before deciding as to whether or not a case should be heard *in camera*, the court must be satisfied that constitutional interests or values of considerable weight may be damaged or destroyed by a public hearing. In making this determination, the court is required to examine the nature of the interest relied on as well as the extent to which it is likely to be damaged by a public hearing. In addition, if there are other measures which would adequately protect the interests in question without hearing a case *in camera*, these should be given due consideration by the court. Moreover, the threshold that the applicant must meet in order to establish that the application should be heard *in camera* notwithstanding the constitutional imperative as regards the administration of justice in public is a high one.⁹²

An excerpt from the judgment of Butler J. is instructive and worth noting in this context. It highlights an underlying issue with the *in camera* rule which is that societal thinking concerning family law matters has moved on significantly over the last few decades, and in today’s world of misinformation, a great deal of public importance is placed on the need

⁸⁹ The same girls were wrongfully retained by the same Respondent in Ireland in 2022. A return Order was made by this Court in December, and they returned to Sweden. See *J.K. v. L.E.* 2022 IEHC 733. In that first case, the Respondent had brought the girls to Ireland for a holiday and then refused to return them to their home.

⁹⁰ *K. v. E.* [2024] IEHC 43 at para.10.4.

⁹¹ *Ibid* at para.10.7.

⁹² [2022] IEHC 44 at para 22.

for transparency in the administration of justice, particularly in family and child care proceedings:

In circumstances where marital breakup is now relatively common and the fact that spouses separate or divorce is no longer a matter of public scandal, the need to have this category of case heard exclusively behind closed doors such that the public does not have a realistic understanding of how the courts approach family law matters has been questioned by academics and others. Nonetheless the understanding that “family law matters” will and should be dealt with *in camera* remains deeply ingrained.⁹³

2.5 Children’s rights

While clearly a strength of the *in camera* rule has been to protect the right to privacy of children, arguably, the potential for the operation of the rule to negatively impact the enjoyment of children’s rights extends beyond this. Indeed, it is significant that to date, the extent to which the other rights of children in Ireland are potentially impacted by the operation of the *in camera* rule has received very limited attention. For example, as far back as 2013, the Office of the Ombudsman for Children highlighted the importance of including the views of children and young people who are impacted by family law and child care proceedings when considering reform of the Courts Bill 2013, facilitating media reporting. In April 2022, as part of a multi-phased consultation with family justice system users, practitioners, academics and civil society organisations designed to inform the plan for a reformed family justice system, the Department of Justice together with the Participation Team within the Department of Children, Equality, Disability, Integration and Youth (DCEDIY) developed a bespoke consultation process for children and young people with experience of family justice in Ireland. The consultation aimed to gain an insight into the views and perspectives of children and young people on how a reformed family justice system could support their needs.⁹⁴ While a number of themes concerning reform emerged from the consultation process, access to clear child-appropriate information about what is happening at home and in the context of family law decision-making processes was the main message emanating from the children and young people. Children referred to the need to have their voices listened to and to have trusted individuals speak on their behalf. However, while the desk-top based review of the literature revealed that privacy and anonymity are important for children and young people in the context of family law proceedings affecting them, the *privacy or in camera* rule itself was not the focus of the consultation with children and young people in Ireland.

A 2007 study in the UK entitled *The views of children and young people regarding media access to family courts*⁹⁵ is instructive in this regard. This 2007 study comprised a

⁹³ *Ibid* at para 21.

⁹⁴ Fullerton D., and McGrellis S., Report on the Consultations with Children and Young people for the Family Justice Oversight Group (Ireland: Department of Justice, April 2022), See <https://www.gov.ie/pdf/?file=https://assets.gov.ie/240556/60a80de6-39d2-4342-a572-19c8dee661b9.pdf#page=null> (Date accessed: 31/03/2025).

⁹⁵ Brophy, J., The views of children and young people regarding media access to family courts (Children’s Commissioner for Children, 2010).

consultation with over 200 children and young people concerning media attendance at public and private family law cases. It highlighted several concerns on the part of children and young people about media reporting on their case. It was significant that a number of the children consulted felt that in individual cases, the Judge should consult with any impacted children before exercising its discretion and granting permission for media to report on any given case.⁹⁶

In the Irish context, there is a notable absence in legal and policy debates, reform proposals and the key literature in this area of any discussion of the potential implications for the operation of the *in camera* rule on the rights of children.⁹⁷ While this is not surprising given that the origins of the rule pre-date the current international and domestic legal frameworks which govern children's rights in Ireland, it is problematic when considering the current children's rights context.

At the international level, the UN Convention on the Rights of the Child 1989 (CRC), to which Ireland is a party since 1992, sets out minimum legal standards pertaining to children's rights. In particular, in the context of legal proceedings involving children, the CRC recognises that in the context of legal proceedings, the best interests principle shall be a primary consideration (Article 3) and the children capable of forming views shall have the opportunity to express those views either directly/indirectly with due weight being afforded those views in accordance with the age and maturity of the child (Article 12).⁹⁸ Article 42 A of the Irish Constitution 1937, adopted in 2015, sets out constitutional obligations with respect to these international provisions in both public and private family law proceedings:

Article 42 A. 4.1 explicitly states that

4 1 Provision shall be made by law that in the resolution of all proceedings—

- i. Brought by the State, as guardian of the common good, for the purpose of preventing the safety and welfare of any child from being prejudicially affected, or
- ii. Concerning the adoption, guardianship of, custody of, or access to, any child,

the best interests of the child shall be the paramount consideration.

2 Provision shall be made by law for securing, as far as practicable, that in all proceedings referred to in subsection 1° of this section in respect of any child who is capable of forming his or her own views, the views of the child shall be ascertained and given due weight having regard to the age and maturity of the child.⁹⁹

⁹⁶ Brophy, J., The views of children and young people regarding media access to family courts (Children's Commissioner for Children, 2010).

⁹⁷ McCaughren S., Holt, S., Parkes A., Gregory, S., Research report on guidance on contact time for infants and young children in separated families (Dublin: One Family, December 2022) See <https://onefamily.ie/wp-content/uploads/2022/12/FINAL-Research-Report-from-TCDUCC-Infant-Contact.pdf> (Date accessed: 17/02/2025). Child Law Clinic, UCC, Ascertaining the Views of Children in Guardianship, Custody and Access Proceedings in Ireland. <https://www.ucc.ie/en/media/academic/law/2023x2f2024/20242025/AscertainingtheViewsofChildreninGuardianshipCustodyandAccessProceedingsinIrelandJanuary2025Copy.pdf> (Date accessed: 17/02/2025).

⁹⁸ UN Convention on the Rights of the Child 1989, 20 November 1989, General Assembly resolution 44/25. <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child> (Date accessed: 12/02/2025).

⁹⁹ Further detail is provided in respect of each of these areas through the Children and Family Relationships Act 2015 and the Child Care Act 1991 (as amended).

Thus, it is clear that within the current domestic legal framework, the best interests principle must be the paramount consideration in guardianship, custody and access proceedings and child care proceedings, and the voice of the child must be considered in all such cases where children are capable of forming views.

In cases where there is an identified risk to a child which has come to the attention of the courts or State bodies, to ensure that the best interests of children are appropriately protected in such cases, it is critical that any information should be shared in a timely manner, and access thereto should not be delayed unnecessarily due to a need to apply to lift the *in camera* rule, not least due to potential risks to the child but also, in light of the rapid speed of child development. Related to this is the need for other bodies to have access to *in camera* protected information concerning a child in investigations of the Office for the Ombudsman for Children (OCO). However, the advice of the OCO provided on the Courts Bill 2013¹⁰⁰ noted the impact of the *in camera* rule:

...on the capacity of statutory bodies with powers to conduct inquiries to access *in camera* information. Ss.40(6) and 40(7) of the 2004 Act are meant to ensure that statutory bodies with powers to conduct inquiries, investigations and hearings have the power to access *in camera* material. This has been very important for the Ombudsman for Children in particular since this Office deals with a large volume of complaints relating to the child care system.¹⁰¹

Related to this is the fact that in order to have a true insight into the best interests of the child, it is imperative that the court has input from the child themselves. Indeed, from a practical point of view, in order to be able to authentically participate, the children must be provided with child friendly and relevant information concerning the decision to be made.¹⁰² In this respect, the UN Committee on the Rights of the Child, the international monitoring body for overseeing the implementation of the CRC has stated that all processes where children should be heard and participate should be:

Transparent and informative - children must be provided with full, accessible, diversity-sensitive and age-appropriate information about their right to express their views freely and their views to be given due weight, and how this participation will take place, its scope, purpose and potential impact.¹⁰³

Currently, under a strict interpretation of the *in camera* rule, any discussion of information pertaining to the court proceedings with individuals who are not party to the proceedings, which would include children, would be considered a breach. This arguably impacts the ability of children and young people to exercise their right to be heard authentically in such cases.

In order to ensure that children's rights are effectively protected in public and private family law proceedings are protected to the greatest extent possible, it is critical that there is transparency in terms of how those rights are protected in practice. While in recent years

¹⁰⁰ Ombudsman for Children's Office, Advice of the Ombudsman for Children on the Courts Bill 2013 (June 2013).

¹⁰¹ Ibid at para. 1.8.

¹⁰² This requirement is based on a holistic reading of the UN Convention on the Rights of the Child 1989 and the indivisible nature of children's rights. Moreover, the General Comment on Article 12 as provided by the UN Committee on the Rights of the Child makes it clear that "Article 13, on the right to freedom of expression, and article 17, on access to information, are crucial prerequisites for the effective exercise of the right to be heard" (UN DOC. CRC/GC/12 at para.80).

¹⁰³ UN Committee on the Rights of the Child, General Comment on the Right of the Child to be Heard (2009) UN DOC. CRC/GC/12 at para. 134 (a), 20 July 2009.

the Child Law Project has shone a light on how child care proceedings operate in practice, there has been limited transparency with respect to how children's rights are protected in private family law cases, specifically, where they are not party to such cases.

2.6 Legislative exceptions

Reconciling the individual's right to privacy with the overarching right to freedom of the press and open justice is a difficult task. The increasingly popular view is that privacy must generally yield to freedom of speech and open justice in the interest of democratic principles. Justice has to be done and to be seen to be done in any democratic country. This principle casts a dark shadow over the mandatory application of the *in camera* rule in family law and child care cases in Ireland.¹⁰⁴

Indeed, Coggins has suggested that based on the "constitutional imperative" that justice should be done, and be seen to be done, all cases should be dealt with in public, with consequent reporting of cases not only by way of Court reporting, but also in the media.¹⁰⁵ This could result in all judgments and statistics being made freely available, as well as the pertinent details of the cases themselves.¹⁰⁶ This may help counteract the "... perception of unfairness and the notion that they may have been discriminated against by the family law courts in general".¹⁰⁷

While the parameters of the *in camera* rule have been largely left up to the judiciary to delineate, the exceptions to the rule's application are much clearer since they are legislatively enshrined. Specific legislative amendments have been made over time to facilitate a slight relaxation of the *in camera* rule to permit certain categories of persons to attend and report on these legal proceedings to improve transparency. The reason for reporting is to 'increase public confidence in the judicial system by partially removing the veil which often hangs over such cases'.¹⁰⁸ Reporting provides insights into the operation of the court system (and State agencies in child care proceedings such as the Child and Family Agency). It promotes transparency while simultaneously protecting the rights of litigating parties to privacy, confidentiality and anonymity. This is in line with the constitutional imperative of the public administration of justice while respecting one's constitutional right to privacy. Indeed, as Craven Barry has pointed out, "...the enactment of statutory provisions which permit researchers and bona fide members of the press to attend court... promotes compliance with Article 34.1 of the Constitution of Ireland, 1937 and Article 6(1) of the European Convention on Human Rights".¹⁰⁹

¹⁰⁴ Rosemary Horgan, Editorial, *Irish Journal of Family Law* 2010, 13(4), 81-82, p. 82.

¹⁰⁵ Stephanie Coggans, *The In camera Rule - Time For Change?* *Irish Journal of Family Law* 2001, 4(1) p. 1-2.

¹⁰⁶ *Ibid.*

¹⁰⁷ *Ibid.*

¹⁰⁸ Dáil Debates 09 July 2013, vol 810, no 1, 64-79. Debate related to second stage reading of the Courts and Civil Law (Miscellaneous Provisions) Bill 2013, available from: <https://www.oireachtas.ie/en/debates/debate/dail/2013-07-09/28/> (Date accessed:24/01/2025).

¹⁰⁹ Craven Barry, C., *Transparency In Family And Child Law Proceedings: Disentangling The Statutory Techniques And Terminology* [2019] *Irish Judicial Studies Journal* Vol 3 102.

The Courts and Civil Liability Act 2004¹¹⁰ was the product of a number of reports in the 1990s including the Law Reform Commission *Consultation Paper on Family Courts*¹¹¹ and the *Working Group on a Courts Commission Report*.¹¹²

Section 40(3) of the 2004 Act provides a list of the categories of persons who are entitled to apply to attend family law proceedings. However, the anonymity of the parties must be preserved at all times. This section provides:

Nothing contained in a relevant enactment shall operate to prohibit—

the preparation by a barrister at law or a solicitor or a person falling within any other class of persons specified in regulations made by the Minister and publication of a report of proceedings to which the relevant enactment relates,

or

the publication of the decision of the court in such proceedings, in accordance with rules of court, provided that the report or decision does not contain any information which would enable the parties to the proceedings or any child to which the proceedings relate to be identified and, accordingly, unless in the special circumstances of the matter the court, for reasons which shall be specified in the direction, otherwise directs, a person referred to in paragraph (a) may, for the purposes of preparing such a report, attend the proceedings subject to any directions the court may give in that behalf.

While the only persons expressly mentioned under s.40(3)(a) are solicitors and barristers, other persons are also permitted to access the family law courts subject to regulations made by the Minister for Justice and Equality.¹¹³ Section 40 of the Civil Liability and Courts Act 2004 also consolidated what had already been established in the case law which is that any information, evidence and documents generated for and in *in camera* proceedings may be produced as evidence before a body or person conducting a hearing or adjudicating under statute on any matter. If so produced, the hearing concerned shall be held *in camera* insofar as it relates to that evidence, and that evidence cannot be published.

Despite the changes introduced by the 2004 legislation, it was felt that it did not “...do enough to recalibrate the balancing mechanism necessary for achieving a fair disposition between the competing rights to privacy of the individual and the public right to open justice ...”.¹¹⁴

¹¹⁰ As amended by the Civil Law (Miscellaneous Provisions) Act 2008 s 31.

¹¹¹ Law Reform Commission, *Consultation Paper on Family Courts* (Dublin: Government of Ireland Publications, March 1994) available from: <https://www.lawreform.ie/fileupload/consultation%20papers/cpFamilyCourts.htm> (Date accessed: 16/04/2025).

¹¹² Working Group on a Courts Commission, *Sixth Report* (Dublin: Government Publications, November 1998) available from: <https://courts.ie/acc/alfresco/e5c33f6d-5c57-4bf0-b586-92c66746ff29/6th%20Report%20WGCC%20conclusion.pdf/pdf#view=fitH> (Date accessed: 11/11/2024).

¹¹³ On July 12, 2005, the Minister signed various orders further relaxing the rule to include the categories of persons specified in the regulations, who may write to the Minister seeking approval to attend family law proceedings. The categories of persons who may apply to attend family law courts under S.I. No. 337 2005 include: family mediators, persons engaged in family law research, and persons engaged by the Courts Service to prepare court reports of proceedings.

¹¹⁴ Rosemary Horgan, *Editorial*, *Irish Journal of Family Law* 2010, 13(4), 81-82, p82.

The *in camera* rule was amended under the Child Care (Amendment) Act 2007 to facilitate the reporting of child care proceedings.¹¹⁵ Since 2012, the Child Law Project¹¹⁶ has been reporting on these proceedings, publishing volumes of court reports examining specific cases, and producing analytical reports examining trends and themes relating to the operation of these proceedings. Irwin has noted there was trepidation at the beginning of this project regarding an exception to the *in camera* rule permitting reporting:

There is surely a degree of fear present when it comes to the lifting of the *in camera* rule. Families involved in such court proceedings and members of the legal profession will need to adjust to this new era. Essentially, we will be relying on the quality of reporting by the members of the media to maintain the standard and the dignity of those utilising the justice system for such sensitive matters.¹¹⁷

The seminal work and success of the Child Law Project has contributed greatly to transparency, and public and professional knowledge of public child care law proceedings. There has been extensive, supportive public and professional commentaries on their most recent report.¹¹⁸

The 2013 Courts and Civil Law (Miscellaneous Provisions) Act,¹¹⁹ which opened the family courts up to *bona fide* representatives of the media, allows the media access into court with the aim of introducing greater transparency in the administration of family and child care law.¹²⁰ However, in practice, the legislation sets restrictions on what can be published, it provides the courts with far-reaching powers to limit reporting, and provides for severe penalties for breaching the terms of the legislation – up to €50,000 in a fine and three years in jail for both journalists and media executives who publish prohibited material. Unsurprisingly, since its enactment, there has been limited media attendance at family law proceedings. Possible reasons for this include the potential attraction of a fine

¹¹⁵ A Family Law Reporting Pilot Project was set up in October 2006 and ran for over two years, ending "...partly because of Ireland's economic crash, resulting in a 40 per cent cut in funding for the Courts Service, and it has not been replaced by anything similar".¹¹⁵

¹¹⁶ Child Law Project, available at: <https://www.childlawproject.ie> (Date accessed: 16/04/2025).

¹¹⁷ Irwin, K. (2014) Column: Behind the veil – a new era has begun for Family Courts, *TheJournal.ie*. Available from: <https://www.thejournal.ie/readme/behind-the-veil-%e2%80%93-a-new-era-has-begun-for-family-courts-1265246-Jan2014> (Date accessed: 10 November 2024).

¹¹⁸ See, for example, *Falling Through the Cracks: An Analysis of Child Care Proceedings from 2021 to 2024* (Corbett and Coulter, 2024).

¹¹⁹ This Act was introduced to amend the Civil Liability and Courts Act 2004 and the Child Care Act 1991. Part 2 of the Courts and Civil Law (Miscellaneous Provisions) Act 2013 amended section 39 and 40, and part 3 of the Civil Liability and Courts Act 2004, as well as different sections 2, 29, 31 of Child Care Act 1991, and sections 18, 30 and 31 of Adoption Act 2010. Part 2 of the Courts and Civil Law (Miscellaneous Provisions) Act 2013 provides for the attendance at court of *bona fide* representatives of the press. The Act provides that the press may be present at family law cases and may report on them. The reports must not include any information likely to identify the parties involved or any children to whom the cases relate. It will be a criminal offence to publish such information. The courts will be able to exclude or restrict the presence of members of the press from all or part of the proceedings, where this is necessary, in the following circumstances:

- To protect the anonymity of the parties to the proceedings or any children to whom the proceedings relate
- Because of the nature and circumstances of the case or
- In the interests of justice

The court will also have the power to order that certain evidence given in family law cases not be published or broadcast. Before making an order on press attendance or publication of information, the court must consider the views of any of the parties involved. It must also take account of the views of any child involved in the case if that child is able to express such views.

¹²⁰ Joint Committee on Justice and Equality, *Report on Reform of the Family Law System*, Dublin: Government publications (October 2019) p.13.

for a misstep in reporting as well as some of the issues highlighted by Horgan who suggested that:

In reality, the press tend to concern themselves with “high profile” or “newsworthy” cases, rather than the “average” case. The press is a commercial enterprise and can flourish only by selling newspapers. Therefore, opening the family law courts to the press will not necessarily achieve the intended goal of providing the public with information about the ordinary workings of the family law courts. This goal is better achieved by regular, responsible law reporting as, for example, in the family law reporting project which has unfortunately now ceased completely.¹²¹

This was confirmed by the Joint Oireachtas Committee on Justice and Equality on Reform of the Family law system in 2019 when it acknowledged that

Since its enactment five years ago, there has been little media attendance at family law proceedings, and virtually no media organisation has the resources to provide comprehensive coverage.¹²²

Indeed, Coulter has also made the point that the reporting of family law cases:

One of the lessons from the Courts Service Pilot Project was the sheer mundanity of most family law proceedings – though of course they are not mundane to the people involved. In judicial separation or divorce proceedings two issues are mainly in dispute: property, usually the family home and maintenance of the dependent spouse and children; and custody of and access to children. Under both the Judicial Separation and the Divorce Acts the behaviour of the parties cannot be introduced into family law proceedings unless it would be contrary to the interests of justice to exclude it. This happens very rarely.¹²³

Indeed, has Coulter also suggested there is a need for a dedicated reporting body to perform a reporting role in family law proceedings:

... In my opinion, the only way to ensure balanced and systematic reporting of all family law proceedings is by way of a dedicated reporting body that can attend a representative sample of cases, staying with complex cases through repeated adjournments and publishing the exchanges between the parties’ lawyers, Judges and witnesses, as well as the court’s conclusions. Such a body should apply a Protocol that ensures the protection of the anonymity of the parties and therefore filters out any identifying information before it reaches the public domain.¹²⁴

¹²¹ Rosemary Horgan, *Editorial*, Irish Journal of Family Law 2010, 13(4), 81-82, p82.

¹²² Joint Committee on Justice and Equality, *Report on Reform of the Family Law System*, Dublin: Government publications (October 2019) p.26.

¹²³ Coulter C., Child care law reporting without tears, available from: <https://www.childlawproject.ie/events/child-care-law-reporting-without-tears/> (Date accessed: 11/11/2024). Coulter has reiterated this point more recently where she acknowledges:

Not alone might they have to face an application from lawyers for a party seeking their exclusion on any of the wide range of grounds available, then having to instruct their own legal representatives to argue for their right to attend, they would also have to possess the superhuman ability to be aware of “other information” that might be out there, which, put together with the report, could lead to identification.

Breaching these conditions could lead to fines of up to €50,000, or three years in jail, or both. It is small wonder that, to my knowledge, there has not been a single media report of divorce or legal separation proceedings in the decade since the enactment of the legislation.

See Coulter C., Seen to be Done, Law Society Gazette of Ireland, December 2024, <https://www.lawsociety.ie/gazette/in-depth/2024/december/seen-to-be-done/> (Date accessed: 13/02/2025).

¹²⁴ Coulter, C. (2019) *Child Law Project*. Available at: <https://www.childlawproject.ie/wp-content/uploads/2019/03/CCLRP-regional-report-2019-FINAL.pdf> (Date accessed: 11 November 2024).

In the recent case of *A.X. v B.X. (Unapproved)* [2023] IECA 109 (05 May 2023)¹²⁵, the parameters of sections 40 (6), 40 (7) and 40 (8) of the Courts and Civil Liability Act 2004 were the subject of discussion. In the High Court, Barrett J. held that the disclosure of *in camera* documentation was impermissible without the leave of the Court. Mr X. argued that the leave of the Court was not required in relation to documentation provided pursuant to ss.40(6) and (7) of the Civil Liability Act 2004. The Court of Appeal held that ss.40 (6) and (7) allowed disclosure of *in camera* documentation to certain bodies for specified purposes, i.e. in relation to where there is a hearing, enquiry or investigation, or for the purpose of giving evidence. On the other hand, s.40 (8) allows the Court to direct a party to disclose *in camera* documentation in order to protect the legitimate interests of a party or other parties affected by the proceedings- i.e. the Court's leave is required for a release pursuant to s.40 (8) but not for the purposes required for in s.40 (6) and (7). On appeal, the Court of Appeal referred to the decision of Butler J. where she stated that s.40 established two different pathways through which *in camera* material might become available and be used outside the parameters of the case in which it originated, with which the Court of Appeal agreed. The Court of Appeal allowed Ms. X's solicitors to send a copy of the judgment to their PI insurers, which fell within the definition of protecting their 'legitimate interests'. It held that the husband's decision to provide the documentation to the Solicitors Disciplinary Tribunal/LSRA was permitted under ss.40(6) and (7). Most recently, s.40 of the 2004 Act has been amended to allow the sharing of documentation from *in camera* proceedings without the leave of the court.¹²⁶

2.7 McKenzie friend

The possibility of a third party – referred to as a 'McKenzie friend' being allowed to attend family law or child care proceedings to support a lay litigant has received some attention in Irish case law. With its origins rooted in an English case called *McKenzie v McKenzie*,¹²⁷ a McKenzie friend refers to a friend in court present with the litigant, taking notes and quietly giving advice in certain circumstances. In the Irish case of *R.D. v. District Judge McGuinness*,¹²⁸ a case of judicial review, the applicant had sought "[a] declaration that the Applicant when acting in person is entitled to be accompanied in court by a friend who may take notes on his behalf and quietly make suggestions and assist him generally

¹²⁵ The husband, who appeared to be unrepresented, had made a complaint about his wife's solicitors to the Law Society and the LSRA. The husband provided a copy of an unredacted version of the judgment of the High Court to the Solicitor's Disciplinary Tribunal and also to the LSRA. The wife had no difficulty with the copy being provided to the Solicitor's Disciplinary Tribunal, but it objected to the same being provided to the LSRA, and she also wanted permission to disclose a copy of the judgment to her Solicitors' PI insurers.

¹²⁶ S. 56 of the Courts and Civil Law (Miscellaneous Provisions) Act 2023 amends section 40 of the Act of Civil Liability and Courts Act 2004 by the insertion of the following subsection after subsection (7):

"(7A) The leave of a court shall not be required for—

(a) the production of a document in accordance with subsection (6), or

(b) the giving of information or evidence in accordance with

subsection (7)."

¹²⁷ [1971] P.33; [1970] 3 W.L.R. 472; [1970] 3 All E.R. 1034.

¹²⁸ [1999] 2 I.R. 411. In the District Court, the applicant was defending a barring application brought by his wife under the Domestic Violence Act 1996 ("the 1996 Act"). At the commencement of the hearing, the applicant's wife objected to the attendance of his McKenzie friend. The 1996 Act requires that barring applications to be heard "otherwise than in public".

during the hearing". Macken J. was asked to assess whether he considered that section 16 of the Domestic Violence Act 1996 [as it then was], which required that proceedings be held "otherwise than in public", essentially meant that such proceedings should take place *in camera*. At the commencement of the hearing, the applicant's wife objected to the attendance of his McKenzie friend. However, the District Judge considered that the District Court Rules 1997 gave the court discretion as regards who could be present during barring applications. Order 59, rule 3 of the District Court Rules 1997 provides that:

[p]roceedings under the Act shall be heard otherwise than in public, and only Officers of the Court, the parties and their legal representatives, witnesses ... and such other persons as the Judge shall in the exercise of his discretion allow, shall be permitted to be present at the hearing.

In this case, the District Judge opined that the applicant was a very articulate person and would not be prejudiced by representing himself without the assistance of a McKenzie friend. He also noted that the Court was very experienced in protecting lay litigants in family law proceedings, even where the other party was legally represented. Macken J. stated the following:

I would be reluctant to find that the long standing view of the legislature that all matters of a matrimonial nature, including Barring Orders or any other relief sought under the Domestic Violence Act, 1996, are to be heard otherwise than in public, ought to be set aside or modified in favour of the attendance in Court of a member of the public, as a "McKenzie friend", unless there were overwhelming evidence that a fair hearing could not be secured by the Applicant, the Applicant having a Constitutional right to such a hearing.

Taking these facts into consideration, Macken J. held that no evidence had been adduced to warrant setting aside the clear and mandatory wording of the 1996 Act and observed that the very attendance of a McKenzie friend would run counter to the requirement to hold such proceedings "otherwise than in public".

More generally, Section 40(5) of the Civil Liability and Courts Act 2004 provides that "Nothing contained in a relevant enactment shall operate to prohibit a party to proceedings to which the enactment relates from being accompanied, in such proceedings, in court by another person subject to the approval of the court and any directions it may give in that behalf". However, this provision does not guarantee the appointment of a McKenzie friend in all cases as was seen in the case of *K. v. K.* [2010] IEHC 416 where a wife refused to testify and had asked her son to testify on her behalf, the son was appointed as a McKenzie friend in the court of first instance. In this case, McMenamin reversed the earlier ruling and stated: "a McKenzie friend should be a person who should be detached, objective and of real assistance to a party."¹²⁹ Significantly, the Domestic Violence Act 2018 provides for an accompaniment in domestic violence cases, but this is at the discretion of the Judge (see below on domestic violence). In particular, Section 26 of the Domestic Violence Act 2018 provides that:

an applicant may, in addition to being accompanied by his or her legal representative (if any), be accompanied in court by an individual (including a support worker) of his or her choice. "support

¹²⁹ [2010] IEHC 416 at para.42(f).

worker” means a volunteer of, or an individual employed under a contract of service or under a contract for services by, an organisation which provides support to victims of domestic violence.

The court may refuse to allow an applicant to be accompanied in court by a particular individual at any stage in the proceedings which relate to the applicant if the court considers that it would not be in the interests of justice for the individual concerned to accompany, or continue to accompany, the applicant and where the court so refuses it shall give reasons for such refusal.

2.8 Breach of the *in camera* rule in family law and child care proceedings

To date, no systematic records exist concerning breaches of the *in camera* rule and what types of sanctions are applied in such cases. Breach of the *in camera* rule in family law proceedings appears to be dealt with under the contempt of court jurisdiction of the courts. However, because this is not explicit, it has been left up to the Judges as a matter of interpretation. For example, in *R.C. v K.E.* [2018] IEHC 548, Noonan J. considered the case of *M.P. v. A.P.* cited above and applied it to the case before him:

As Laffoy J. has pointed out the court is entitled to take whatever steps it considers appropriate to protect its processes in the event of such a breach occurring and such steps I am satisfied include, if necessary, the striking out of a claim which is brought in breach of the rule and on foot of an abuse of process.¹³⁰

In the context of child care proceedings specifically, where the Court determines that a breach of section 31(1) of the Child Care Act 1991 has occurred,¹³¹ those responsible “...shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,000 or to imprisonment for a term not exceeding 12 months or both” under Section 31 (3) of the Child Care Act 1991.¹³² The Child Care Act 1991 provides that the law on contempt of court is also relevant in cases where there is a breach of the *in camera* rule since section 31(4) states that “[n]othing in this section shall affect the law as to contempt of court”. Part 2 of the Courts and Civil Law (Miscellaneous Provisions) Act 2013¹³³ prohibits the reporting of information likely to identify the parties to the proceedings or any children to whom the proceedings relate, breaches of which is deemed a criminal offence and those found guilty of the offence may be liable to a fine to a maximum limit of €50,000 and or a term of imprisonment up to 3 years. The manner in

¹³⁰ *R.C. v K.E.* [2018] IEHC 548 at para.7.

¹³¹ Section 31(1) of the Child Care Act 1991 provides: no matter likely to lead members of the public to identify a child who is or has been the subject of proceedings under Part III, IV or VI shall be published in a written publication available to the public or be broadcast.

¹³² Section 31(3) provides

If any matter is published or broadcast in contravention of subsection (1), each of the following persons, namely:

(a) in the case of publication in a newspaper or periodical, any proprietor, any editor and any publisher of the newspaper or periodical,
(b) in the case of any other publication, the person who publishes it, and
(c) in the case of a broadcast, any body corporate who transmits or provides the programme in which the broadcast is made and any person having functions in relation to the programme corresponding to those of an editor of a newspaper, shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,000 or to imprisonment for a term not exceeding 12 months or both.

¹³³ The Courts and Civil Law (Miscellaneous Provisions) Act 2013 (Commencement) Order 2014 was signed by Minister Alan Shatter to bring this Act into force.

which these provisions are applied in practice is a matter for the Judge to determine based on the facts concerning the breach before them.

2.9 Other categories of cases and the *in camera* rule

The case law to date has also highlighted the challenges associated with the *in camera* rule when third parties have a particular interest in being directly involved in a family law matter. A relatively recent case which arose in the context of section 194 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 is that of *D. v. B.* [2021] IEHC 407. In this case, the adult children of the deceased wished to attend *in camera* proceedings in order to allow them to dispute that the applicant had an ‘intimate and committed relationship’ with their father. If she were successful in this claim, it would allow her to claim against his estate as a cohabitant. In considering their claim, the Twomey J. found he had no discretion to permit the children to attend the proceedings:

the Oireachtas, as the elected law maker, has set down very limited exceptions to the *in camera* rule. In this Court's view, it is not the role of an unelected Judge to seek to expand those exceptions. Thus, while one can sympathise with the adult children regarding what they view to be unfounded claims in relation to their father, this Court does not believe that it would be an appropriate exercise of its powers to seek to, in effect, expand the category of exceptions to the *in camera* rule to include adult children who dispute a cohabitation claim against their parent's estate. If any such expansion of the exceptions to the *in camera* rule is to be made, it is, in this Court's view, a matter for the Oireachtas.

The *in camera* rule also has an important role outside of private and public family law proceedings and these will be briefly considered next.

2.10 Criminal law proceedings

In 2023, Egan and O'Malley Dunlop produced a report which explored *the Intersection of Criminal Justice, Private Family Law and Public Law Child Care Processes in Relation to Domestic and Sexual Violence* specifically.¹³⁴ Significantly, this report noted that there are:

...considerable differences between criminal proceedings and civil proceedings as far as the nature of those restrictions [required by the *in camera* rule] are concerned. In criminal proceedings involving alleged offences pertaining to sexual violence, the various governing statutes provide that the public may be excluded from the courtroom during the conduct of the proceedings...¹³⁵

A considerably more rigorous form of the *in camera* rule is found in the two civil law systems in question which are regulated by statutes providing that the court processes shall be conducted

¹³⁴ Egan, Nuala & O'Malley Dunlop, Ellen, "A Report on the Intersection of the *Criminal Justice, Private Family Law and Public Law Child Care Processes in Relation to Domestic and Sexual Violence*" [2023], *Department of Justice and National Women's Council*, available from:

https://www.nwci.ie/images/uploads/NWC_DoJ_DSV_Justice_Report.pdf (Date accessed: 01/06/2024).

¹³⁵ Egan, Nuala & O'Malley Dunlop, Ellen, "A Report on the Intersection of the *Criminal Justice, Private Family Law and Public Law Child Care Processes in Relation to Domestic and Sexual Violence*" [2023], *Department of Justice and National Women's Council*, par. 2.1.2, available from:

https://www.nwci.ie/images/uploads/NWC_DoJ_DSV_Justice_Report.pdf (Date accessed: 01/06/2024).

'otherwise than in public'. It is a contempt of court to disclose what went on in court although... certain statutory exceptions have now been created.¹³⁶

In criminal law cases which involve alleged sexual offences, the general rule is that hearings shall be heard 'otherwise than in public', and the victim's identity should be protected through anonymity.¹³⁷ The public is excluded from the courtroom with the exceptions of "officers of the courts, persons directly concerned in the proceedings, *bona fide* representatives of the Press and such other persons (if any) as the Judge, the justice or the court, as the case may be, may in his or its discretion permit to remain".¹³⁸ In exceptional cases, "the Judge, the justice or the court, as the case may be, shall exclude from the court all persons except officers of the court and persons directly concerned in the proceedings".¹³⁹ The latter provisions are "without prejudice to the right of (a) a parent, relative or friend of the complainant or, where the accused is not of full age, of the accused, or b) a support worker chosen by the complainant, to remain in court".¹⁴⁰

In terms of protecting the anonymity of the parties while reporting, the current legislation protects not only the complainant but also the accused person; this protection starts once the person is charged with a sexual offence.¹⁴¹ Under the Criminal Law (Rape) Act 1981, "no matter likely to lead members of the public to identify a person as the complainant" or a person "as the person against whom the charge is made, shall be published in a written publication available to the public or be broadcast".¹⁴² There are exceptions to this rule however, when a direction is given by the Judge. For example, it is possible for an application to be made to the Circuit Court or the High Court for a direction that the prohibition on identifying the victim shall not apply. In cases where the accused applies for such a direction, he must satisfy the Judge "(a) that the direction is required for the purpose of inducing persons to come forward who are likely to be needed as witnesses at the trial, and (b) that the conduct of the applicant's defence at the trial is likely to be adversely affected if the direction is not given."¹⁴³ The application must be made by either the accused or another person against whom the accused is expected to give evidence. Moreover, the applicant must demonstrate that in the absence of such a direction being given, it will not be possible to induce witnesses to come forward as witnesses, which will negatively impact the applicant's ability to mount a defence at trial.¹⁴⁴ As the O'Malley report (discussed below) acknowledges, applications of this nature appear to be rare in

¹³⁶ Egan, Nuala & O'Malley Dunlop, Ellen, "A Report on the Intersection of the *Criminal Justice, Private Family Law and Public Law Child Care Processes in Relation to Domestic and Sexual Violence*" [2023], *Department of Justice and National Women's Council*, par. 2.1.3, available from: https://www.nwci.ie/images/uploads/NWC_DoJ_DSV_Justice_Report.pdf (Date accessed: 01/06/2024).

¹³⁷ See Criminal Law (Rape) Act 1981, ss 6, 7 & 8, which are used as the base in the rest of sexual offences piecemeal legislation.

¹³⁸ Criminal Law (Rape) Act 1981, s. 6, 7 & 8. Due to the recent Criminal Law (Sexual Offences and Human Trafficking) Act 2024, these sections also apply to offences regulated under the Criminal Law (Sexual Offences) Act 2006 and the Criminal Law (Sexual Offences) (Amendment) Act 2007.

¹³⁹ Criminal Law (Rape) Act 1981, s. 6(2).

¹⁴⁰ Criminal Law (Rape) Act 1981, s. 6(3).

¹⁴¹ Criminal Law (Rape) Act 1981, ss. 7 & 8, and Criminal Law (Sexual Offences) Act 2017, s. 30.

¹⁴² Criminal Law (Rape) Act 1981, ss. 7(1) & 8(1).

¹⁴³ Criminal Law (Rape) Act 1981, s. 7(2). S. 7(3-5) stipulates other exceptions for when the anonymity of the victim may be lifted.

¹⁴⁴ Criminal Law (Rape) Act 1981, ss. 7 & 8. In particular, see section 7(2-5), available from: <https://revisedacts.lawreform.ie/eli/1981/act/10/section/7/revised/en/html> (Date accessed: 12/02/2025).

practice and in cases where they are made, the actual granting of such a direction is also not common.¹⁴⁵

In 2020, the O'Malley Review was published which examined the *Protections for Vulnerable Witnesses in the Investigation and Prosecution of Sexual Offences*.¹⁴⁶ However, the final review found that legislation on sexual offences is not only inconsistent in terms of protecting privacy in the context of both public attendance and the anonymity of the parties in reporting, but the legal provisions in question are widely dispersed across many pieces of legislation. As a result, the review made a number of recommendations, one of which was for the necessary legislative amendments to be made so that all "criminal proceedings for sexual offences should take place otherwise than in public".¹⁴⁷ The reasons underpinning this recommendation include the fact that *bona fide* representatives of the press are always entitled to be present and can report on the proceedings but must respect the anonymity of the victims and accused in that context. In addition, allowing members of the public to be present can serve as an unnecessary additional stress for the victims and witnesses in the proceedings. Finally, the risks posed by social media and unregulated access to trials of this nature can potentially result in the identity of the victim, the accused or both, being disclosed.¹⁴⁸ In the context of maintaining anonymity of victims, the report recommended that it should be extended to "victims in trials for offences contrary to ss. 21 and 22 of the Criminal Law (Sexual Offences) Act 2017", which "deal with sexual abuse of persons with mental illness or a mental or intellectual disability".¹⁴⁹ The recently enacted Criminal Law (Sexual Offences and Human Trafficking) Act 2024 has sought to implement key recommendations from the O'Malley Review.¹⁵⁰ Thus, the Act 2024 now seeks to "ensure anonymity for victims in all trials for sexual offences",¹⁵¹ and "provides for the anonymity of an accused person, unless and until he or she is convicted of a sexual offence".¹⁵²

¹⁴⁵ O'Malley, Tom *et al*, *Review of Protections for Vulnerable Witnesses in the Investigation and Prosecution of Sexual Offences*, July 2020, p. 44, available from: <https://assets.gov.ie/204256/960587c2-2168-4a47-aba2-22705bda75c9.pdf> (Date accessed: 23/01/2025).

¹⁴⁶ O'Malley, Tom *et al*, *Review of Protections for Vulnerable Witnesses in the Investigation and Prosecution of Sexual Offences*, July 2020, Chapter 4, available from: <https://www.gov.ie/pdf/?file=https://assets.gov.ie/204256/960587c2-2168-4a47-aba2-22705bda75c9.pdf#page=null> (Date accessed: 23/01/2025). This review was commissioned by the Minister for Justice and Equality due to a "widely shared concern about the experiences of vulnerable witnesses in criminal proceedings for sexual offences". The Working Group appointed for this review was asked "to examine certain key aspects of the criminal justice process in so far as it relates to vulnerable witnesses, and to identify ways in which the treatment of such witnesses might be improved". (See the Executive Summary of the Report). Some of the inconsistencies identified by the Report were: i) while anonymity is the rule for the victims of sexual assault offences, there did not appear to be any provision that directly conferred anonymity to mentally ill or mentally disabled victims (Part 3 of the Criminal Law (Sexual Offences) Act 2017); ii) in sexual assault offences, some provisions state that the public should be excluded from the courtroom (s. 6 of the Criminal Law (Rape) Act 1981), others stipulates that the public may be excluded (s. 257 of the Children Act 2001, and s. 20 of the Criminal Justice (Victims of Crime) Act 2017).

¹⁴⁷ O'Malley, Tom *et al*, *Review of Protections for Vulnerable Witnesses in the Investigation and Prosecution of Sexual Offences*, July 2020, par. 4.24, available from: <https://www.gov.ie/pdf/?file=https://assets.gov.ie/204256/960587c2-2168-4a47-aba2-22705bda75c9.pdf#page=null> (Date accessed: 23/01/2025).

¹⁴⁸ *Ibid.*

¹⁴⁹ *Ibid.*, p. 55.

¹⁵⁰ It has sought to do so by amending the Criminal Law (Rape) Act 1981, the Criminal Law (Sexual Offences) Act 2006 and the Criminal Law (Sexual Offences) Act 2017.

¹⁵¹ Department of Justice, *New legislation on sexual offences and human trafficking passed by Oireachtas* (10 July 2024) available from: <https://www.gov.ie/en/press-release/26383-new-legislation-on-sexual-offences-and-human-trafficking-passed-by-oireachtas/> (Date accessed: 27/01/2025).

¹⁵² *Ibid.*

2.11 Children in conflict with the law and child witnesses

The Children Act 2001¹⁵³ was brought in to provide for the ‘care, protection and control’ of children, including children who are in conflict with the law and focuses on preventing criminal behaviour, diversion from the criminal justice system and rehabilitation. While detention is to be used as a measure of last resort, where a Judge hears a criminal law matter involving a child before the Children’s Court, no one can attend the hearing of any of these proceedings except:

- a. officers of the Court,
- b. the parents or guardians of the child concerned,
- c. an adult relative of the child, or another adult who attends the Court pursuant to section 91(6),
- d. persons directly concerned in the proceedings,
- e. *bona fide* representatives of the Press, and
- f. such other persons (if any) as the Court may at its discretion permit to remain.¹⁵⁴

However, in cases where a child is called as a witness:

...the court *may* [or may not] exclude from the court during the taking of his or her evidence all persons except officers of the court, persons directly concerned in the proceedings, *bona fide* representatives of the Press and such other persons (if any) as the court may in its discretion permit to remain.¹⁵⁵

Therefore, in cases where a child is a witness, it may be possible for the media to report on such cases. Similar prohibitions exist in the context of publications and broadcasts relating to “...any proceedings for an offence against a child or where a child is a witness to such proceedings”.¹⁵⁶ The court’s “...order or decision ... (if any) in any such proceedings shall be announced in public”.¹⁵⁷

¹⁵³ This Act has been amended on several occasions by various pieces of legislation including: the Criminal Justice Act 2006, the Child Care (Amendment) Act 2007 and The Children Amendment Act 2015.

¹⁵⁴ Children Act 2001, s. 93(2).

¹⁵⁵ Children Act 2001, s. 257(1).

¹⁵⁶ Children Act 2001, s.252. In the case of *People (DPP) v. C* [2020] IECA 292, the issue before the court was whether or not the protections provided by s252 continued to apply where the child victim was deceased. This case involved a mother who had been charged with murdering her daughter and had pleaded not guilty by reason of insanity. The trial judge had ordered that nothing should be published or broadcast that would lead to the child being identified. The latter ruling was appealed by a number of media organisations to the Court of Appeal on the basis that the definition of a child did not include a child who was deceased and the constitutional principle that justice should be administered in public. Birmingham J in the Court of Appeal disagreed with this argument and held that the language of the section was clear and that the proceedings against the accused were proceedings in respect of an offence against a child and so therefore the section could not be interpreted in a way that would preclude a deceased person who was a child at the time of death. Following this decision, section 252 of the Children Act 2001 as originally enacted was amended soon after this decision by Children (Amendment) Act 2021. As a result of the amendment, the prohibition no longer applies in cases where a) the proceedings relate to the death of a child and publication would not serve to publish identifying information in respect of another living child and a contravention of s93; (b) where the person against whom an offence is alleged to have been committed has reached the age of 18 years on or before the date that proceedings commenced and publication would not serve to publish identifying information in respect of another living child and a contravention of s93 and finally (c) the court may dispense with the requirements of the section if it is satisfied that to do so is appropriate in the best interests of the child and it would not be contrary to the best interests of the child concerned or contrary to the best interests of another living child and it would not contravene section 93.

¹⁵⁷ Children Act 2001, s. 94(2).

In the context of reporting on cases before the Children’s Court, the 2001 Act protects a child’s anonymity by prohibiting: the publication, broadcast or any other form of communication of any “report which reveal their name, address or school ... or includes any particulars likely to lead to the identification of any such child”, as well as the publication or inclusion of any “still or moving picture of or including any such child or which is likely to lead to his or her identification”.¹⁵⁸ The court may make an exception to the prior restrictions if it is necessary:

- a) where the child is charged with an offence—
 - (i) to avoid injustice to the child,
 - (ii) where the child is unlawfully at large, for the purpose of apprehending the child, or
 - (iii) in the public interest,
- or
- b) where the child is subject to an order under *section 257D* [Behaviour order for children over 12]—
 - (i) to avoid injustice to the child, or
 - (ii) to ensure that the order is complied with.¹⁵⁹

The reasons for the court’s decision in this respect shall be explained in open court.¹⁶⁰

In March 2025, the Supreme Court delivered its decision concerning whether the anonymity protections afforded children in conflict with the law,¹⁶¹ applied in cases where the young person reached the age of 18 years before their legal proceedings were concluded. In this case, the defendant had been charged and brought before the courts while still a child but before their appeal was heard before the Court of Appeal, they turned 18 years old. Having received a sentence of detention for life for murder, PB appealed unsuccessfully against the severity of the sentence before the Court of Appeal. The Court of Appeal determined that because he had reached 18 years of age by the time of the appeal that he would lose the protections provided by section 93 of the 2001 Act and he could be identified in the reporting of the case. On appeal, O’Malley J. in the Supreme Court, considered the nature and scope of Section 93 of the 2001 Act noting the ‘...heavy emphasis on the rehabilitation of persons who commit crimes during childhood’.¹⁶² The Court had to consider whether Section 93(5), which extends anonymity during an appeal, continues to protect a defendant who turns 18 years old before their appeal is concluded. The Supreme Court confirmed that section 93’s protections continue even if the young person in conflict with the law reaches adulthood during proceedings including, appellate proceedings.

2.12 Domestic Violence Act 2018

While domestic violence matters are also dealt with under the remit of private family law proceedings, they are also addressed separately here for ease of reference. Under the

¹⁵⁸ Children Act 2001, s. 93(1).

¹⁵⁹ Children Act 2001, s. 93(2).

¹⁶⁰ Children Act 2001, s. 93(3).

¹⁶¹ Under Section 93 of the Children Act 2001 (as amended).

¹⁶² *The People (DPP) vs. P.B. and the Attorney General* [2025] IESC 12 at para.115.

Domestic Violence Act 2018, in cases involving parents and children which involve domestic violence and abuse as well as coercive control, hearings shall be heard otherwise than in public.¹⁶³ The 2018 Act also provides that an applicant can be accompanied by an individual of their choice, including a support worker.¹⁶⁴ Nevertheless, at any stage, the court has the discretion to refuse the attendance of a support person, "if the court considers that it would not be in the interests of justice for the individual concerned to accompany, or continue to accompany, the applicant and where the court so refuses it shall give reasons for such refusal".¹⁶⁵ Significantly, the potential exercise of discretion here to disallow an accompaniment in such proceedings is in direct contrast to the position of the criminal law legislation referred to above where a supporter under the Criminal Law (Rape) Act 1981, s. 6(3).¹⁶⁶ This has also been highlighted by a Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), which in its 2023 Baseline Evaluation Report of Ireland concerning legislative and other measures designed to give effect to the Istanbul Convention acknowledges that:

... this prerogative may be refused by the competent court if it deems that it is in the interests of justice to do so. GREVIO considers that this provision leaves a very wide margin of appreciation to Judges and queries in which cases, and for what reasons, it would not be in the interests of justice to allow victims to be accompanied in court.¹⁶⁷

In cases where there has been an alleged contravention of orders given under the Domestic Violence Act 2018, the Judge shall exclude all persons from the court, with the exception of "officers of the court, persons directly concerned with those proceedings, bona fide representatives of the press and such other persons (if any) as the Judge may in his or her discretion permit to remain".¹⁶⁸

In such cases where an order has been breached, the anonymity of the parties is preserved under section 33 of the Act 2018. It is considered an offence to publish or broadcast:

information about, or a photograph, depiction or other representation of the physical likeness of, the relevant person, the person charged or a dependent person of either of them that is likely to enable the identification of the relevant person, or the person charged commits an offence.¹⁶⁹

¹⁶³ Domestic Violence Act 2018, s. 23(1). Section 40 of the Civil Liability and Courts Act 2004 applies to cases of this nature. However, in cases where the court "hears together applications under more than one Act, the court shall, in so far as is practicable, comply with the requirements relating to the hearing of applications under each of those Acts and the other relevant provisions of those Acts shall apply accordingly". See Domestic Violence Act 2018, s. 23(2).

¹⁶⁴ Domestic Violence Act 2018, s. 26(1).

¹⁶⁵ Domestic Violence Act 2018, s. 26(2).

¹⁶⁶ See page 38 above re court accompaniment in criminal law proceedings involving sexual offences.

¹⁶⁷ Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), GREVIO's (*Baseline*) *Evaluation Report on legislative and other measures giving effect to the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)*. Ireland, (November 2023) at para. 292, available from: <https://rm.coe.int/grevio-s-baseline-evaluation-report-on-legislative-and-other-measures-/1680ad3feb> (Date accessed: 12/02/2025).

¹⁶⁸ Domestic Violence Act 2018, s. 33 (offences) and 34 (proceedings relating to offences).

¹⁶⁹ Domestic Violence Act 2018, s. 36(1).

The latter is not considered an offence if there is consent of the relevant person to be identified and the court also gives its consent,¹⁷⁰ or where the court, because the interests of the justice so require, directs that such information “may be published or broadcast in such manner and subject to such conditions as he or she may specify in the direction”.¹⁷¹ For these cases, “publish’ means publish, other than by way of broadcast, to the public or portion of the public”.¹⁷²

2.13 The Family Law Courts, other State bodies and lifting the *in camera* rule

As discussed in the case law pertaining to the *in camera* rule above, all documentation, including pleadings, medical and other evidence and professional reports which are prepared for the purpose of public or private child care proceedings are subject to the *in camera* rule. Egan and O'Malley Dunlop have recognised that in family law proceedings:

... an exception has been created permitting documents presented or prepared in anticipation of private family law proceedings, and information or evidence given in those proceedings, to be disclosed to a member of An Garda Síochána for the purposes of the conduct of an investigation.¹⁷³

Where this information is required by another State body, it appears that a request for the *in camera* rule to be lifted must be made directly to the Judge who presided over the initial hearing for which the documents were generated and that judge must exercise its discretion when deciding whether or not to lift the *in camera* rule.

The case of J.D. v. S.D. [2013] IEHC 648 is particularly instructive in the context of when the *in camera* rule in family law divorce proceedings should be lifted. In this case, Abbott J. in the High Court sought to set parameters on the way in which the *in camera* rule is lifted in divorce proceedings specifically:

On the basis that I find that the court may in certain circumstances lift the *in camera* rule, it is important that the lifting of the *in camera* rule is seldom absolute and the practice of the Court usually

¹⁷⁰ Domestic Violence Act 2018, s. 36(2).

¹⁷¹ Domestic Violence Act 2018, s. 36(4).

¹⁷² Domestic Violence Act 2018, s. 36(5).

¹⁷³ Egan, Nuala & O'Malley Dunlop, Ellen, “A Report on the Intersection of the *Criminal Justice, Private Family Law and Public Law Child Care Processes* in Relation to Domestic and Sexual Violence” [2023], Department of Justice and National Women's Council, at para. 2.1.4, available from: https://www.nwci.ie/images/uploads/NWC_DoJ_DSV_Justice_Report.pdf (Date accessed: 01/06/2024). Section 40(6) and (7) of the Civil Liability and Courts Act, 2004 applies in this context. In the case of A v. B [2021] IEHC 96, the High Court was asked to consider making an order directing that the Commissioner of An Garda Síochána provide a copy of a recording taken by the respondents wife, which was used as corroboration in an application for an Interim Barring Order, of abuse she and her children suffered at the hands of the husband. The Judge was also asked by the respondents wife to lift the *in camera* rule to allow her to use the same recording to facilitate the writing of a section 32A or a section 47 report. Due to the fact that An Garda Síochána had possession of this evidence while they decided whether or not to take a prosecution against the applicant, they argued that it was subject to privilege. The applicant argued that he was entitled to a copy of the recording so that he and his legal team could give it due consideration. Barrett J. noted that while the current proceedings did not directly concern guardianship, custody and access, the outcome of same did have the potential to impact any questions of custody and access and so ‘the protective scope of s. 3’ of the Guardianship of Infants Act 1964 required that the court balance certain competing interests including the best interests of the child[ren]. He went on to order that the recording be disclosed to the court in the first instance so that it could ‘undertake a weighing exercise of the type contemplated’. [2021] IEHC 96 at para. 42.

is to attach the disciplines of the *in camera* rule to the recipients or recipients of the information and documentation which has been released by lifting the rule. There is, almost invariably, a further restriction on the lifting order insofar as non-essential private material should be redacted, and where the lifting of the *in camera* rule relates to information and documentation pertaining to just one of the parties, then the privacy and business of the other party should be preserved by even more rigorous redaction, with costs orders providing that the burden of such redaction does not fall on an innocent, or less blameworthy party.

Thus, when the *in camera* rule is being lifted, limits on who should have access to this information and for what purpose should be clearly defined by the Judge.

In the case of the Child and Family Agency vs. J. and G. [2017] IEDC 13, Toale J. was asked to consider whether or not the *in camera* rule should be lifted to allow Garda C have access to the Digital Audio Recording (DAR) of a Court hearing for an emergency care order which had been granted in respect of a one-year old child (K). Garda C was seeking disclosure of this material to assist with his investigations of an alleged assault of K. Garda C appeared to come across information that admissions had been made by G but couldn't say how he came to be aware of this. Having reviewed the relevant case law concerning when the rule should be lifted, Toale J. considered the impact on the best interests of K:

I do not consider it likely that the welfare or interests of K will be adversely affected at all by ordering the disclosure sought. It is more likely (though by no means certain) that the welfare or interests of K will be promoted by granting the application [see in particular para 39 above]. In so far as it is relevant, and because it has been raised by the GAL, I do not consider it likely that the welfare or interests of L will be adversely affected at all by ordering the disclosure sought.

Furthermore, Toale J. carefully considered the other interests that should be weighed up in such cases:

I have considered the public interest in the investigation of crime, and the private interest of K in the investigation of crime of a serious nature. I have considered the public interest in encouraging frankness and candour in evidence in 1991 Act proceedings and the private interest of K in encouraging frankness and candour in evidence in these 1991 Act proceedings. I have considered whether G in particular and J have an absolute entitlement to confidentiality in respect of evidence given and conclude that they do not. I have considered the effect or otherwise of the privilege against self-incrimination in so far as it might arise in the circumstances of the evidence given in this case. I have considered the matters set out by Barr J in EHB and approved by Birmingham J in McA as "the considerations which should be taken into account...". I have considered these matters in the context of the facts of the application before me, and of the evidence actually given, and the submissions made...On balance, the interests of justice require that the disclosure sought be in general terms allowed, for the purpose of investigation of an alleged assault of K.

However, there have also been challenges associated with applying to lift the rule where there are potential criminal proceedings at issue. This is evident from the case of Garda B. v. G.M. v. I.M. [2018].¹⁷⁴ Section 40 (8) of the 2004 Act provides that the *in camera* rule does not operate to prevent the release of a document, information or evidence given in *in camera* proceedings. In this case, G.M. had made a false allegation of a criminal nature

¹⁷⁴ In the Matter of Order 67 A of the Circuit Court Rules and Garda B. v. G.M. and I.M. [2018] No. 64 CAF, Unapproved judgment of Ms Justice Faherty, 3rd February 2020.

to An Garda Síochána against the new partner of I.M.¹⁷⁵ While these allegations proved unfounded following a criminal investigation, G.M. eventually admitted under oath in family law proceedings that the allegations that he made were false. In addition, he admitted the allegations were false in a s.47 report which was the subject of separate family law proceedings before a different judge. Upon discovering that G.M. had admitted making false allegations, I.M. notified An Garda Síochána. The Gardaí decided to make an application for access to the relevant *in camera* material on the basis that it was required for them to conduct a lawful investigation of false reporting of a crime. In the Circuit Court, McDonnell J. lifted the *in camera* rule and ordered the release of the relevant extracts of the s.47 report and the digital audio transcript (DAR) to Garda B. G.M. appealed to the High Court on the basis that he would be “...*in jeopardy of prosecution of an indictable offence under s.12 of the Criminal Law Act, 1976*” which would have implications for his future career prospects. In addition, counsel for G.M. argued and the *in camera* rule is not only there to protect minors, but as per the English case of *Re M (Care Proceedings)* [2001] 2 F.L.R. 1316, it is also there “...to encourage frankness and candour and disclosure in the family law courts”.¹⁷⁶ Faherty J. in delivering her decision highlighted the following:

...it is a fact that every single reported Irish and non-Irish judgment in this area of law have concerned cases where an application to lift the *in camera* rule was made to the Judge who was presiding when sworn statements-the subject matter of the application in question-were made. To my mind, this must weigh with this Court in considering whether this Court should embark on a *de novo* hearing of matters that, in my view, more properly, having regard to the particular circumstances of this case, should have been brought to the attention of the Judges who presided over the relevant court proceedings.¹⁷⁷

In exercising the appellate function of the High Court, Faherty J. was of the view that Garda B’s applications in respect of the extracts from the s.47 report and the DAR where the admissions concerning a false allegation was made “...are more properly matters to be brought before the Judges who presided over the proceedings in respect of which access is being sought...”.¹⁷⁸ The Judge accepted that her ruling would result in two separate applications being made to two separate Judges which could result in two separate outcomes, but considered that this was “...not a sufficiently weighty factor to trump the argument that the application for access to the DAR should have been made to the presiding Judges. Finally, it was accepted by Counsel for Garda B that I.M. had breached the *in camera rule* by bringing the admission to making a false criminal complaint under oath to the attention of the Gardaí. Faherty J. pointed out that “...the relevance (if any) of the fact that there was a breach of the *in camera* rule, or the weight

¹⁷⁵ As a result, the child of G.M. and I.M. underwent a medical examination and a specialist interview with the Gardaí. Following a full investigation, no prosecution was taken against I.M.’s partner.

¹⁷⁶ In the Matter of Order 67 A of the Circuit Court Rules and Garda B. v. G.M. and I.M. [2018] No. 64 CAF, Unapproved judgment of Ms Justice Faherty, 3rd February 2020, at paras. 16(10) and 51.

¹⁷⁷ In the Matter of Order 67 A of the Circuit Court Rules and Garda B. v. G.M. and I.M. [2018] No. 64 CAF, Unapproved judgment of Ms Justice Faherty, 3rd February 2020, at para. 69.

¹⁷⁸ In the Matter of Order 67 A of the Circuit Court Rules and Garda B. v. G.M. and I.M. [2018] No. 64 CAF, Unapproved judgment of Ms Justice Faherty, 3rd February 2020, at para. 71.

to be attributed to this factor, is a matter for the respective presiding Judges when adjudicating on Garda B's applications for the DAR and the s.47 report".¹⁷⁹

The latter case highlights the difficulties that have been encountered by litigants and third parties when trying to have the *in camera* rule lifted in the family law courts. Where no clear guidance exists concerning how, and under what circumstances, the *in camera* rule will be lifted, this leaves State bodies and litigants in the dark as to how to prepare and effectively argue their case.

In 2023, the Civil Liability and Courts Act 2004 was amended to provide that the leave of the court is not necessary in cases where a criminal investigation is at issue.¹⁸⁰ According to Egan and O'Malley Dunlop's report, in public child care proceedings, however, this is not the case and any documentation, information or evidence prepared or used in child care proceedings cannot be disclosed, unless the Court makes an Order for Discovery, thus giving permission for such documentation to be disclosed to persons not involved in those proceedings for use in other proceedings. Significantly, in the context of criminal law proceedings, there are no comparable restrictions which apply and so the Gardaí can, without the approval of the criminal court, let documents be given, for example, to the Child and Family Agency for use in child care proceedings. However, it has been noted by Egan and O'Malley Dunlop that "[w]hile the Child and Family Agency is obliged to put all relevant documentation before the Court in child care proceedings, it must be queried whether court approval is required for the disclosure to An Garda Síochána of documents of no relevance to the child care litigation".¹⁸¹ It is understood that at the time of writing, a Data Sharing Agreement between Tusla, Child and Family Agency and An Garda Síochána is being agreed upon.¹⁸²

2.14 Summary and analysis

It is ironic that pre-1937, the Irish justice system was largely an open one where it was left to the discretion of Judges in all cases as to whether a case would be heard in private.¹⁸³ With the enactment of the Irish Constitution 1937, came Article 34 which enshrines and protects one of the hallmarks of our democratic society - that the people can bear witness to justice being administered in public. Thus, it should come as no surprise that any exception to this principle should not only have a limited impact on the transparency of legal proceedings in all areas of law (including the family and child care spheres), but also on the rights of those individuals who are directly and indirectly experiencing the system. Indeed, the case law has made it abundantly clear that exceptions to the public administration of justice should be very strictly construed both in the context of the subject

¹⁷⁹ In the Matter of Order 67 A of the Circuit Court Rules and Garda B. v. G.M. and I.M. [2018] No. 64 CAF, Unapproved judgment of Ms Justice Faherty, 3rd February 2020, at para. 82.

¹⁸⁰ Civil Liability and Courts Act 2004, s. 40(7A).

¹⁸¹ Egan, Nuala & O'Malley Dunlop, Ellen, "A Report on the Intersection of the *Criminal Justice, Private Family Law and Public Law Child Care Processes* in Relation to Domestic and Sexual Violence" [2023], *Department of Justice and National Women's Council*, par. 5.8.2, available from: https://www.nwci.ie/images/uploads/NWC_DoJ_DSV_Justice_Report.pdf (Date accessed: 01/06/2024).

¹⁸² Confirmed in an email communication between Tusla, Child and Family Agency and the Department of Justice (12/02/2025).

¹⁸³ The latter approach is one that is still adopted in some jurisdictions today such as Türkiye, Australia and Sweden.

matter to which it applies, but also in relation to the procedures that are applied. Every departure from the rule should do no more than is required to protect the countervailing interests in the proceedings such as the proper administration of justice and the protection of family life. However, from a review of the case law and the various pieces of legislation that require cases to be held in private, it would appear that the *in camera* rule and its application have been interpreted in a manner that has resulted not only in transparency in certain types of legal proceedings being limited, but has arguably negatively impacted the rights of children and family service users.

Due to the prolonged absence of a comprehensive and detailed legislative framework pertaining to the *in camera* rule in Ireland, it has been largely left at the hands of the judiciary to define the inner and outer limits of the phrases 'otherwise than in public' or *in camera* as they operate in areas such as child care and family law proceedings, criminal law, domestic violence, company law, as well as in special care cases. While it is acknowledged the introduction of legislation in judicial separation since the late 1980s and divorce in the 1990s resulted in a legal requirement that these matters be heard 'otherwise than in public', beyond that, the practical operation of the rule has been left to the courts to determine including the matter of breach of the rule. Furthermore, a review of the case law in child care proceedings, for example, would suggest that a very strict approach is taken to the operation of the *in camera* rule. While this does not impact transparency to the same extent as it does in private family law proceedings (largely due to reporting conducted by the Child Law Project), it does serve to impact the rights of children (to be treated the same as other children not in care for example) and the rights of adults in terms of access to justice (for example, gaining a copy of a s.20 court report¹⁸⁴).

It is suggested that equally conservative legislative changes with respect to the exceptions to the rule across child and family law have been introduced in an unsuccessful attempt to enhance transparency. For example, while the rule has been slightly relaxed to facilitate more court reporting in family law cases, the lack of take up on this unfortunately has not had the desired result of enhanced transparency. Moreover, a slight relaxation of the rule is evident from the changes introduced under the 2018 Domestic Violence legislation where there is provision for court accompaniments to support victim survivors in court, but the Judge retains discretion to disallow this. Efforts to ensure that the anonymity of all victims of sexual violence is protected in a consistent manner were achieved through the Criminal law (Sexual Offences and Criminal Trafficking) Act 2024. In addition, while some pieces of legislation which concern the *in camera rule* set out clear consequences for breach – such as s31 of the Child Care Act 1991 (as amended), while others leave the matter of breach to be determined in accordance with the contempt of court jurisdiction of the courts. Even where consequences for breach are outlined, there is no guidance concerning what should be considered by the court when determining whether or not a breach has occurred and what sanctions should be administered as a result. Since such interpretations are given in relation to a particular set of facts before specific courts and Judges, they can be quite limited in scope. There are currently no records kept concerning

¹⁸⁴ Child Care Act, 1991, s.20.

breaches of the *in camera* rule in any legal context in Ireland, making it difficult to examine this issue in practice.

Strikingly absent from the above analysis of the existing case law and legislation concerning the operation of the *in camera* rule is any reference to children and children's rights. It is significant that while the international and domestic legal frameworks concerning the protection of children's rights in the context of both private and public family law proceedings are well established, the only real acknowledgement of children in this context is that the rule must protect their privacy. While Article 42 A, and the need to consider the best interests of children as paramount in private and public law cases, has been firmly rooted in our constitutional and legislative frameworks since 2015, the extent to which the current manner in which the rule operates impacts the best interest of children in Ireland has received limited attention. This is concerning given the fact that decisions concerning the best interests of these children are made every day behind the closed doors of the courtroom (particularly in the lower courts) in the absence of any public scrutiny.

From the case law, it is evident that the Irish judiciary has gone to great lengths to clarify the boundaries of the rule in case law much of which is cited above. However, there continue to be aspects of the operation of the rule that have not yet been dealt with in case law, that is, case law that is publicly available. A lack of insight and oversight continues to further undermine transparency resulting in reduced public confidence and faith in our family justice system. The strict application of the rule also serves to limit legal and political reform in this area. While some efforts at enhancing transparency have been made through defined exceptions in legislation, these changes have been largely piecemeal in nature and arguably have had limited impact in terms of promoting confidence and transparency in our private and public family law systems. In the family law context specifically, the absence of any public scrutiny of an overburdened system has resulted in feelings of perceived unfairness and injustice by those who directly experience family law and child care proceedings (see Chapter Four below).

Chapter 3: Privacy rules in family law and child care proceedings in other countries

3.1 Introduction

The manner in which justice is administered in private and public family law (child care proceedings) cases can differ between jurisdictions. Some countries have opted for an open system, whereby all court proceedings take place in public but reporting of those cases is restricted, while others, like Ireland, administer family law in private, the public cannot attend, and there are also restrictions on reporting. This research sought to gain some insight into how a select number of countries aim to achieve a balance between protecting the privacy of children and adults in family law proceedings, while also promoting transparency in the administration of family justice, irrespective of whether the system is open or closed. As explained in Chapter One above, an in-depth literature review was conducted of international peer-reviewed materials as well as grey literature concerning how privacy rules operate in family law proceedings across other jurisdictions. Search terms used included:

‘family law’; ‘child law’ / ‘child care law’; ‘*in camera*’, ‘privacy’; ‘family law proceedings’, ‘child care law proceedings’; ‘child law cases/proceedings’; ‘transparency’, ‘domestic violence cases’; ‘domestic abuse cases’; ‘confidentiality’; ‘media and family law proceedings’; ‘court observation’; ‘qualitative data and family proceedings’.

For the purpose of this report, two jurisdictions - Australia (common law) and Sweden (civil law) which currently conduct family law matters in open court were reviewed. The approaches adopted towards transparency in the common law family law systems of New Zealand and England and Wales were also explored, both of which currently operate closed family law systems.

3.2 Comparative approaches

Human rights

Before examining the approaches of other jurisdictions, however, it is instructive to explore some jurisprudence from the European Court of Human Rights 1950 (ECtHR) concerning the administration of justice in public and private family law proceedings. The European Court of Human Rights (ECtHR) has examined ‘proceedings heard otherwise than in public’, and how this approach adheres to existing obligations under the European Convention on Human Rights 1950 (ECHR), in particular, Article 6 (right to a fair and

public hearing)¹⁸⁵ and Article 8 (right to respect for private and family life, home and correspondence)¹⁸⁶ of the ECHR. The incorporation of the ECHR into Irish law has heightened Ireland's obligations in this regard to ensure that the public has some insight into how the family law and child care systems operate.¹⁸⁷

Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests.¹⁸⁸

Interestingly, the majority of European Union (EU) member States currently conduct family court proceedings in private, while a smaller number allow for public proceedings, particularly in matters concerning child protection.¹⁸⁹ This distinction reflects the varying approaches to family law across the EU, balancing the need for privacy in sensitive family matters with the imperative for transparency in the administration of justice. In the case of *B and P v United Kingdom* (2001),¹⁹⁰ the *in camera* restrictions which applied under the Children Act 1989 in England and Wales were at issue in the context of private custody and residence proceedings regarding children. It was argued that the presumption that those proceedings should be heard in private was contrary to Article 6(1) ECHR, and that there should instead be a presumption that they should be heard in public. This argument was rejected by the court. For the Court, proceedings concerning the residence of a child following parental divorce or separation:

¹⁸⁵ Article 6 – Right to a fair trial (1) In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

¹⁸⁶ Article 8 – Right to respect for private and family life (1) Everyone has the right to respect for his private and family life, his home and his correspondence. (2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

¹⁸⁷ The European Convention on Human Rights 1950 has been incorporated into Irish law through the European Convention on Human Rights Act 2003.

¹⁸⁸ [Application no. 12643/02, Judgment of 21 September 2006 at para 93]. The approach at European level essentially echoes that of Article 14 of the *International Covenant on Civil and Political Rights* 1966 which recognises that

All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (order public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

¹⁸⁹ As a result of a cursory review of existing approaches to family law proceedings in the EU, including approximately 20 out of the 27 EU member States primarily conduct family court proceedings in private including: Austria, Belgium, Czech Republic, Denmark, Finland, France, Germany, Hungary, Ireland, Italy, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden. The rationale for this practice is to protect the privacy of families involved in sensitive matters such as divorce, child custody, and maintenance claims. The confidentiality of these proceedings is seen as crucial for the emotional well-being of the parties involved. Countries which conducted the administration of family justice in public included: Bulgaria, Estonia, Finland (in certain cases), Lithuania (in certain cases), Romania, Sweden (in certain cases) Slovakia (in certain cases).

¹⁹⁰ *B and P v United Kingdom*, Application nos. 36337/97 and 35974/97, [38] ECHR, 2001.

...are prime examples of cases where the exclusion of the press and public may be justified in order to protect the privacy of the child and parties and to avoid prejudicing the interests of justice ... it is essential that the parents and other witnesses feel able to express themselves candidly on highly personal issues without fear of public curiosity or comment.¹⁹¹

Indeed, the European Court was of the opinion that it was not inconsistent with Article 6:

...for a State to designate an entire class of case as an exception to the general rule where considered necessary... where required by the interests of juveniles or the protection of the private life of the parties..., although the need for such measures must always be subject to the Court's control.¹⁹²

In addition, the Court found that providing transparency through alternative means such as providing the public with access to the anonymised courts' decisions was sufficient to be in line with Article 6. The subsequent case of *Moser v Austria* (2006)¹⁹³ concerned public child care proceedings where, under Austrian law, the court had no power to lift *in camera* restrictions. The Court considered that in cases where a case is taken by a State body against an individual "...the reasons for excluding a case from public scrutiny must be subject to careful examination".¹⁹⁴ However, in this case, it was felt that this was not possible, "...since the law was silent on the issue and the courts simply followed a long-established practice to hold hearings in camera without considering the special features of the case".¹⁹⁵ The court held that Article 6(1) ECHR had been violated in such circumstances.¹⁹⁶

Thus, the European Court of Human Rights has recognised that in private family law proceedings, it can be justified to hold family law and child care cases in private to protect the privacy of the children and families involved, to facilitate the free expression of views and to avoid prejudicing the interests of justice. However, in such cases, transparency to ensure public confidence in the administration of justice must be achieved through alternative means such as systematic and anonymised reporting of judgments. In cases where there is a possibility of State intervention in the family, as is the case in child care proceedings, it is important for the court to consider the unique circumstances of individual cases when deciding on whether it will be held in public or private. Therefore, in child care cases, the importance of ensuring that transparency is achieved through anonymised judgments becomes all the more important.

Children's rights

Given that the interests of children are often at the heart of many family law cases before the courts, and are the central consideration in cases before the child care courts, the extent to which their rights are considered in the context of transparency merits attention. The UN Convention on the Rights of the Child 1989 (CRC), an international legal treaty

¹⁹¹ Ibid.

¹⁹² Ibid.

¹⁹³ *Moser v Austria*, Application no. 12643/02, [97] ECHR, 2006.

¹⁹⁴ Ibid.

¹⁹⁵ *Moser v Austria*, Application no. 12643/02 [97] ECHR, 2006

¹⁹⁶ Ibid.

binding on 196 States parties worldwide, sets out minimum global legal standards in respect of children's rights in all areas of life. Ireland has been a party to this international treaty since 1992 and since then, there have been many changes to our domestic laws which reflect the principles and provisions contained therein.

For the purpose of this report, a number of rights of the child are of critical importance. The UN Committee on the Rights of the Child, the international body responsible for monitoring the Conventions' implementation worldwide, has identified four general guiding principles which should inform how each right of a child is implemented in practice: Article 2 (non-discrimination); Article 3 (best interests); Article 6 (rights to Life, survival and development) and Article 12 (respect for child's views). Each of these principles should inform the development of any laws in a jurisdiction, particularly Article 12 which makes clear that children and young people, once capable of forming views, should have an opportunity to express views on any decision being made which impacts them. Decisions made in the context of private and public family law proceedings will impact any children concerned. Thus, where laws are to be enacted which define how those proceedings operate in practice, children and young people should have an input into the law reform process.

In the context of the right to privacy of children more generally, this is protected under Article 16 CRC. It provides:

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.
2. The child has the right to the protection of the law against such interference or attacks.

In the context of the operation of the *in camera* rule, this provision has to be borne in mind alongside the other rights of the child in family law and child care proceedings, including the right of the child to be heard and the best interests principle in legal proceedings. For example, in all family law and child care proceedings, the best interests of the child are of paramount consideration. In determining what the best interests of a child are, it is a requirement that their views be considered in all matters impacting them, with due consideration being given to their age and maturity.¹⁹⁷ The rights of children must be applied and protected in a manner that is non-discriminatory, and which takes account of their ages and stages of development. In order to be able to accurately determine the extent to which children's rights and interests are protected in family law proceedings and child care proceedings, it is essential that transparency in the administration of justice is achieved in the family law court system. Moreover, the parameters of any laws enacted concerning privacy of children in private and public law proceedings, should be delineated in a manner which considers all relevant rights of children including: the rights to be heard (Article 12 CRC), to be informed (Article 17), to be protected (Article 19 CRC), to identity

¹⁹⁷ This is now reflected in Irish domestic law under Article 42 A 4 and has been given further effect through the Children and Family Relationships Act 2015.

(Article 7 CRC) and expression (Article 13 CRC) to have their best interests protected (Article 3) as well as the right to life, survival and development (Article 6).

Australia

In Australia, with the exception of Western Australia, the federal parliament has jurisdiction over marriage, divorce, parenting and family property on separation. All states and territories retain jurisdiction over adoption and child welfare. The impact of this is that neither the federal parliament nor the states and territories have exclusive legislative competence in the area of family law, which has resulted in 'an especially fragmented system with respect to children'.¹⁹⁸

Family law proceedings

Australia, a common law jurisdiction guided by the principle of open justice, has operated an open court system for family law proceedings, since the 1980s.¹⁹⁹

The Family Law Act attempts to strike a balance between the principle of open justice, and public expectations of accountability and transparency that flow from this principle, and the right of children and families to privacy.²⁰⁰

Open justice is not only considered to be a significant, and longstanding judicial principle in Australia, but it is recognised as a hallmark of the judicial branch of the Australian government.²⁰¹ This open approach to the administration of justice in family law arose out of a perceived need for more public scrutiny of the courts and Judges. However, moves towards a more open system were also due to escalated violence against individual Judges and their families, especially among men's groups who claimed there was a gender bias against fathers.²⁰²

According to section 97(1) of the Family Law Act 1975:

Subject to this Act, to the regulations and to the applicable Rules of Court, all proceedings in the Federal Circuit and Family Court of Australia or in a court of a Territory (other than the Northern Territory) when exercising jurisdiction under this Act, shall be heard in open court.

The principle of open justice has been achieved through the requirement that family law proceedings be held in public. However, the special nature of family law proceedings, many of which can involve children, requires that the need for open justice is balanced

¹⁹⁸ Australian Law Reform Commission and New South Wales Law Reform Commission, *Family Violence—A national legal response*, ALRC Report 114/NSWLRC Report 128, 2010, p. 52.

¹⁹⁹ The Family Law (Amendment) Act 1983 revised the Family Law Act 1975.

²⁰⁰ Australia Government. Australian Law Reform Commission, *Family Law for the Future — An Inquiry into the Family Law System. Final Report*, ALRC Report 135 (March 2019) (NSW: Commonwealth of Australia 2019) at 435, available from: https://www.alrc.gov.au/wp-content/uploads/2019/08/alrc_report_135_final_report_web-min_12_optimized_1-1.pdf (Date accessed: 10/08/2024).

²⁰¹ Pender K., *Open Justice, Closed Courts And The Constitution: Australian And Comparative Perspectives*, (2023) *University of Queensland Law Journal* Vol 42(2) pp.155-189.

²⁰² Dr Anne Egan, "The *In camera* Rule: A Barrier to Transparency or a Necessity in Irish Family Law?" *Irish Journal of Family Law* 2012, 15(3), 59-70.

with a family's need for privacy.²⁰³ The 2019 report from the Australian Law Reform Commission (ALRC) involved a comprehensive review of the Family Law System in Australia and made important recommendations which underpinned the recently adopted Family Law Amendment Act 2023 and the Family Law Amendment (Information Sharing) Act 2023. Following an inquiry into the Australian Family law system, the 2019 report dedicated a chapter to building transparency and accountability. One of the main recommendations in this respect was that

In order to enhance system performance, accountability, and transparency in decision making, the ALRC recommends expanding the role of the existing Family Law Council to include monitoring and reporting of the overall functioning of the family law system.²⁰⁴

The ALRC suggested that oversight of the family law system would be likely to enhance transparency, improve the functioning of the system and enhance public confidence in its operation. In order to achieve this end, initially it proposed that an independent statutory body – a Family Law Commission be established. However, this proposal met with mixed views from various stakeholders who were consulted about this. As a result, it recommended that an existing body – the Family Law Council - have its powers expanded under legislation:

Section 115 of the Family Law Act 1975 (Cth) should be amended to expand the Family Law Council's responsibilities to include:

- monitoring and regular reporting on the performance of the family law system;
- conducting inquiries into issues relevant to the performance of any aspect of the family law system, either of its own motion or at the request of government; and
- making recommendations to improve the family law system, including
- research and law reform proposals.²⁰⁵

In addition, it is noteworthy that the ALRC recommended that the Family Law Council should also introduce a dedicated Children and Young People's Advisory Board so that input from children and young people on their experiences of the family law system could be obtained on a systematic and continuous basis. Moreover, it would facilitate the input of children and young people into the development of family policy and practice.²⁰⁶

²⁰³ Commonwealth Courts Portal, "The Courts and your Privacy", available from: <https://www.fcfcga.gov.au/pubs/court-privacy> (Date accessed: 06/02/2025).

²⁰⁴ Australia Government. Australian Law Reform Commission, *Family Law for the Future — An Inquiry into the Family Law System. Final Report*, ALRC Report 135 (March 2019) (NSW: Commonwealth of Australia 2019) at p.385, available from: https://www.alrc.gov.au/wp-content/uploads/2019/08/alrc_report_135_final_report_web-min_12_optimized_1-1.pdf (Date accessed: 15/04/2025).

²⁰⁵ Australia Government. Australian Law Reform Commission, *Family Law for the Future — An Inquiry into the Family Law System. Final Report*, ALRC Report 135 (March 2019) (NSW: Commonwealth of Australia 2019) at p.388, available from: https://www.alrc.gov.au/wp-content/uploads/2019/08/alrc_report_135_final_report_web-min_12_optimized_1-1.pdf (Date accessed: 15/04/2025).

²⁰⁶ Australia Government. Australian Law Reform Commission, *Family Law for the Future — An Inquiry into the Family Law System. Final Report*, ALRC Report 135 (March 2019) (NSW: Commonwealth of Australia 2019) at p.385, available from: https://www.alrc.gov.au/wp-content/uploads/2019/08/alrc_report_135_final_report_web-min_12_optimized_1-1.pdf (Date accessed: 15/04/2025).

Significantly, in reviewing the requirement to conduct of proceedings in public, the ALRC's main recommendation was to redraft section 121 of the Family Law Act 1975 regarding privacy specifically so it "...does not discourage communications about family law proceedings beyond its intended scope".²⁰⁷ According to data collected by the ALRC, the way the original section 121 of the 1975 Act was written was causing confusion among media professionals and private individuals about what could be shared outside the family courts and resulted in very little reporting in practice. Indeed, the presence of the media at family law hearings was very limited, and public attendance at hearings was non-existent before the legislative changes were introduced.²⁰⁸ It has been suggested that "...due to changes in the communications landscape, the media no longer have the resources or sufficient inclination to adequately safeguard the public interest in transparency in the courts".²⁰⁹ Moreover, for family members, while the privacy provisions as set out under the legislation did not prohibit private communications, some people understood that to be their effect in practice. This was despite the existence of case law that makes it clear that "the offence of dissemination does not apply to private communications ... [nor to communications] with a government agency or a service provider agency about a family or family member in connection with services to be provided".²¹⁰ Similarly, for service providers, it was not clear whether it prevented:

... communications between family law service providers about safety concerns for clients, or even private conversations between individuals. [or] ... scrutiny of family law decision making, reporting on the deficiencies of the family law system, and victims of family violence from speaking out about their experiences.²¹¹

The Family Law Amendment Act 2023 was passed by the Australian Parliament on 19 October 2023.²¹² While it did not make substantive changes to the privacy provisions, it redrafted them with a view to providing much needed clarity, as the ALRC had recommended. It introduced 'Part XIVB–Restriction on communication of accounts and lists of proceedings' and repealed the original section 121 of the 1975 Act.

The updated provisions –now under section 114N of the Act– state, among other things, that: "*It is an offence to communicate an account of proceedings under this Act to the public, if the account identifies certain people involved in the proceedings*", as well as "to

²⁰⁷ Australia Government. Australian Law Reform Commission, *Family Law for the Future — An Inquiry into the Family Law System. Final Report*, ALRC Report 135 (March 2019) (NSW: Commonwealth of Australia 2019) at 23, 436, available from: https://www.alrc.gov.au/wp-content/uploads/2019/08/alrc_report_135_final_report_web-min_12_optimized_1-1.pdf (Date accessed: 10/08/2024).

²⁰⁸ Bosland J., and Townend, J *Open justice, transparency and the media: representing the public interest in the physical and virtual courtroom*(2018) 4 CL 183–202.

²⁰⁹ Bosland J., and Townend, J, *Open justice, transparency and the media: representing the public interest in the physical and virtual courtroom*(2018) 4 CL 183–202.

²¹⁰ Australia Government. Australian Law Reform Commission, *Family Law for the Future — An Inquiry into the Family Law System. Final Report*, ALRC Report 135 (March 2019) (NSW: Commonwealth of Australia 2019) at 439-440, available from: https://www.alrc.gov.au/wp-content/uploads/2019/08/alrc_report_135_final_report_web-min_12_optimized_1-1.pdf (Date accessed: 10/08/2024).

²¹¹ Australia Government. Australian Law Reform Commission, *Family Law for the Future — An Inquiry into the Family Law System. Final Report*, ALRC Report 135 (March 2019) (NSW: Commonwealth of Australia 2019) at 436, available from: https://www.alrc.gov.au/wp-content/uploads/2019/08/alrc_report_135_final_report_web-min_12_optimized_1-1.pdf (Date accessed: 10/08/2024).

²¹² Most of the changes commenced on 6 May 2024.

communicate a list of proceedings that are to be dealt with under this Act to the public, and that are identified by reference to the names of the parties to those proceedings.”²¹³

To communicate:

...means communicate by any means, including by any of the following: (a) publication in a book, newspaper, magazine or other written publication; (b) broadcast by radio or television; (c) public exhibition; (d) broadcast or publication or *other communication by means of the internet*.²¹⁴

The latter inclusion of a reference to the internet is an important one, as the ALRC had acknowledged that “...dissemination on social media or other internet-based media may constitute a prohibited public communication if the potential audience is sufficiently wide in the circumstances”.²¹⁵ Thus, while it is legal to publish information concerning family law proceedings, it is prohibited to identify a party, witness or other person involved in the proceedings.²¹⁶ Similarly, it is considered an offence to publish a list of proceedings, identified by reference to the names of the parties to those proceedings.²¹⁷ To breach these provisions is considered an offence and attracts a penalty of imprisonment of one year,²¹⁸ with the Commonwealth Director of Public Prosecutions being the only one who can initiate the prosecutions. However, these proceedings are rare in practice.²¹⁹

Significantly for individual family members, the clarity introduced by the amending legislation concerning what does not constitute a communication to the public was much needed. A communication *is not made* to the public if the communication is made to a person or body with a significant and legitimate interest in the subject matter of the communication that is greater than the interest of members of the public generally.²²⁰

²¹³ Family Law Act 1975, s. 114N.

²¹⁴ Family Law Act 1975, s. 114P.

²¹⁵ Australia Government. Australian Law Reform Commission, *Family Law for the Future — An Inquiry into the Family Law System. Final Report*, ALRC Report 135 (March 2019) (NSW: Commonwealth of Australia 2019) at 436, available from: https://www.alrc.gov.au/wp-content/uploads/2019/08/alrc_report_135_final_report_web-min_12_optimized_1-1.pdf (Date accessed: 10/08/2024).

²¹⁶ Australia Government. Australian Law Reform Commission, *Family Law for the Future — An Inquiry into the Family Law System. Final Report*, ALRC Report 135 (March 2019) (NSW: Commonwealth of Australia 2019) at 45, available from: https://www.alrc.gov.au/wp-content/uploads/2019/08/alrc_report_135_final_report_web-min_12_optimized_1-1.pdf (Date accessed: 10/08/2024); Family Law 1975 Act, ss. 114Q, 114R.

²¹⁷ Family Law Act 1975, s. 114R.

²¹⁸ Australia Government. Australian Law Reform Commission, *Family Law for the Future — An Inquiry into the Family Law System. Final Report*, ALRC Report 135 (March 2019) (NSW: Commonwealth of Australia 2019) at 45, available from: https://www.alrc.gov.au/wp-content/uploads/2019/08/alrc_report_135_final_report_web-min_12_optimized_1-1.pdf (Date accessed: 10/08/2024); Family Law Act 1975, ss. 114Q, 114R.

²¹⁹ Australia Government. Australian Law Reform Commission, *Family Law for the Future — An Inquiry into the Family Law System. Final Report*, ALRC Report 135 (March 2019) (NSW: Commonwealth of Australia 2019) at 437, available from: https://www.alrc.gov.au/wp-content/uploads/2019/08/alrc_report_135_final_report_web-min_12_optimized_1-1.pdf (Date accessed: 10/08/2024).

²²⁰ Family Law Act 1975, ss. 114N, 114S(1). (1) For the purposes of paragraph 114Q(1)(a) and subsection 114R(1), a communication to a person or body is not a communication to the public if:

(a) the person or body has a significant and legitimate interest in the subject matter of the communication; and
(b) that interest is substantially greater than, or different from, the interests of members of the public generally.

Note: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3) of the Criminal Code).

(2) Without limiting subsection (1), none of the following is a communication to the public:

(a) a private communication between a party to proceedings and one or more persons who are members of the party's family or friends of the party;

(b) a communication of a pleading, transcript of evidence, or other document for use in connection with any of the following proceedings, to a person concerned in those proceedings:

(i) proceedings in a court;

Significantly, the updates to the law make clear that the following are also *not* considered a communication to the public: private communications between a party to proceedings and members of their family or their friends;²²¹ communications of material for use in connection with proceedings specified in the Act; communications of material to bodies responsible for disciplining members of a profession, or to bodies that grant legal aid assistance; communications of material intended primarily for use by the members of any profession.²²²

Interestingly, it has been observed that the amendments lack stronger enforcement mechanisms, which had been a longstanding issue with section 121, with parties seldom penalised for breaches, a situation similar in nature to the Irish context.²²³ Indeed, according to the ALRC:

Prosecutions may be initiated only by the Commonwealth Director of Public Prosecutions, and as few as seven prosecutions have been completed involving a proven offence since the offences were introduced into law.²²⁴

Finally, in the context of promoting transparency in family law cases, “...the family courts have a long-standing practice of publishing anonymised reports of decisions” in Australia.²²⁵ Indeed, since 2007, the Family Court in Australia has had a policy to publish ‘almost all’ judgments, while the Circuit Court has committed to publishing ‘as many

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- (ii) proceedings before an officer of a court investigating or dealing with a matter in accordance with this Act, the regulations or the applicable Rules of Court;
 - (iii) proceedings in a tribunal established by or under a law of the Commonwealth or of a State or Territory;
 - (c) a communication of a pleading, transcript of evidence, or other document, to a prescribed authority of a State or Territory that has responsibilities relating to the welfare of children;
 - (d) a communication of a pleading, transcript of evidence, or other document, to:
 - (i) a body that is responsible for disciplining members of a profession in a State or Territory; or
 - (ii) a person concerned in disciplinary proceedings against a member of a profession in a State or Territory (being proceedings before a body that is responsible for disciplining members of that profession in that State or Territory);
 - (e) a communication of a pleading, transcript of evidence, or other document, to a body that grants assistance by way of legal aid for the purpose of facilitating a decision as to whether assistance by way of legal aid should be granted, continued or provided in a particular case;
 - (f) a communication of material intended primarily for use by the members of any profession (being part of a series of law reports or any other publication of a technical character);
 - (g) a communication of an account of proceedings to a member of a profession in connection with:
 - (i) the person's practice of that profession; or
 - (ii) any form of professional training in which that person is involved;
 - (h) a communication of an account of proceedings to a student in connection with the student's studies.

²²¹ Significantly, this has always been the interpretation afforded s121 by the members of the judiciary in Australia. For example, in the case of *Donnelly v Edelsten*, (1988) 12 Fam LR 294, [296]. Morling J held that the phrase ‘disseminates to the public’

“...should be taken as a reference to widespread communication with the aim of reaching a wide audience. It cannot have been intended by the legislature that the restriction on dissemination should apply, for example, to conversations between a party to Family Court proceedings and close personal friends. This case has been more recently cited with approval in *R Pty Ltd aff the Fletcher Trust & Jones and Anor* [2016] FamCA 928, [37].

²²² *Family Law Act* 1975, s. 114(2).

²²³ Jacky Campbell, “Evolving ‘Best Interests’ Factors For Post-Separation Parenting – What You Need To Know About Family Law Reforms in 2023” (*Forte Family Lawyers*, 14 November 2023) available from: <https://fortefamilylawyers.com.au/family-law-reforms-in-2023/> (Date accessed: 12/11/2024).

²²⁴ Australia Government. Australian Law Reform Commission, *Family Law for the Future — An Inquiry into the Family Law System. Final Report*, ALRC Report 135 (March 2019) (NSW: Commonwealth of Australia 2019) at 437, available from: https://www.alrc.gov.au/wp-content/uploads/2019/08/alrc_report_135_final_report_web-min_12_optimized_1-1.pdf (Date accessed: 14/11/2024).

²²⁵ Australia Government. Australian Law Reform Commission, *Family Law for the Future — An Inquiry into the Family Law System. Final Report*, ALRC Report 135 (March 2019) (NSW: Commonwealth of Australia 2019) at 442, available from: https://www.alrc.gov.au/wp-content/uploads/2019/08/alrc_report_135_final_report_web-min_12_optimized_1-1.pdf (Date accessed: 10/08/2024).

judgments as practicable'. Yet in its 2019 report, the Australian Law Reform Commission (ALRC) encouraged the government and the courts to go further and invest more effort into publishing more anonymized family law judgments, prioritizing those with potential legal significance.²²⁶ The ALRC encouraged the Australian Government and the Courts service to provide sufficient resources to enable sufficient anonymisation and publication of as many family law judgments as possible with priority provided to those of potential legal significance as well as those which were in relation to final orders only.

In terms of the sharing of pertinent information which may be subject to privacy protections, the recently adopted Family Law Amendment (Information Sharing) Act 2023 introduced significant changes. The result of these changes is that the courts have enhanced access to more accurate information in all family law matters in a timely fashion. For example, in situations where children and families are affected by family violence, child abuse or neglect, they can often interact with the federal family law system, the State and territory systems, as well as agencies responsible for responding to family violence and child protection. Specifically, the Family Law (Information Sharing) Act 2023 was implemented in recognition of the fact that decision makers across these systems require timely access to family safety information.

Essentially, the changes facilitate the courts having access to a more accurate and holistic picture of family safety risk in order to prioritise the safety of children and families, particularly in circumstances where there is a risk of child abuse, neglect or family violence. The Act aims to create a significantly improved framework for sharing information relating to family violence, child abuse and neglect risk between the family law courts and information sharing agencies. These reforms facilitate the courts in obtaining information quickly from the police, child protection and firearms agencies about family violence, child abuse and neglect that could place children at risk through two new information sharing orders. The legislative amendments empower the court to make orders requiring information sharing agencies to inform the court if it has any information or documents in its possession, and if so, to provide them to the court.²²⁷ In addition, the court can make orders requiring information sharing agencies to produce any documents or information to the court which may be relevant to a determination of the best interests of the child.²²⁸ The new Act also ensures these orders are available at all stages of the proceedings so that information is accurate and up to date throughout proceedings. Furthermore, the information sharing legislation helpfully sets out the circumstances where information sharing is excluded and sets out information sharing safeguards for the family law courts and agencies to consider when sharing, using and storing information. The Act also introduces a new system with limits on the issuance of subpoenas without the leave of the court to avoid the duplication of information requests before the courts.

²²⁶ Australia Government. Australian Law Reform Commission, *Family Law for the Future — An Inquiry into the Family Law System. Final Report*, ALRC Report 135 (March 2019) (NSW: Commonwealth of Australia 2019) at 443, available from: https://www.alrc.gov.au/wp-content/uploads/2019/08/alrc_report_135_final_report_web-min_12_optimized_1-1.pdf (Date accessed: 10/08/2024).

²²⁷ Section 67ZBD Family Law Amendment (Information Sharing) Act 2023.

²²⁸ Section 67ZBE Family Law Amendment (Information Sharing) Act 2023.

The legislative changes introduced under the 2023 Acts establish a new power for the Government to make regulations which will set down minimum standards and requirements to be met by family report writers who prepare family reports.

These changes are underpinned by a *National Strategic Framework for Information Sharing between the Family Law and Family Violence and Child Protection Systems* (National Framework).²²⁹ The main aim of the National Framework is to promote the safety and wellbeing of children and families impacted by domestic violence, child abuse and neglect, while at the same time, supporting informed and appropriate decision-making in circumstances where there is, or may be, a risk of family violence, child abuse or neglect. It is an agreement which supports a uniform and systematic approach to two-way information sharing between the federal family law courts and State and territory courts, child protection, policing and firearms agencies.

Finally, parties to family law proceedings are entitled to request a copy of the transcript of their family law digital audio recording, albeit at a fee.²³⁰

Child care proceedings

From 6 May 2024, the changes outlined above also apply to all child-related proceedings, including when a final hearing has already commenced. In Australia, while there is Commonwealth legislation that provides guidance on child protection, responsibility for administering child protection falls to the individual States and territories. As pointed out by Harman, “[t]here are, accordingly, eight different jurisdictions for child welfare proceedings and the substantive law and applicable rules of evidence vary between the States and Territories”.²³¹ Child protection legislation in each State and territory confers broad powers on child protection officers to make critical decisions concerning children who are at risk including when a child is in need of protection, in what circumstances it is appropriate to intervene in the lives of families, where to place children where they have been removed from the family, and how much contact children should have with their birth family.

Remote Hearings

The Federal Court and the Family Court of Australia also provide the option of conducting a hearing electronically via video link and by way of telephone. Where this option is used, the usual “...Rules of Court, court procedures, courtesies and formalities still apply and are expected to be complied with”.²³² Hearings may be heard electronically because one

²²⁹ Australia Government. Attorney-General's Department, *National Strategic Framework for Information Sharing between the Family Law and Family Violence and Child Protection systems* (July 2022) available from: (Date accessed: 07/02/2025). <https://www.ag.gov.au/families-and-marriage/publications/national-strategic-framework-information-sharing-between-family-law-and-family-violence-and-child-protection-systems> (Date accessed: 07/02/2025).

²³⁰ Commonwealth Courts Portal, Court recording and transcription services <https://www.fccoa.gov.au/recording-transcripts> (Date accessed: 09/05/25).

²³¹ Judge Joe Harman, “The Protection of Confidentiality in Australian Family Law”, *Family Court Review* (2020) 58(1), at 127, available from: <https://www.fccoa.gov.au/recording-transcripts> (Date accessed: 10/08/2024).

²³² Electronic hearings, <https://www.fccoa.gov.au/attending-court/electronic-hearings> (Date accessed: 16/04/2025).

of the parties has made a request using the [Request form](#) or the Court has directed that the hearing will be held via video link or through telephone.²³³

The recent family law reform process in Australia provides much food for thought concerning potential reforms for the operation of the *in camera* rule in family law proceedings in Ireland. However, since the reforms introduced are relatively recent in nature, it is not possible at this stage to assess how effective these measures are in practice at promoting transparency, while at the same time safeguarding the rights of all concerned. While acknowledging this is ultimately an open system, the privacy of children and families is still maintained through clear and unambiguous legal provisions.

The clarity introduced with respect to what constitutes a public communication of what occurs in court under the new family law legislation is particularly instructive. The fact that private communications between family members are not considered public communication is important since it not only takes into account of the reality of everyday life of children and families, but it also facilitates family members receiving family support without the constant worry of breaking the law. The extension of systematic reporting of family law cases through anonymised judgments is vital in terms of promoting transparency and faith in the administration of justice in family law in Australia. In this respect, the call on the Federal Government and the Courts from the ALRC to resource the publication of as many anonymised family law judgments relating to final orders is worthy of consideration for the Irish context. Finally, with the systemic reforms currently underway in Irish family law, this is an important opportunity to learn from the experience of Australia in the context of information sharing in family and child care matters. In the most complex cases of domestic violence and abuse, neglect and child abuse, the need to protect children and families is particularly acute and this could be achieved in a more timely, safe and protective manner if information is systematically shared between State agencies and the courts where relevant. The timely sharing of relevant information in any proceedings involving children and young people is also particularly important in terms of protecting the best interests of children as well as their right to development. The manner and circumstances in which information sharing takes place could be made clearer through similar legislative provision in Ireland.

Sweden

Akin to Ireland, Sweden, has a written constitution.²³⁴ While the Swedish Legal system is not neatly classified as common law or civil law, it is often referred to as ‘a third way’ or a

²³³ Electronic hearings, <https://www.fcfa.gov.au/attending-court/electronic-hearings> (Date accessed: 16/04/2025). There is also focussed guidance for practitioners and litigants on the procedural aspects of electronic hearings. [Practitioner and Litigant Guide to Electronic Hearings](#) (Date accessed: 16/04/2025).

²³⁴ The Constitution of Sweden 1974, The Fundamental Laws and the Riksdag Act (Stockholm: Department for Parliamentary Documents, 2024) has been subject to amendment on a number of occasions since its inception. The Constitution regulates the manner in which the Riksdag (the Swedish Parliament) and the Government are appointed and outlines how these bodies should operate in practice. Significantly, freedom of opinion as well as other rights and

hybrid model which as part of the Nordic legal tradition, embraces aspects of both systems.²³⁵ In line with the civil law tradition, the Swedish system is bound by legislation. However, akin to the common law tradition, case law from the highest courts in Sweden is regarded as a very important source of law. Sweden largely operates an open court system based on the principle of public access, which facilitates the free formation of opinion.²³⁶

Family law proceedings

Sweden does not have a system of specialised family courts. Ordinary public courts hear private family law matters in the District Court in the area where one of the parties to the proceedings resides (Tingsrätt). Parties can lodge appeals to the Court of Appeals (Hovrätt).²³⁷ The Children and Parents Code (1949:381) states that the best interests of the child must be the determining factor in all cases concerning custody, residence and contact.²³⁸

In relation to the administration of justice in Sweden, Article 11 of the Instrument of Government states that “[p]roceedings in courts of law shall be open to the public”, a right which can be restricted in certain circumstances as outlined by Articles 20 and 21:

...to satisfy purpose in a democratic society.

The restriction may never go beyond what is necessary with regard to the purposes for which it was imposed, nor may it extend so far that it represents a threat to the free shaping of opinion as one of the foundations of democracy.

No restriction may be imposed solely on grounds of political, religious, cultural or other such beliefs.²³⁹

Thus, in cases where the right to the administration of justice in public is to be limited, each of the above requirements must be complied with. Additionally, the Freedom of the

freedoms enjoy special protection under the Constitution so it is not surprising that the administration of family justice takes place in open court. The Swedish Constitution comprises four fundamental laws: (1) the Instrument of Government, (2) the Act of Succession, (3) the Freedom of the Press Act and (4) the Fundamental Law on Freedom of Expression. The Freedom of the Press Act provides for the use of the freedom of expression in printed media and the principle of public access to official documents. The Fundamental Law on Freedom of Expression regulates the use of the freedom of expression in non-printed media.

²³⁵ Pernilla Leviner, “Child protection under Swedish law— legal duality and uncertainty”, *European Journal of Social Work* (2014) 17:2, 206-220, at 210. DOI: 10.1080/13691457.2013.791249.

²³⁶ Swedish family law is based mainly on the Marriage Code (1987) (‘MC’) and the Code relating to Parents, Guardians and Children (1949) (‘PGCC’). Family law also includes the law relating to cohabitants, (Cohabitants (‘joint home’) Act (1987:232)); the related Homosexual Cohabitants Act (1987:813); and the Partnership Act (1994:1117). In the broader sense, the law relating to succession, which is regulated by the Inheritance Code (1958) (‘IC’), is also a part of Swedish family law.

²³⁷ Terre des hommes, “Access to Justice for Children, Country fact sheet: Sweden” (June 2021, Terres des hommes) available from:

<https://justicewithchildren.org/sites/default/files/library/attachments/17%20Sweden%20Access%20to%20Justice%20for%20Children.pdf> (Date accessed: 14/08/2024). The general courts deal with both criminal and civil cases and consist of district courts, courts of appeal and the Supreme Court. There are 53 district courts in Sweden and in most cases, parties can file an appeal against a District Court’s judgment with one of the six courts of appeal. The court of final appeal is the Supreme Court, the responsibility of which is to create precedents. Leave to appeal is required from the Supreme Court, before a case can be taken before it. https://fra.europa.eu/sites/default/files/fra_uploads/1543-access-to-justice-2011-country-SE.pdf (Date accessed: 12 November 2024).

²³⁸ See: <https://www.ici.org/wp-content/uploads/1998/10/Sweden-Act-on-The-Children-and-Parents-Code-1998-eng.pdf> (Date accessed: 07/02/2025).

²³⁹ Constitutional Documents of Sweden, the Instrument of Government 1972, chapter 2.

Press Act 1949 states that the right to access official documents may be restricted only in certain specific cases, one of them being “the protection of the personal or economic circumstances of individuals”, requiring any restriction to be “scrupulously specified in a provision of a special act of law”.²⁴⁰ Thus, the latter provision applies to documentation which may be generated as part of family law proceedings which contains an individual’s personal or financial information. Sweden has widely developed the freedom of the Press at a constitutional level,²⁴¹ which is a testament to its importance for Swedish democracy. Article 1 of Chapter 1 states the aim of this right as follows:

The purpose of the freedom of the press is to secure the free exchange of opinion, free and comprehensive information, and freedom of artistic creation. Freedom of the press means the freedom for everyone to express their thoughts, opinions and sentiments in print, and to publish official documents and in general communicate information on any subject whatsoever.

Freedom of the press also means a right for everyone to publish written matter, without prior hindrance by a public authority or other public body. Legal proceedings on grounds of the contents of written matter may only be instituted after publication, and in a court of law. No one may be punished for publication of written matter other than because the content contravenes an express provision of law, enacted to preserve public order without suppressing information to the public.

In this context, the freedom to communicate and procure information on any subject for the purpose of publication in print is recognised,²⁴² while also stating that the protection of the rights of the individual and public safety must be observed in exercising freedom of the press.²⁴³

In relation to public attendance at legal proceedings, the Swedish Code of Judicial Procedure regulates the right of the public to attend both civil and criminal proceedings. Sections 1 and 2 of Chapter 5 determine in which cases the court *may* decide to hold the hearing behind closed doors. It refers to provisions which are regulated by the “the Secrecy Act (SFS 1980:100)”.²⁴⁴ Discretion can be used in the “[e]xamination of anyone under the age of fifteen years, or of anyone who suffers from a mental disturbance”; and finally it leaves an open clause to indicate that “[i]f other provisions for special cases provide that hearings be held behind closed doors, they shall apply”.

The attendance of persons “who are or appear to be under the age of eighteen years” can be denied if the court considers there is a reason for it.²⁴⁵ In addition, section 9 of Chapter 5 allows the court to limit the number of spectators to avoid congestion in the courtroom and prohibit the recording of examinations if it is interfering with the proceedings. Photographs are not allowed within the courtroom. Nonetheless, when a hearing is being held behind closed doors, Section 3 of Chapter 5 gives the court discretion to admit

²⁴⁰ *Freedom of the Press Act 1949*, chapter 2, article 2.

²⁴¹ As set down under the *Freedom of the Press Act 1949*, chapter 2, article 2.

²⁴² *Ibid.*, chapter 1, article 7.

²⁴³ *Ibid.*, chapter 1, article 2.

²⁴⁴ Now the *Public Access to Information and Secrecy Act 2009*, which entered into force in 2009.

²⁴⁵ *Code of Judicial Procedure*, chapter 5, section 2.

officers of the court and persons serving in the court as part of their education, as well as other persons if there is a special reason for doing so.

According to Swedish legislation, family law proceedings are not held behind closed doors or confidential by virtue of their nature. It is left to the Judge's very limited discretion to authorise a private hearing as an exception under the Public Access to Information and Secrecy Act 2009, the Code of Judicial Procedure and considering the requirements provided by Article 21 of the Instrument of Government. Under the Public Access to Information and Secrecy Act 2009,²⁴⁶ 'secrecy' refers to "...a prohibition on disclosing information whether orally or by making an official document available or in any other way".²⁴⁷ When secret information is disclosed by one authority to another, the secrecy is not necessarily transferred to the new authority, and a balance must be achieved in each case concerning the public interest in accessing information.²⁴⁸ In the case of courts, the main rule is that "if a court hearing in a case is held in public, the secrecy that applied to information that has been provided or adduced at the hearing ceases. If the hearing is held behind closed doors (in camera) ..., the main consideration is that secrecy is preserved".²⁴⁹ That secrecy ceases when the court concludes the case unless the court decides that it must continue.²⁵⁰ Secrecy is not forever, however, and the time limits depend on the risk of damage, being that the period can go from two to seventy years.²⁵¹

For private family law matters, provisions in Chapter 36 of the Public Access to Information and Secrecy Act 2009 guide the court when deciding in which cases it may require confidentiality for certain personal information. In particular, it provides that confidentiality applies with respect to information about an individual's personal or financial circumstances, if it can be assumed that disclosure of information would cause damage to the individual or to someone close to them. This means that confidentiality is conditional, and that "the main rule ... [is] that secrecy does not apply, and that the information may be disclosed".²⁵² On the other hand, the law provides that confidentiality also applies regarding disclosed information that appears in a specific list of matters, such as matrimonial or adoption cases, trusteeships, certain cases regulated by the Parental Code.

²⁴⁶ It replaced the Secrecy Act (SFS) 1980:100 Secrecy Act. See: Uppsala University, *Swedish Law*, available from: <https://user.it.uu.se/~andersa/law/se/index.eng.html> (Date accessed: 12/02/2025).

²⁴⁷ Government Offices of Sweden, Ministry of Justice, "Public Access to Information and Secrecy Act. Information concerning public access to information and secrecy legislation, etc" (2009) at 18, available from: https://www.glyphosate.eu/app/uploads/2020/11/Appendix-2a_SE_public-access-to-information-and-secrecy-act.pdf (Date accessed: 14/08/2024).

²⁴⁸ *Ibid.* at 21.

²⁴⁹ *Ibid.* at 31.

²⁵⁰ *Ibid.* at 31.

²⁵¹ Government Offices of Sweden, Ministry of Justice, "Public Access to Information and Secrecy Act. Information concerning public access to information and secrecy legislation, etc" (2009) at 30, available from: https://www.glyphosate.eu/app/uploads/2020/11/Appendix-2a_SE_public-access-to-information-and-secrecy-act.pdf (Date accessed: 14/08/2024).

²⁵² Government Offices of Sweden, Ministry of Justice, "Public Access to Information and Secrecy Act. Information concerning public access to information and secrecy legislation, etc" (2009) at 29, available from: https://www.glyphosate.eu/app/uploads/2020/11/Appendix-2a_SE_public-access-to-information-and-secrecy-act.pdf (Date accessed: 14/08/2024).

Where these provisions are breached, Chapter 20, section 3 of the Swedish Penal Code 1962 (as amended in 2023)²⁵³ sets out the relevant sanctions. In cases where a person is required to keep information secret but fails to do so, they shall be sentenced to a fine or imprisonment for a maximum of two years. If the offence is particularly serious, they may be sentenced up to a maximum of four years. In deciding what constitutes a serious breach, special consideration is given to the potential damage the action could have, the large amount of information disclosed, or the particularly dangerous nature of the disclosure. Likewise, if the breach is due to negligence on the part of the accused, the person may be sentenced to a fine. Where the act is minor in nature, it shall not constitute a crime.

Child care proceedings

The national legal framework for child care proceedings in Sweden is set out under the Social Services Act (SoL) (2001, 453) and related laws. At a local level, social services in Sweden are administered in each of the 290 municipalities. Each municipality, in accordance with the legal framework, has a Social Welfare Board and a subsection of that board is – a Social Welfare Committee – is then tasked with decision-making based on the best interests of the child. The Committee is comprised of laypersons or ‘good citizens’ with no specialist knowledge of social work or any other related profession.²⁵⁴ The committee can delegate decision-making to the social workers who operate in their area. Where a parent is unhappy with a decision relating to their child, they can appeal the decision of the Committee to an administrative court.²⁵⁵ According to the Care of Young Persons Act (1990) LVU cases where a child must be forcibly removed from the family unit and placed outside of the family home without the consent of their parents, an application for this must be made by the Social Welfare Board to the local administrative court which adopts an inquisitorial approach to such cases. The decisions of the county courts must be made public in these cases, but the Judge must ensure that the child’s right to privacy is protected. The day-to-day work of the Social Welfare Boards and the Committees is protected with a high level of confidentiality; but where a child is forcibly removed through a decision of the Social Welfare Board, the decision must also be made public. However, “...the SWB has the right to restrict the information in the decision to just the most basic facts, otherwise this exception would lead to a breach of a child’s and family’s right to anonymity”.²⁵⁶ It is noteworthy that the parties to the case are entitled to

²⁵³ The Swedish Criminal Code (brottsbalken, SFS 1962:700) was adopted in 1962 and entered into force on 1 January 1965. It contains provisions on many of the acts that are criminal offences in Sweden including those relating to secrecy. Available from: <https://www.government.se/contentassets/7a2dcae0787e465e9a2431554b5eab03/the-swedish-criminal-code.pdf> (Date accessed: 10/02/2025).

²⁵⁴ Svensson G. and Höjer, S., “Placing children in State Care in Sweden” in Burns, K., Pösö, T., Skivenes M., *Child Welfare Removals by the State: A Cross-Country Analysis of Decision- Making Systems*, (Oxford: Oxford University Press, 2016) at pp. 66-67.

²⁵⁵ The county administrative court is made up of a Judge and three laypersons, the latter being appointed at the suggestion of the political parties. If the three laypersons reach a unanimous decision concerning the welfare of a child, the decision stands, irrespective of the position of the Judge. Svensson G. and Höjer, S., “Placing children in State Care in Sweden” in Burns, K., Pösö, T., Skivenes M., *Child Welfare Removals by the State: A Cross-Country Analysis of Decision- Making Systems*, (Oxford: Oxford University Press, 2016) at p. 69.

²⁵⁶ Svensson G. and Höjer, S., “Placing children in State Care in Sweden” in Burns, K., Pösö, T., Skivenes M., *Child Welfare Removals by the State: A Cross-Country Analysis of Decision-Making Systems*, (Oxford: Oxford University Press, 2016) at p. 81.

have full access to all documentation relating to their case and this openness can only be restricted in the most limited of circumstances.²⁵⁷

Thus, in general, Sweden ensures that there is transparency in the administration of private and public family justice by holding private family law cases in public with courts retaining discretion as to when these cases should be held in private and in the case of child care proceedings, the decisions are publicly reported with any identifying information removed. Reporting of family cases is restricted in the interests of the rights of the individual and public safety. What is particularly noteworthy about the Swedish approach is the clarity around the penalties to be applied. Where an individual breaches the requirements concerning maintaining information secret, clear penalties are outlined in the legislation, making reference to different levels of breach. Ireland could benefit from adopting such a transparent approach with guidance concerning what constitutes a negligent breach, a minor breach and a more serious breach.

New Zealand

New Zealand, a common law jurisdiction, operates a closed system of family justice which is broadly similar in nature to the Irish system, where family law proceedings are heard in private.²⁵⁸ The Family Court is a part of Aotearoa New Zealand's District Court. The Family Court helps whānau work out disagreements and family law issues²⁵⁹. The closed model was adopted in New Zealand:

...in the hope that the privacy and unnecessary formality of the Court processes, plus the confidentiality of the self-determination processes, would encourage families to seek the assistance of the Court and to speak frankly about intimate matters during a hearing so that the Court could be aware of all information necessary to make a decision...²⁶⁰

²⁵⁷ Svensson G. and Höjer, S., "Placing children in State Care in Sweden" in Burns, K., Pösö, T., Skivenes M., *Child Welfare Removals by the State: A Cross-Country Analysis of Decision-Making Systems*, (Oxford: Oxford University Press, 2016) at p. 82. For example, the identity of the person who reported the risk to the child may not be revealed if they feel that they could be under threat as a result.

²⁵⁸ This is in accordance with sections 11A to 11D of the Family Courts Act 1980. The Family Courts Act 1980 applies to proceedings held under the Family Proceedings Act 1980, the Family Protection Act 1955, the Marriage Act 1955, the Civil Union Act 2004, the Child Support Act 1991, the Care of Children Act 2004, the Oranga Tamariki Act 1989, *et al.*

²⁵⁹ In August 2018, the Minister of Justice, Hon. Andrew Little, appointed an independent panel "to consider the 2014 family justice reforms as they relate to assisting parents/guardians to decide or resolve disputes about parenting arrangements or guardianship matters ...". The 2014 Family Justice reforms in New Zealand were focused on moving the emphasis away from in court to out of court alternative dispute resolution processes. The Review panel were asked to consider: the effectiveness of out of court services, such as Family Dispute Resolution (FDR); the effectiveness of Family Court processes, particularly given the significant increase in the number of urgent (without notice) applications coming to the Court; the roles of the professionals, for example, lawyers, lawyer for child, Family Dispute Resolution providers and psychologists and; whether the system as a whole is producing outcomes that are upholding the welfare and best interests of children, and particularly tamariki Māori. Te Korowai Ture ā-Whānau: The final report of the Independent Panel examining the 2014 family justice reforms (2019)

<https://www.justice.govt.nz/assets/Documents/Publications/family-justice-reforms-final-report-independent-panel.pdf>

²⁶⁰ Heneghan, M. and Tapp, P., "Privacy in the Courts", Chapter 11 at para. 11.4.1 in Chamberlain, N. & Penk, S., eds., *Privacy Law in New Zealand* (Wellington: Thomson Reuters, 2023) at 469-511, available from: <https://researchspace.auckland.ac.nz/handle/2292/67460> (Date accessed: 10/08/2024).

Transparency in family law matters is achieved through reporting of proceedings, albeit within clear guidelines, as well as publication of official family law judgments online.²⁶¹ Moreover, attendance at hearings remotely is also possible and guidance has been provided for such cases.²⁶²

The New Zealand Family Court Act 1980 (as amended) explicitly sets out who may attend Family Law hearings, and it also very helpfully contains the reporting restrictions for media and others as well as sanctions for breach of the law regarding reporting in private family law cases under one piece of legislation. In particular, section 11A of the New Zealand *Family Courts Act 1980* (as amended) provides a list of who may attend and publish reports:

- (a) officers of the court:
- (b) parties to the proceedings:
- (c) lawyers representing parties to the proceedings:
- (d) witnesses:
- (e) accredited news media reporters:
- (f) persons whom the Family Court Judge permits to be present as support persons for a party on a request by that party:
- (g) any other persons whom the Family Court Judge permits to be present.²⁶³

In 2004, a New Zealand Law Commission Report examined the Australian system of open justice with a view to deciding whether or not a similar system would work in the New Zealand context.²⁶⁴ Significantly, this report determined that despite having an open family law system, in practice, the public rarely attended court apart from those who may have an interest in the case or were waiting for their own case to be called. As a result, the New Zealand Law Commission recommended that accredited media representatives, in addition to support persons, be allowed to attend court to promote transparency in the system. Several amendments have since been made to this legislation (2004 and 2008) which have facilitated the attendance of media and support persons.²⁶⁵

Section 11B of the 1980 Act addresses publication of proceedings and now provides that ‘any person may ‘...may publish a report of proceedings in the Family Court’.²⁶⁶ Importantly, however, a person may not, without the leave of the court, publish a report of proceedings in the Family Court that includes identifying information where —

- (3) (a) a person under the age of 18 years—

²⁶¹ District Court of New Zealand, Search for family law judgments <https://districtcourts.govt.nz/search/SearchForm?Search=+&TermID=4> (Date accessed: 10/02/2025). A selection of family law judgments from all levels of family court are published online <https://districtcourts.govt.nz/about-the-judgments> (Date accessed: 04/04/2025).

²⁶² Ministry of Justice of New Zealand, *Remote courts information for participants*, available from: <https://www.justice.govt.nz/courts/going-to-court/participating-in-a-virtual-meeting-room-court-hearing/remote-courts-information-for-participants/> (Date accessed: 10/02/2025).

²⁶³ *Family Courts Act 1980*, s. 11A.

²⁶⁴ New Zealand Law Commission, “Delivering Justice for All: A vision for New Zealand Courts and Tribunals” (NZLC R85 2004) at 304.

²⁶⁵ Mark Henaghan & Pauline Tapp, “Privacy in the Courts” in Chamberlain, N. & Penk, S., eds., *Privacy Law in New Zealand* (Wellington: Thomson Reuters, 2023) at 487 available from: <https://researchspace.auckland.ac.nz/server/api/core/bitstreams/958a4152-a232-4860-8454-31e6b344fc68/content> (Date accessed: 10 August 2024).

²⁶⁶ *Family Courts Act 1980*, s. 11B(1).

- (i) is the subject of the proceedings; or
- (ii) is a party to the proceedings; or
- (iii) is an applicant in the proceedings; or
- (iv) is referred to in the proceedings; or

(b) a vulnerable person—

- (i) is the subject of the proceedings; or
- (ii) is a party to the proceedings; or
- (iii) is an applicant in the proceedings.²⁶⁷

The motivation behind Section 11 B (3) included:

...both a general educative function and to assist family self-determination by enabling members of the public and families with legal issues to scrutinise and understand the processes and values used by the Court and how these are applied in particular contexts, while also protecting the privacy of the children and families involved.²⁶⁸

The legislation also very helpfully outlines when the restrictions under subsection 3 will not apply, such as reports of a genuinely professional nature as well as those which do not include any identifying information of children or other vulnerable individuals. Furthermore, it does not apply to statistical data.²⁶⁹

As a result of changes to who can attend such proceedings, where requested, a Judge must allow support persons to attend the hearings unless they have “good reason” not to.²⁷⁰ Support persons are not allowed to assist a party with their case. Generally, Judges have wide discretion concerning whether or not other people from the list should be present in family law court. Judges may also require witnesses, accredited news media reporters and support persons, previously admitted, to leave the courtroom where the circumstances dictate that this is appropriate.²⁷¹ Thus, legislation in New Zealand gives the Judge discretion to carry out a balancing exercise between the protection of privacy and freedom of expression, which “...will examine the nature of the public interest that is present in the case, and any restriction on publication should be no wider than is

²⁶⁷ *Family Courts Act 1980*, s. 11B(3).

²⁶⁸ Mark Henaghan & Pauline Tapp, “Privacy in the Courts” in Chamberlain, N. & Penk, S., eds., *Privacy Law in New Zealand* (Wellington: Thomson Reuters, 2023) at 490, available from: <https://researchspace.auckland.ac.nz/server/api/core/bitstreams/958a4152-a232-4860-8454-31e6b344fc68/content> (Date accessed: 10/08/2024).

²⁶⁹ However, subsection (3) does not apply to—

(a) a report of proceedings in a publication that—

(i) is genuinely of a professional or technical nature (including a publication that is intended for circulation among members of the legal or medical professions, officers of the public service, psychologists, counsellors, mediators, or social workers); and

(ii) does not include the name of—

(A) any person under the age of 18 years who is the subject of the proceedings, or who is referred to in the proceedings:

(B) any vulnerable person who is the subject of the proceedings:

(C) any parties or applicants in the proceedings where subparagraph (A) or (B) applies:

(D) any school that a person who is the subject of proceedings under the Oranga Tamariki Act 1989 is or was attending, or any other particulars likely to lead to the identification of that school:

(b) a publication of statistical information relating to the proceedings.

²⁷⁰ *Family Courts Act 1980*, s. 11A(2)(f).

²⁷¹ *Ibid.*, s. 11A(4).

necessary to achieve the purpose for which it is imposed”.²⁷² This discretion is also used to respond to applications asking for access to documents or court files in Family Court Rules (or proceedings), when the registrar, the Family Court Associate or Judge has to determine if the applicant has a genuine and proper interest, which is considered a requirement to that access.²⁷³

In respect of accredited news media attending court, the Ministry of Justice in New Zealand has developed and published guidelines called *Media Guide for Reporting in the Family Court*.²⁷⁴ While reports of many proceedings may be published without the need for the leave of the court, they must ensure that they do not include any identifying information where either a person under the age of 18 years or a vulnerable person is the subject of, party to, or referred to in the proceedings.²⁷⁵ A breach of the reporting restrictions under the Family Courts Act 1980 may result in a fine of up to \$2000 or 3 months in prison. For a company or other corporate body, they may have to pay a fine of up to \$10,000.²⁷⁶

Child care proceedings

The Care of Children Act 2004 came into force on 1 July 2005 and seeks to promote the welfare and best interests of children. It sets out the duties and responsibilities of parents to their children and delineates the court's power in relation to the care of children. It encourages agreement on care arrangements and provides for the resolution of disputes. It also implements the Hague Convention on the Civil Aspects of International Child Abduction into New Zealand law, allowing for the enforcement of orders internationally. Significantly, the Act created an extension as to who is permitted to attend family law proceedings with a view to providing more transparency. While the Act allows the media to attend Family Court, there are strict limits on what they can publish and the names or any information that might identify anyone involved cannot be published. The family law Judge has the power to remove them from the courtroom at any time. Under s.137 of the Act, accredited news media reporters, together with witnesses, court officers and other persons permitted by the Judge may now attend hearings.

Court reports

²⁷² *Jones v Television New Zealand Ltd* [2007] NZFLR 456 (HC) at [29]; as cited in Mark Henaghan & Pauline Tapp, “Privacy in the Courts” in Chamberlain, N. & Penk, S., eds., *Privacy Law in New Zealand* (Wellington: Thomson Reuters, 2023) at 497, available from: <https://researchspace.auckland.ac.nz/items/079b83e7-ab41-4aff-ac1f-76c54b1e22b2> (Date accessed: 10/08/2024).

²⁷³ *Family Court Rules 2002*, s. 429. It is interesting that under the Family Court (Family Court Associates) Legislation Act 2023, the new role of Family Court Associate was established in 2023 in an attempt to reduce the workload of the Family Court Judges including decisions made at earlier stages of proceedings. The first appointments of six Family Court Associates were made in Auckland and Christchurch in March 2024.

²⁷⁴ Ministry of Justice of New Zealand, *News & Media*, 10.6 Appendix F: *Media Guide for reporting in the Family Court* (August 2017) available from: <https://www.justice.govt.nz/about/news-and-media/media-centre/media-information/media-guide-for-reporting-the-courts-and-tribunals-edition-4-1/appendices/10-6-appendix-f-media-guide-for-reporting-in-the-family-court/> (Date accessed: 14/11/2024). See also District Court of New Zealand, *Guidance for news media covering the District Court*, available from: <https://www.districtcourts.govt.nz/media-information/information-for-news-media-covering-district-court/> (Date accessed: 14/11/24).

²⁷⁵ Ministry of Justice of New Zealand, *News & Media*, 10.6 Appendix F: *Media Guide for reporting in the Family Court* (August 2017) available from: <https://www.justice.govt.nz/about/news-and-media/media-centre/media-information/media-guide-for-reporting-the-courts-and-tribunals-edition-4-1/appendices/10-6-appendix-f-media-guide-for-reporting-in-the-family-court/> (Date accessed: 14/11/2024).

²⁷⁶ Section 11 B (6) of the Family Courts Act 180.

As referred to above, the leave of the court is not necessary for a report that “...is genuinely of a professional or technical nature (including a publication that is intended for circulation among members of the legal or medical professions, officers of the public service, psychologists, counsellors, mediators, or social workers)”,²⁷⁷ as long as it does not include the name of:

- (a) any person under the age of 18 years who is the subject of the proceedings, or who is referred to in the proceeding,
- (b) any vulnerable person who is the subject of the proceedings,
- (c) any parties or applicants in the proceedings where sub paragraph (A) or (B) applies,
- (d) any school that a person who is the subject of proceedings under the Oranga Tamariki Act 1989 is or was attending, or any other particulars likely to lead to the identification of that school.²⁷⁸

“[A] publication of statistical information relating to the proceedings” also does not require leave of the court.²⁷⁹

The Family Court Act 1980 also contains clear information regarding sanctions where reporting restrictions are breached. In cases where restrictions on reporting are breached, this constitutes an offence which is punishable by a term of imprisonment no more than 3 months, or a fine no higher than NZ \$2,000. In the case of a body corporate, the fine must not exceed NZ \$10,000.²⁸⁰ Additionally, the court may punish the offender for contempt of court.²⁸¹

While privacy in family law proceedings operates in a similar manner to the Irish system, transparency is facilitated in New Zealand through the regular reporting of anonymised family law judgments. Moreover, there is clear and uncomplicated legal provision for media reporting of family law judgments. What is particularly helpful about the New Zealand law in this context is that one piece of legislation clearly delineates the parameters of privacy, including the penalties for breach of the law, leaving no room for ambiguity. This makes it clear for the public and professionals alike.

Oranga Tamariki Act 1989 (the OTA)

The Oranga Tamariki Act 1989 promotes the well-being of children, young persons and their families and contains provisions relating to youth justice.²⁸² In cases where there is a perceived welfare risk to a child, the Family Group Conference is a well-established and firmly embedded mechanism in New Zealand law which promotes the wellbeing of a child within the care of their family or extended family where possible.²⁸³ The OTA challenges the traditional concept of privacy in family and child law from the Māori people’s

²⁷⁷ *Family Courts Act 1980*, s. 11B(4)(a)(i).

²⁷⁸ *Ibid*, s. 11B(4)(ii).

²⁷⁹ *Ibid*, s. 11B(4)(b).

²⁸⁰ *Ibid*, s. 11B(6).

²⁸¹ *Ibid*, s. 11B(6).

²⁸² *Oranga Tamariki Act 1989*, Part 1, s. 4.

²⁸³ The *Children’s and Young People’s Wellbeing Act 1989* (also called the *Oranga Tamariki Act 1989*). See: <https://www.legislation.govt.nz/act/public/1989/0024/latest/DLM147088.html> (Date accessed: 10/02/2025).

perspective²⁸⁴ as it goes beyond the “...parents and guardians of the child as the people primarily responsible for making decisions about the care of the children to include the child’s extended family (whānau) and broader family (hapū) and tribal groups”²⁸⁵ and applies to all children in New Zealand.

One of the most important contributions of this Act is the establishment of the ‘family group conference’ (FGC), the operation of which is at “*the core of the Act*” and is a legislatively mandated “formal vehicle for collaboration between the State and the family”.²⁸⁶ Where a social worker/Oranga Tamariki social worker (or the police) decides after an investigation that a child needs care or protection, a Care and Protection Coordinator will call a Family Group Conference which parents will be required to attend.²⁸⁷ At a Family Group Conference, members of the child’s family or whānau meet with social workers and other individuals to discuss and plan what needs to happen to ensure that a child is safe and well cared for. Recommendations are made concerning the next steps and the plan for the child going forward. It is understood that the family group that is formed to deal with children’s and young people’s concerns will make the best decisions, because “family knows ‘best’”.²⁸⁸

There are special rules regarding who can attend these family group conferences and what kind of information must be kept confidential before the FGC. Interestingly, it is required that any discussions concerning the decisions or recommendations made in the FGC are kept confidential as well as the plans for the child, and “it is only the agreed plan which is disclosed to the court”.²⁸⁹ The justification for this privilege is to “...ensure that the FGC functions as intended and within a structure of privacy, enabling free and frank exchanges about the issues of concern touching upon the child whose wellbeing is at the centre of the conference”.²⁹⁰

The Oranga Tamariki Act 1989 considers the reporting of the FGC’s proceedings or “...any particulars that are identifiable by any person ... as particulars relating to any particular person who was the subject of, or a participant in, that family group conference” as an offence.²⁹¹ The sanction for that offence is a fine of up to NZ \$2,000 in the case of an individual, and NZ \$10,000 in the case of a body corporate.²⁹² In the case of proceedings under the Oranga Tamariki Act 1989, “...identifying information also includes the name or particulars likely to lead to the identification of any school that a person subject of the proceedings is or was attending”.²⁹³

²⁸⁴ Merkel-Holguin, Lisa *et al.*, “The New Zealand and Family Group Conference Confidentiality Protections: Lessons Learned and an Application in U.S. Child Welfare Systems” (January 2020), *Family Court Review*, at 110.

²⁸⁵ Merkel-Holguin, Lisa *et al.*, “The New Zealand and Family Group Conference Confidentiality Protections: Lessons Learned and an Application in U.S. Child Welfare Systems” (January 2020), *Family Court Review*, at 109-110, at 110.

²⁸⁶ *Ibid*, at p.112.

²⁸⁷ Section 18 of the 1989 Act.

²⁸⁸ Merkel-Holguin, Lisa *et al.*, “The New Zealand and Family Group Conference Confidentiality Protections: Lessons Learned and an Application in U.S. Child Welfare Systems” (January 2020), *Family Court Review*, at 112.

²⁸⁹ *Ibid* at 114.

²⁹⁰ *Ibid* at 116.

²⁹¹ *Oranga Tamariki Act 1989*, Part 2, s. 38.

²⁹² *Ibid*, Part 2, s. 38.

²⁹³ *Family Courts Act 1980*, s. 11C(2).

Remote hearings New Zealand

New Zealand has operated remote hearings in court proceedings more generally for some time now.²⁹⁴ However, on 20th March 2025²⁹⁵ the New Zealand judiciary issued a dedicated protocol which provides clear guidance on when a remote hearing will be considered the default or usual mode of hearing in the Family Court.²⁹⁶ While the ultimate decision concerning whether or not a hearing will be held remotely lies with the presiding judge, the protocol lists a number of situations where it is presumed that a hearing will take place remotely as a matter of default. These include without notice applications, chambers work,²⁹⁷ Dissolution (on the papers conducted almost solely by the registry), Mental Health (Compulsory Assessment and Treatment) Act hearings, Property (Relationships) Act 1976, Family Protection Act 1955, Family Proceedings Act 1980 (e.g. spousal maintenance, separation, and dissolution orders) Child Support Act 1991, Adoption Act 1955,²⁹⁸ Call overs for long cause (one day +) and short cause (under one day) fixtures, Hearings where a party / witness is overseas or lives a reasonable distance from the court (e.g. International child abduction (Hague Convention) where the applicant (via the Central Authority) is overseas) and Single issue interlocutory (submissions only) hearings (e.g. s139A Care of Children Act 2004).

United Kingdom (England and Wales)

Within the common law context, England and Wales have recently been making significant efforts at improving transparency for public and private family law proceedings, while still seeking to maintain the privacy of those directly involved. At the same time, very explicit guidance has been provided by the HM Courts and Tribunal Service concerning what is and is not permissible to share publicly as a party to a family law/ child care matter.²⁹⁹ Very pragmatically, in England and Wales, a party to a family law case is permitted to share information with a person where this is deemed necessary for the following reasons:

- private confidential advice to help present a case or get support during proceedings;
- mediation or help to sort out a disagreement between the parties in the case;

²⁹⁴ The earliest piece of legislation dedicated to remote hearings in New Zealand is 2010 - <https://www.legislation.govt.nz/act/public/2010/0094/latest/DLM2600715.html> (Date accessed: 16/04/2025).

²⁹⁵ <https://thelawassociation.nz/wp-content/uploads/2025/03/New-Zealand-judiciary-releases-remote-participation-protocols.pdf> (Date accessed: 15/04/2025).

²⁹⁶ <https://www.courtsofnz.govt.nz/assets/6-Going-to-Court/practice-directions/Protocol-for-remote-participation-in-District-Court-Family-proceedings-final.pdf> (Date accessed: 15/04/2025). In this context, remote participation refers to a court hearing where one or more participants takes part using audio-visual or audio technology, rather than appearing in person. In New Zealand, this is sometimes referred to as hearings conducted “on the papers”, where the parties do not appear in person but are required to make written submissions.

²⁹⁷ This refers to a. almost all (uncontested) PPPR work; b. all IDCCR work; c. case management reviews; d. aged case review; and e. consent orders and directions.

²⁹⁸ Hearings conducted under the Family Court Protocol for the Adoption by New Zealand-Based Intended Parents of Children Born by Surrogacy Overseas

²⁹⁹ HM Courts & Tribunals Service, *Sharing information outside of court in family proceedings* (July 2013), available from: <https://www.gov.uk/guidance/sharing-information-outside-of-court-in-family-proceedings> (Date accessed: 10/02/2025).

- advice on or help with a complaint about the proceedings or someone involved in them (such as an expert witness involved the proceedings).

These are listed in addition to the more well-established listings of professionals including:

- Legal representatives.
- Other parties to the case and their legal representatives.
- Court-appointed experts.
- Cafcass or Cafcass Cymru officers involved in the case.
- Local authority independent reviewing officer.
- Legal Aid.³⁰⁰

Legislative provision and Family Procedure Rules 2010

Primary legislation governing the issue of privacy in family law proceedings (mainly involving children) includes section 12 of the Administration of Justice Act 1960 and section 97(2) of the Children Act 1989.³⁰¹ The manner in which the law is operationalised in England and Wales is through the *Family Procedure Rules 2010* together with a number of Practice Directions. In particular, section 27.10 of the *Family Procedure Rules 2010* (FPR)³⁰² states that proceedings to which these rules apply (family proceedings in the High Court and the Family Court) will be held ‘in private’. Appeals regarding these cases may be held in public however, in which case the court may impose restrictions on reporting, such as the prohibition of the publication of the identity of any party, child, witness or any other person, or any information to the proceedings that could lead to identifying them, as well as any information relating to the proceedings.³⁰³

Section 27.11 of the FPR³⁰⁴ provides a list of authorised persons who can be present in the courtroom in these proceedings, such as:

- (a) an officer of the court;
- (b) a party to the proceedings;
- (c) a litigation friend for any party, or legal representative instructed to act on that party's behalf;
- (d) an officer of the service or Welsh family proceedings officer;
- (e) a witness;
- (f) duly accredited representatives of news gathering and reporting organisations;
- (ff) a duly authorised lawyer attending for journalistic, research or public legal educational purposes;
- and
- (g) any other person whom the court permits, or who is required by any Practice Direction, to be present.

³⁰⁰ HM Courts & Tribunals Service, *Sharing information outside of court in family proceedings* (July 2013), available from: <https://www.gov.uk/guidance/sharing-information-outside-of-court-in-family-proceedings> (Date accessed: 10/02/2025).

³⁰¹ Ministry of Justice of the UK, *Family Procedure Rules*, available from: https://www.justice.gov.uk/courts/procedure-rules/family/rules_pd_menu (Date accessed: 10/11/2024).

³⁰² *Family Procedure Rules 2010*, s. 27.10.

³⁰³ *Ibid* s. 30.12A.

³⁰⁴ According to s. 27.11(1), these rules do not apply to hearings that have the purpose of judicially assisted conciliation or negotiation, nor to procedure for applications in adoption, placement or related proceedings, *et al.*

(Practice Direction 27C makes provision for the attendance at hearings of Independent Domestic Violence Advisers and Independent Sexual Violence Advisers.)³⁰⁵

Practice Direction 27B indicates how the court can accredit the media and lawyers to attend these proceedings.³⁰⁶ Media representatives can use the UK Press Card Authority, or a card issued under that scheme to prove accreditation. In the event that they cannot show some form of accreditation, then their attendance is at the court's discretion.³⁰⁷

While non-parties to proceedings are allowed to attend family law hearings, the court retains the discretion to direct that they should leave the courtroom, only when "justice will otherwise be impeded or prejudiced" or if "it is necessary (i) in the interests of any child concerned in, or connected with, the proceedings; (ii) for the safety or protection of a party, a witness in the proceedings, or a person connected with such a party or witness; or iii) for the orderly conduct of the proceedings".³⁰⁸ When exercising this discretion, the court must give the person who is attending an opportunity to make representations.³⁰⁹

Practice Direction 27B is particularly helpful in setting out very clearly what proceedings media or duly authorised lawyers cannot attend and in the context of family law and child care cases:

...do not entitle a media representative to receive or peruse court documents referred to in the course of evidence, submissions or judgment without the permission of the court or otherwise in accordance with Part 12, Chapter 7 of the Family Procedure Rules 2010 and Practice Direction 12G (rules relating to disclosure to third parties).³¹⁰

Significantly, the procedural rules that accompany the legislation in respect of how privacy operates outside of the courtroom in England and Wales regarding children's proceedings, is very clearly set out in Chapter 7 of Part 12 of the FPR. Rule 12.73 provides a restricted list of people who are authorised to access information relating to those proceedings, such as the parties, their legal representatives, officers of the service, welfare officers, among others.³¹¹ That information can also be communicated when the court gives permission or subject to any direction of the court. In addition, the rules clearly state that "nothing in this Chapter permits the communication to the public at large, or any

³⁰⁵ *Family Procedure Rules 2010*, s. 27.11(2).

³⁰⁶ Ministry of Justice of the UK, *Practice Direction 27B – Attendance of media representatives or duly authorised lawyers at hearings in family proceedings*, available from: https://www.justice.gov.uk/courts/procedure-rules/family/practice_directions/pd_part_27b#:~:text=This%20Practice%20Direction%20supplements%20rule,in%20private%20subject%20to%20the (Date accessed: 10/11/2024).

³⁰⁷ Ministry of Justice of the UK, *Practice Direction 27B – Attendance of media representatives or duly authorised lawyers at hearings in family proceedings*, [4.2, 4.3], available from: https://www.justice.gov.uk/courts/procedure-rules/family/practice_directions/pd_part_27b#:~:text=This%20Practice%20Direction%20supplements%20rule,in%20private%20subject%20to%20the (Date accessed: 10/11/2024).

³⁰⁸ *Family Procedure Rules 2010*, s. 27.11(3a).

³⁰⁹ *Ibid*, s. 27.11(4).

³¹⁰ *Ibid*, s. 27.B 2.3. s 27B 2.5 provides the prohibition in section 97(2) of the Children Act 1989, on publishing material intended to or likely to identify a child as being involved in proceedings or the address or school of any such child, is limited to the duration of the proceedings. However, the limitations imposed by section 12 of the Administration of Justice Act 1960 on publication of information relating to certain proceedings in private apply during and after the proceedings. In addition, in proceedings to which s.97(2) of the Children Act 1989 applies the court should continue to consider at the conclusion of the proceedings whether there are any outstanding welfare issues which require a continuation of the protection afforded during the course of the proceedings by that provision.

³¹¹ 2.73 (1)(a) *Family Procedure Rules 2010*.

section of the public, of any information relating to the proceedings”, except for those cases when the court gives permission to do so, which are regulated by Practice Direction 12R (previously known as the “Reporting Pilot”)³¹² aimed at accredited members of the press or authorised lawyers attending for journalistic research or public legal education purposes.³¹³ At the heart of this Practice Direction, lie two important principles - “the transparency principle” and “the principles of protection of the anonymity of any children involved in the proceedings.”³¹⁴

Furthermore, similar to the approach adopted in Australia, rule 12.75 of the FPR provides that a party to proceedings may communicate information relating to public and private family law proceedings³¹⁵ to any person where necessary to enable that party:

- (a) by confidential discussion, to obtain support, advice or assistance in the conduct of the proceedings;
- (b) to attend a mediation information and assessment meeting, or to engage in mediation or other forms of non-court dispute resolution;
- (c) to make and pursue a complaint against a person or body concerned in the proceedings; or
- (d) to make and pursue a complaint regarding the law, policy or procedure relating to a category of proceedings to which this Part applies.³¹⁶

The person to whom such information is communicated is prohibited from passing on this information any further.³¹⁷ The exception to this rule applies where a person communicates information to a further recipient where “(i) the party who initially communicated the information consents to that further communication; and (ii) the further communication is made only for the purpose or purposes for which the party made the initial communication”.³¹⁸ Additionally, “the information may be successively communicated to and by further recipients on as many occasions as may be necessary to fulfil the purpose for which the information was initially communicated, provided that on each such occasion the [two previous] conditions ... are met”.³¹⁹

Sanctions and s12 of the Administration of Justice Act 1960

In proceedings involving children, section 12 of the Administration of Justice Act 1960 provides that the “publication of information relating to proceedings before any court sitting in private shall not itself be contempt of court”, except if that information is related to minors, or is brought under the Children Act 1989 or the Adoption and Children Act 2002,

³¹² 12.73 (2) *Family Procedure Rules 2010. Practice Direction 12R – The Court giving permission to communicate information from proceedings to which part 12 FPR applies* (previously the Reporting Pilot Guidance from the President of the Family Division dated August 2024) will enter into force progressively in 2025.

³¹³ Ministry of Justice of the UK, *Practice Direction 12R – The court giving permission to communicate information from proceedings to which Part 12 FPR applies*, available from: <https://www.justice.gov.uk/practice-direction-12r-the-court-giving-permission-to-communicate-information-from-proceedings-to-which-part-12-fpr-applies> (Date accessed: 10/02/2025).

³¹⁴ Ministry of Justice of the UK, *Practice Direction 12R – The court giving permission to communicate information from proceedings to which Part 12 FPR applies*, para 3.1-3.3, available from: <https://www.justice.gov.uk/practice-direction-12r-the-court-giving-permission-to-communicate-information-from-proceedings-to-which-part-12-fpr-applies> (Date accessed: 10/02/2025).

³¹⁵ Except Parental Order proceedings and proceedings for Applications in Adoption, Placement and related proceedings.

³¹⁶ 12.75 (1) (a-d) *Family Procedure Rules 2010*.

³¹⁷ 12.75 (2) *Family Procedure Rules 2010*.

³¹⁸ 12.75 (3)(a) *Family Procedure Rules 2010*.

³¹⁹ 12.75 (3)(b) *Family Procedure Rules 2010*.

or to the maintenance or upbringing of a minor.³²⁰ In addition, in cases not involving children, it will be considered contempt of court if there is a court order that expressly prohibits "...the publication of all information relating to the proceedings or of information of the description which is published",³²¹ or expressly prohibits "...the publication of the text or a summary of the whole or part of an order made by a court sitting in private".³²² Section 97 of the Children Act 1989 also restricts the publication of any material that may identify "any child as being involved in any proceedings before the High Court or the family court", or that child's address or school.³²³ In addition, according to rule 37.9 of the FPR—

(1) If the court finds the defendant in contempt of court, the court may impose a period of imprisonment (an order of committal), a fine, confiscation of assets or other punishment permitted under the law.

While the reporting of family proceedings held in private is possible in some cases, it has been claimed that section 12 has had a 'chilling effect' on reporting more generally. This has meant that the media had stopped reporting on family law cases to any significant degree.³²⁴ In a paper delivered by the President of the Family Division, Sir Andrew McFarlane opined that "Section 12 is a somewhat opaque provision, and the fear of breaching it and the costs involved in litigation have acted as a major disincentive to journalists and others reporting on Family cases".³²⁵ He concluded that section 12's operability has undermined "...confidence in the administration of Family Justice to a marked degree",³²⁶ and has meant "...serious reputational damage of the Family Justice system".³²⁷

Information exchange between State bodies and Courts

In the context of information exchange between State bodies, the Communication of Information Rules are further supplemented by Practice Direction 12G which further clarifies how information can be shared among certain bodies and persons including parties, local authorities, professionals, bodies responsible for investigating complaints, police officers, the European Court of Human Rights. In particular, Practice Direction 12G of the FPR makes provision for a party to family law proceedings to provide to the police and the Crown Prosecution Service (CPS) a copy of a family law judgment in whole or part, for the purpose of a criminal investigation and to enable the CPS to discharge its functions under any enactment respectively.

³²⁰ *Administration of Justice Act 1960*, s. 12(1a).

³²¹ *Ibid*, s. 12(1e).

³²² *Administration of Justice Act 1960*, s. 12(2).

³²³ *Children Act 1989*, s. 97(2).

³²⁴ Sir Andrew McFarlane, President of the Family Division, "Confidence and Confidentiality: Transparency in the Family Court", October 2021, [24] available from: <https://www.judiciary.uk/wp-content/uploads/2022/08/Confidence-and-Confidentiality-Transparency-in-the-Family-Courts-final1.pdf> (Date accessed: 20/08/2024).

³²⁵ *Ibid* [38].

³²⁶ *Ibid* [38].

³²⁷ *Ibid* [28].

In 2024, the Disclosure of Information between Family and Criminal Agencies and Jurisdictions: 2024 Protocol came into effect.³²⁸ This “...applies to the exchange of information and material between criminal and family agencies and jurisdictions” in all private and public family law proceedings and regarding all material held by the police.³²⁹ It addresses the disclosure of information or material from the police for the purpose of public and private family proceedings, requests for information from an investigator and linked directions hearings.

In the UK (England and Wales), whole hearing transcripts of family law proceedings are available, and it is possible for the parties to request copies of these transcripts.³³⁰

The UK (Family Law) Reporting Pilot

One of the main proposals McFarlane J. made in the context of enhancing transparency in family law proceedings was that “...the presumption will be reversed to one that allows reporting”, a practice that was tested under the ‘Family Court Reporting Pilot’ (RP).³³¹ Moreover, he suggested the establishment of the Transparency Implementation Group (TIG) to give him support for the proposed changes.³³²

The Family Law Reporting Pilot began in January 2023 in Leeds, Cardiff and Carlisle in England and Wales. Owing to the success of the initial pilot,³³³ it was extended to 19 courts across the country in 2024, including Liverpool, Dorset and Milton Keynes.³³⁴ It involves journalists and legal bloggers, who already have the authorization to attend under section 27.11, “...to report on what they see and hear in court [referred to as ‘the transparency principle’], subject to strict conditions of anonymity [also called ‘the principle of anonymity’]”.³³⁵ Starting in November 2024, the transparency pilot includes not only public but also private law cases.³³⁶ In the case of reporting of financial remedy proceedings, it started in January 2024 at three courts.³³⁷ A ‘family court reporting week’

³²⁸ Courts and Tribunal Judiciary, *Launch of the Disclosure of Information between Family and Criminal Agencies and Jurisdictions: 2024 Protocol* (1 March 2024) available from: https://www.judiciary.uk/guidance-and-resources/launch-of-the-disclosure-of-information-between-family-and-criminal-agencies-and-jurisdictions-2024-protocol/#related_content. (Date accessed: 10/02/2025). This new protocol replaces the 2013 Protocol and Good Practice Model: disclosure of information in cases of alleged child abuse and care directions hearings.

³²⁹ Courts and Tribunal Judiciary, *Disclosure of Information between Family and Criminal Agencies and Jurisdictions: 2024 Protocol*, available from: <https://www.judiciary.uk/wp-content/uploads/2024/03/2024-Protocol.pdf> (Date accessed: 10/02/2025).

³³⁰ HM Courts and Tribunals Service, Guidance for requesting a transcript <https://www.gov.uk/government/publications/order-a-transcript-of-court-or-tribunal-proceedings-form-ex107/guidance-for-requesting-a-transcript#private-hearing-transcripts> (Date accessed: 09/05/25). In the family (lower) court, non-parties to any family hearing are required to make a formal application to the court for permission to access a transcript. For family cases form C2 must be completed for this purpose and a court fee paid.

³³¹ *Ibid* [39].

³³² *Ibid* [37].

³³³ The pilot underwent two separate evaluations – one by National Centre for Social Research, and another by the Transparency Implementation Group, both of which are now available on the Transparency Implementation website IG website – www.thetig.org.uk.

³³⁴ As of Monday 4 November 2024. Courts and Tribunals Judiciary, *Extensions to family court transparency pilots* <https://www.judiciary.uk/extensions-to-family-court-transparency-pilots/> (Date accessed: 04/04/2025).

³³⁵ President of the Family Division and the Transparency Implementation Group, *The Reporting Pilot Guidance* (August 2024) [1] available <https://www.judiciary.uk/wp-content/uploads/2024/08/Reporting-Pilot-Guidance-2024.pdf> (Date accessed: 10 November 2024).

³³⁶ Courts and Tribunals Judiciary, *Extensions to family court transparency pilots* (30 October 2024) available from: <https://www.judiciary.uk/extensions-to-family-court-transparency-pilots/> (Date accessed: 10/11/2024).

³³⁷ *Ibid*.

was launched in November 2024 in order to try and encourage more reporting of cases in the Family Division.³³⁸

During the pilot period of the initiative, the value of the open reporting approach became abundantly clear when the case of Sara Sharif was widely reported across the media. Sara Sharif was murdered by her father and stepmother in August 2023. She was placed in the care of the State since birth owing to concerns that her welfare was at risk in her home environment. The care of Sara was at the centre of three separate court cases in 2014, 2019 and 2021, during the course of which her parents were assessed by professionals. Three separate Judges in three separate court proceedings ordered that Sara be placed in the care of foster parents, her mother and finally her father. The death of this child sparked a public wide debate, the result of which journalists Louise Tickle and Hannah Summers, along with nine other media parties, applied to the High Court to be able to report on the historic court cases relating to Sara. They argued that there was an overwhelming public interest in understanding the reasons why Sara was placed in her father's care and why the States' safeguarding procedures failed her in this case. In December 2024, Williams J. in the High Court was asked whether the historic case papers could be opened up for the purpose of media reporting. In balancing Article 8 ECHR rights to respect for private and family life (particularly those of the children) with the Article 10 ECHR right to freedom of expression of the media, he agreed to allow the media to see and report upon many historic case papers subject to restrictions keeping the names, ages and protected characteristics of Sara's siblings confidential. However, he also ruled that there could be no reporting of the identifies of any third parties including the relevant professionals and the three judges concerned.³³⁹ The media appealed the judgment of Williams J. to the Court of Appeal on the basis that the naming of judges was a matter of exceptionally high constitutional and public importance and that the decision of Williams J. was a derogation from the principle of open justice. Sir Geoffrey Vos, Master of the Rolls, in allowing the appeal, decided that Williams J. had erred in law and had no jurisdiction to anonymise the judges but also on the grounds of procedural irregularity and unfairness.³⁴⁰

The mainstreaming of the transparency initiative to all family courts across England and Wales from Monday 27 January 2025 is a testament to its success.³⁴¹ From January 2025, journalists and legal bloggers are permitted to attend any family court and report on what they observe. Significantly, reporters are also permitted to seek access to documentation and speak to, and quote, parties involved in such proceedings. The now widespread open reporting provisions mean that there is a presumption that a transparency order, which

³³⁸ Castro, B., "New family court reporting week launches to boost transparency", *Law Society Gazette*, 16 September 2024, available from: <https://www.lawgazette.co.uk/news/family-court-reporting-week-aims-to-boost-transparency/5120853.article>. (Date accessed: 14/11/2024).

³³⁹ Williams J did commit to reconsider the anonymity of the Judges in March 2025 when they had been notified.

³⁴⁰ In The Court of Appeal Of England And Wales (Civil Division) On Appeal From The High Court of Justice Family Division [2025] EWCA Civ 42, Sir Geoffrey Vos, Master Of The Rolls, Lady Justice King & Lord Justice Warby https://assets.caselaw.nationalarchives.gov.uk/ewca/civ/2025/42/ewca_civ_2025_42.pdf (Date accessed: 04/04/2025).

³⁴¹ Courts and Tribunals Judiciary, "Open reporting provisions extended to all family courts in "watershed moment for family justice" <https://www.judiciary.uk/open-reporting-provisions-extended-to-all-family-courts-in-watershed-moment-for-family-justice/> (Date accessed: 04/04/2025).

protects the anonymity of the children and their families, is granted, unless there is a legitimate reason not to. President of the Family Division Sir Andrew McFarlane who has spear-headed these reforms from the outset has noted that:

Improving public understanding and confidence in the Family Court is of fundamental importance. Over the last two years there has been a presumption that journalists and legal bloggers can report what they see and hear from pilot courts in England and Wales. The reporting that we have seen has been significant, and includes coverage of issues affecting some of the most vulnerable people in our society, such as: children subject to Deprivation of Liberty Orders; the need to limit parental rights for convicted paedophiles and cases of child neglect or abandonment.³⁴²

Most importantly, he reassured the public that the rights of children have been and will continue to be protected in all such proceedings:

There have been no known breaches of anonymity of children, and the aims of the pilot, to increase public understanding and awareness of the Family Court, are being realised. I am grateful to all in the court system who have supported the pilot, but I would particularly like to thank all of the journalists and legal bloggers who have engaged with the pilot over the last two years and would like to urge them and others to continue to report on these complex and vitally important issues.³⁴³

In addition to promoting transparency through enhancing court reporting of family and child care cases, the Transparency Implementation Group has been considering the development of an Anonymisation Unit specialized in supporting Judges anonymising their judgments so that these are also available for consideration by professionals as well as the public.³⁴⁴ This unit was recommended by the President of the Family Courts back in 2021, as it was the anonymised publication of 10% of the judgments each year.³⁴⁵ Nevertheless, in July 2022, TIG's Anonymisation and Publication Subgroup alleged that "requiring a percentage of judgments to be published (e.g. 10%) is unworkable".³⁴⁶

In August 2024, the President and the TIG launched an updated version of 'The Reporting Pilot Guidance',³⁴⁷ and training videos and materials for the court officers, professionals, parents, lawyers and the media are available on their website.³⁴⁸ One of the mechanisms that the pilot emphasises to provide clarity to the parties involved in the pilot is the

³⁴² Courts and Tribunals Judiciary, "Open reporting provisions extended to all family courts in "watershed moment for family justice" <https://www.judiciary.uk/open-reporting-provisions-extended-to-all-family-courts-in-watershed-moment-for-family-justice/> (Date accessed: 04/04/2025).

³⁴³ Courts and Tribunals Judiciary, "Open reporting provisions extended to all family courts in "watershed moment for family justice" <https://www.judiciary.uk/open-reporting-provisions-extended-to-all-family-courts-in-watershed-moment-for-family-justice/> (Date accessed: 04/04/2025).

³⁴⁴ Courts and Tribunals Judiciary, "Family Court Transparency Implementation Group – First Progress Report" (3 October 2022) available <https://www.judiciary.uk/guidance-and-resources/family-court-transparency-implementation-group/> (Date accessed: 10/11/2024).

³⁴⁵ Sir Andrew McFarlane, "Confidence and Confidentiality: Transparency in the Family Courts" (28 October 2021) [53] available from: <https://www.judiciary.uk/wp-content/uploads/2022/08/Confidence-and-Confidentiality-Transparency-in-the-Family-Courts-final1.pdf> (Date accessed: 20/08/2024).

³⁴⁶ Transparency Implementation Group. Anonymization and Publication Subgroup, "Draft Publication Guidance for Judges" (20 July 2022) [18] available from: <https://www.judiciary.uk/wp-content/uploads/2023/02/Publication-Guidance-Subgroup-Report.pdf> (Date accessed: 10/11/2024).

³⁴⁷ President of the Family Division and the Transparency Implementation Group, *The Reporting Pilot Guidance* (August 2024) available <https://www.judiciary.uk/wp-content/uploads/2024/08/Reporting-Pilot-Guidance-2024.pdf> (Date accessed: 10/11/2024).

³⁴⁸ The videos and materials can be found in this link: <https://www.judiciary.uk/about-the-judiciary/our-justice-system/jurisdictions/family-jurisdiction/transparency-implementation-group/>

Transparency Order. A Transparency Order provides that, in any reporting about the proceedings, certain information must not be reported to the public at large, or a section of the public, without the express permission of the Court and this remains in place until such time as any children to whom the proceedings relate reaches the age of 18 years.³⁴⁹ According to an evaluation made by the National Centre for Social Research (NCSR), whose report was published in July 2024, “there is strong support amongst participants for greater transparency in family courts”, and even those who expressed scepticism accepted its benefits.³⁵⁰ Moreover, no major issues such as potential jigsaw identification occurred, although the involvement of media representatives was low.³⁵¹ It recommended that “[f]uture research on transparency processes in courts should ... attempt to involve more family views and experiences in the data collection”.³⁵² In addition, when considering expansion of the reporting pilot, the NCSR recommended focusing on “...clear accountability on completion of training by court staff”, “concerns around the opacity of listing as a barrier to the interest and involvement of reporters”, as well as “remote attendance at family courts” so reporters’ presence do not disturb the dynamics of the hearing.³⁵³

Recently, the Reporting *Pilot Guidance* has been turned into the *Practice Direction 12R – The Court* giving permission to communicate information from proceedings to which part

³⁴⁹ President of the Family Division and the Transparency Implementation Group, *The Reporting Pilot Guidance* (August 2024) [25, 26, 30] available from: <https://www.judiciary.uk/wp-content/uploads/2024/08/Reporting-Pilot-Guidance-2024.pdf> (Date accessed: 10/11/2024). The standard Transparency Order provides that, in any reporting about the proceedings, the following must not be reported to the public at large, or a section of the public, without the express permission of the Court:

- a. The name or date of birth of any subject child in the case.
- b. The name of any parent or family member who is a party or who is mentioned in the case, or whose name may lead to the child(ren) being identified;
- c. The name of any person who is a party to, or intervening in, the proceedings;
- d. The address of any child or family member;
- e. The name or address of any foster carer;
- f. The school/hospital/placement name or address, or any identifying features of a school of the child;
- g. Photographs or images of the child, their parents, carer or any other identifying person, or any of the locations specified above in conjunction with other information relating to the proceedings;
- h. The names of any medical professional who is or has been treating any of the children or family member;
- i. In cases involving alleged sexual abuse, the details of such alleged abuse;
- j. For the purposes of s.97(2) Children Act 1989, any other information likely to identify the child as a subject child or former subject child.

³⁵⁰ National Centre for Social Research, *Family Court Reporting Pilot. Evaluation Report* (July 2024) at 32, available from: <https://www.judiciary.uk/wp-content/uploads/2024/09/Natcen-Report-on-the-Transparency-Implementation-Groups-Family-Court-Reporting-Pilot.pdf> (Date accessed: 10/11/2024). The objective of the evaluation was to gain an insight into the experiences of various groups involved in the family law reporting pilot across three regions in the UK, namely Leeds, Cardiff and Carlisle, in cases where Transparency Orders had been granted. The evaluation was carried out between March 2023 and December 2023, with interviews taking place between August 2023 and November 2023. Judges, lawyers, court staff, families, legal bloggers and journalists were recruited for interviews for the purpose of the evaluation.

³⁵¹ National Centre for Social Research, *Family Court Reporting Pilot. Evaluation Report* (July 2024) at 32, available from: <https://www.judiciary.uk/wp-content/uploads/2024/09/Natcen-Report-on-the-Transparency-Implementation-Groups-Family-Court-Reporting-Pilot.pdf> (Date accessed: 10/11/2024).

³⁵² National Centre for Social Research, *Family Court Reporting Pilot. Evaluation Report* (July 2024) at 32, available from: <https://www.judiciary.uk/wp-content/uploads/2024/09/Natcen-Report-on-the-Transparency-Implementation-Groups-Family-Court-Reporting-Pilot.pdf> (Date accessed: 10/11/2024).

³⁵³ National Centre for Social Research, *Family Court Reporting Pilot. Evaluation Report* (July 2024) at 32, available from: <https://www.judiciary.uk/wp-content/uploads/2024/09/Natcen-Report-on-the-Transparency-Implementation-Groups-Family-Court-Reporting-Pilot.pdf> (Date accessed: 10/11/2024).

12 FPR applies.³⁵⁴ It came into force on 27th January 2025 in all courts where the Reporting Pilot was already operating.³⁵⁵ Hereafter, all courts will have to engage in a delicate balancing exercise between the transparency principle and the principle of anonymity as required by the Practice Direction 12R.

Remote access to proceedings: observers and litigants

Courts and tribunals in England and Wales have had new powers to allow reporters and other members of the public to participate in, or observe, hearings remotely. In order to support the judiciary in facilitating access in this way, practice guidance has been published that places limits on how litigants and observers of family and child care proceedings can be heard in, and observe, cases remotely.³⁵⁶ In addition, good practice guidance has been developed for remote hearings.³⁵⁷

The President of the Family Division is of the view that there are “...many ways that the Family Court can be more open ... without altering the current restrictions on reporting and attendance”.³⁵⁸ The reporting pilot (RP) and the TIG’s aim to reverse the serious reputational damage caused to the Family Justice system by an interpretation which has favoured the protection of privacy over transparency. However, the efforts put to the RP in England and Wales seem to be the first step towards a system where the principles of transparency and anonymity are properly balanced.

3.3 Summary and analysis

This chapter has sought to provide a succinct, yet comprehensive overview, of how other jurisdictions have sought to achieve the delicate, but necessary, balance between the privacy rights of individuals on the one hand, and the public need for transparency in the administration of justice in family law and child care matters on the other. While a mix of common law and civil law systems has been explored, a unifying feature across all systems is the *de minimis* approach taken towards limiting transparency in family law cases. Open courts like that of Australia, facilitate public attendance at hearings while closed courts like New Zealand and the UK prohibit public attendance but promote

³⁵⁴ Ministry of Justice of the UK, *Practice Direction 12R – The Court giving permission to communicate information from proceedings to which part 12 FPR*, available from: <https://www.justice.gov.uk/practice-direction-12r-the-court-giving-permission-to-communicate-information-from-proceedings-to-which-part-12-fpr-applies> (Date accessed: 10/02/2025).

³⁵⁵ Ministry of Justice of the UK, *Practice Direction 12R – The Court giving permission to communicate information from proceedings to which part 12 FPR* [1.3], available from: <https://www.justice.gov.uk/practice-direction-12r-the-court-giving-permission-to-communicate-information-from-proceedings-to-which-part-12-fpr-applies> (Date accessed: 6 February 2025).

³⁵⁶ Courts and Tribunals Judiciary, *Practice Guidance on Remote Observation of Hearings – New Powers* (28 June 2022), available from: <https://www.judiciary.uk/guidance-and-resources/practice-guidance-on-remote-observation-of-hearings-new-powers/> (Date accessed: 10/11/2024)

³⁵⁷ Judicial College, “Good Practice for Remote Hearings”, available from: <https://www.judiciary.uk/wp-content/uploads/2020/03/Good-Practice-for-Remote-Hearings-May-2020-1.pdf>. (Date accessed: 10/11/2024). The primary legislation is contained in section 85A of the Courts Act 2003 as inserted by section 198 of the Police, Crime, Sentencing and Courts Act 2022. The regime is implemented by the Remote Observation and Recording (Courts and Tribunals) Regulations 2022.

³⁵⁸ Sir Andrew McFarlane, “Confidence and Confidentiality: Transparency in the Family Courts” (28 October 2021) [8] available from: <https://www.judiciary.uk/wp-content/uploads/2022/08/Confidence-and-Confidentiality-Transparency-in-the-Family-Courts-final1.pdf> (Date accessed: 20/08/2024).

publication of judgments and more widespread case reporting. In order to successfully achieve transparency in proceedings, the media are permitted to attend and report on proceedings, but must ensure that they protect the anonymity of the parties while doing so. However, for most jurisdictions examined, it appears media reporting is rare in practice, regardless of whether the system is open or closed. However, it is important to note the success of the new family law reporting provisions in England and Wales which is facilitating transparency in the administration of family justice to the extent that it is now widespread across England and Wales. Arguably, however, each system examined makes up for this lack of reporting with a systematised approach to the reporting of judgments.

While the terminology concerning privacy in family law proceedings varies across the jurisdictions explored, the language tends to be based on a principled approach – including the principle of open justice (Australia), the principles of transparency and open justice (UK) and the principle of anonymity (UK)– all of which speak to the public importance placed upon the matters addressed by this rule, even where it is viewed as rule of a procedural nature. The use of clear and unambiguous language to communicate the purpose, nature and scope of the rule is critical, while at the same time making explicit that privacy and transparency are equally important objectives. The UK Reporting Pilot attempts to successfully achieve this by referring to it as the ‘transparency principle’ and the ‘principle of anonymity’ in family courts.³⁵⁹

In the context of the common law tradition, both Australia and the UK (England and Wales) have recently introduced significant reforms, a primary aim of which has been to enhance the transparency being given to the administration of justice and promote more efficient information sharing in the family law courts. While taking opposing approaches in terms of openness, a unifying thread for both jurisdictions has been the explicit regulation of what can and cannot be published/ reported in private and public family law cases. The fact that communications between family members are not considered public communication is significant since it not only takes into account the reality of everyday life of children and families, but it also facilitates family members receiving family support without the constant worry of breaking the law. It is important to note, however, that since the reforms introduced in these systems are relatively recent, limited literature exists which explores how well these changes are embedding into the system, and more importantly, how effective they are in terms of shedding light on the administration of justice in family law cases. It is also worth remembering the fact that the motivations behind the recent pilot and more general reform discussions in the UK (England and Wales) have not only acknowledged the serious reputational damage caused to the Family Justice system by an interpretation which has favoured the protection of privacy over transparency but have been the driving force behind efforts at reversing this damage.

³⁵⁹ President of the Family Division and the Transparency Implementation Group, *The Reporting Pilot Guidance* (August 2024) [1] available from: <https://www.judiciary.uk/wp-content/uploads/2024/08/Reporting-Pilot-Guidance-2024.pdf> (Date accessed: 10/11/2024).

Operating a closed system similar to Ireland, New Zealand is one jurisdiction which advocates an approach whereby any restriction on publication is “...no wider than is necessary to achieve the purpose for which it is imposed”.³⁶⁰ A well-resourced, systematic and firmly embedded system of reporting of anonymized family law judgments at all levels as exists in New Zealand and Australia, is an essential element of any transparent family law system. A commitment to publishing a certain percentage of judgments from all levels of family and child care court has tended to be the preference in order to introduce transparency and promote faith and confidence in the administration of family justice, although there have been concerns expressed about this within the UK (England and Wales) context. Furthermore, as made clear by the European Court of Human Rights, in cases where the State is intervening in the family in child care cases, it is imperative that there is routine reporting of such cases, thus facilitating much needed transparency.

As far as information sharing between the courts and other institutions as well as State agencies is concerned, both the UK³⁶¹ and Australia³⁶² have tightened up and clarified the rules which help to ensure that no family member or child is left at risk due to lack of disclosure of pertinent information in a timely fashion. From a children’s rights perspective, this is crucial to prevent privacy from being used as a tool to restrict or put at risk other fundamental rights of the parties to the proceedings. Similarly, a pragmatic approach akin to that adopted by Australia and the UK with respect to sharing of experiences within the context of a family law case with close family members and/professionals is one that is more realistic, welcome and supportive of litigants who may be undergoing a very traumatic life experience.

Sanctions for breach of the reporting protections are clearly identifiable for each of the jurisdictions considered. However, the literature suggests that in Australia, New Zealand and the UK in particular, the initial lack of clarity around the boundaries of the rule together with very clear sanctions may have served as a deterrent for reporting of family law and child care cases. Thus, clear regulation of how the privacy rule operates should be accompanied by clear sanctions in the event of breach. Indeed, Sweden provides a good example of how to differentiate or take a graded approach to those sanctions according to the potential damage the breach could cause or the negligence or malicious nature of the person breaching the rule.

Transparency in remote hearings has also been dealt in the UK under a Practice Direction, to secure the attendance of the people entitled to hear the proceedings. Such guidance is positive in terms of making explicit the responsibilities of all involved, and allows for

³⁶⁰ *Jones v Television New Zealand Ltd* [2007] NZFLR 456 (HC) at [29]; as cited in Mark Henaghan & Pauline Tapp, “Privacy in the Courts” in Chamberlain, N. & Penk, S., eds., *Privacy Law in New Zealand* (Wellington: Thomson Reuters, 2023) at 497, available from: <https://researchspace.auckland.ac.nz/items/079b83e7-ab41-4aff-ac1f-76c54b1e22b2> (Date accessed: 10/08/2024).

³⁶¹ Courts and Tribunal Judiciary, *Disclosure of Information between Family and Criminal agencies and Jurisdictions: 2024 Protocol*, available from: <https://www.judiciary.uk/wp-content/uploads/2024/03/2024-Protocol.pdf> (Date accessed: 10/02/2025).

³⁶² Family Law (Information Sharing) Act 2023.

conditions to be imposed, such as deadlines by which to apply for access or requirements of identification.

There are positive examples of good practice from each of the jurisdictions explored, all of which have the benefit of having been tried and tested. These may help inform the reform of the law in this area in Ireland. However, to truly understand how the rule is currently operating in practice, the views, experiences and perspectives of parents, guardians, grandparents, foster parents and other caregivers are essential in terms of informing our understanding of what needs attention. The next chapter explores the empirical data collection – both quantitative and qualitative - and begins with a description of the study design which involved a national online survey that took place over the summer of 2024.

Chapter 4: Parents', grandparents' and foster parents' views on the operation of the *in camera* rule

4.1 Survey sample and questions

In Chapter One, the study design was outlined, the manner in which the online survey data was analysed was presented, as well as how participants were recruited. This chapter is the first of three which presents the findings from the empirical aspect to this study. This chapter specifically presents the findings from the national online survey which sought the views of parents, grandparents and foster parents on the operation of the *in camera* rule in both public and private family law proceedings.

A full copy of the survey is included in Appendix B at the end of this report. In brief, participants were asked about: their background; what they understood the rule was about; whether anyone explained the rule to them as part of their family law court case(s); their experience(s) of the *in camera* rule; their views on the rule, including positives and negatives; whether the rule was breached in their case and what happened in terms of sanctions; whether the rule should be retained or abolished; and recommendations for reform.

Sample size and demographics

In total, 317 participants completed the survey. However, 17 participants were excluded as they did not meet the eligibility criteria. The final sample size was 300 participants. Slightly over two-thirds of the survey participants were female:

Table 4.1: Gender of survey participants

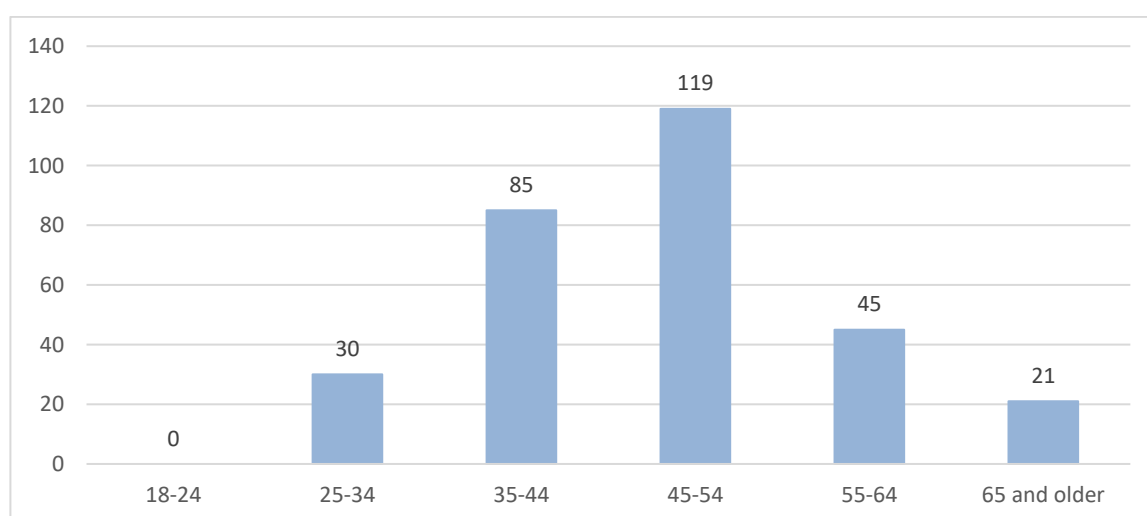
	Number	%
Female	196	65%
Male	102	34%
Prefer not to say	2	1%
Non-binary	0	0%
Total	300	100%

292 (97%) participants indicated that English was their first language. Of those for whom English was not their first language (eight participants), seven indicated that they spoke English 'very well' and only one person required the support of a translator in court. Due to the nature of the sample, and the lack of systematically collected data at a national

level, it is not possible to say how representative the data is of the total population of people who have directly experienced the family law courts in Ireland. Data on family law cases in the Irish courts is available in the Courts Service Annual Reports;³⁶³ however, it is not possible to estimate the total population size from this data.

While the survey was open to parents, grandparents, relatives, guardians, foster parents, and those aged 18+ years to participate, the vast majority of survey participants were parents (n=288) who were party to private family law proceedings. Six grandparents and six foster parents completed the survey. The largest cohort of survey participants was in the 45-54 age bracket (40%).

Figure 4.1: Age profile of survey participants



The Central Statistics Office categories which were used in the 2022 national Irish Census were adopted for the identification of ethnicity/background:³⁶⁴

Table 4.2: Ethnicity/background

	Number	%
White: Irish	274	91%
Any white background	19	6%
White: Irish Traveller	2	<1%
Black or Black Irish: African	2	<1%
Asian or Asian Irish: Indian / Pakistani / Bangladeshi	2	<1%
Other	1	<1%
Total	300	

288 participants completed the survey based on their experiences of private family law cases. 12 participants completed the survey based on their experiences of child care

³⁶³ The Courts Service of Ireland Annual Reports: <https://www.courts.ie/annual-report> (Date accessed: 07/04/2025).

³⁶⁴ <https://www.cso.ie/en/releasesandpublications/ep/p-cpp5/census2022profile5-diversitymigrationethnicityirishtravellersreligion/ethnicgroupbackground/> (Date accessed: 07/04/2025).

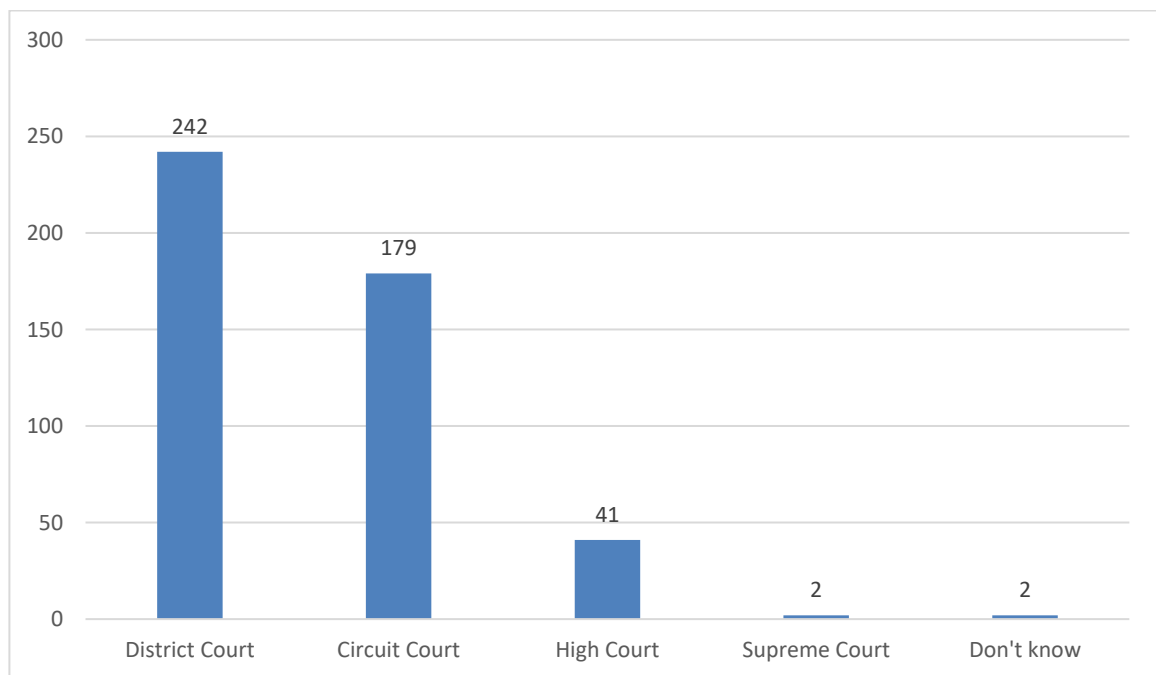
cases only, although 38 participants in total had some experience of a child care case. Further to the limitations outlined in Chapter One, the sample size for public family law (child care) cases in this research sample is small which limits any analysis of this subgroup. The representativeness of the data is further qualified by the fact that cases heard in Dublin (n=108, 31%), Cork (n=57, 16%), Meath (n=18, 5%) and Galway (n=16, 5%) were the largest contributors to the survey. The survey data must also be set in a context whereby close to 50% of participants said that they did not have a clear understanding of what the *in camera* rule allowed at the time of their case, and that 55% of participants said that the rule was not explained to them.

4.2 Findings

Case types, court level, and regional data

52% of participants had an experience of cases before the District Court 242 (52%), 179 (38%) before the Circuit Court, 41 (9%) before the High Court, two before the Supreme Court, and four indicated that they did not know the court level:

Figure 4.2: Court level



* 300 participants completed this question. The data in this figure is greater than the total sample size as a number of survey participants had been involved in a case before different court levels.

72% (216) of cases were heard in family law courts in an urban location, 26% (79) in a rural location, and 2% (5) indicated 'other'.

Participants were asked about the reasons for being before the family law courts:

Table 4.3: Case types before the courts

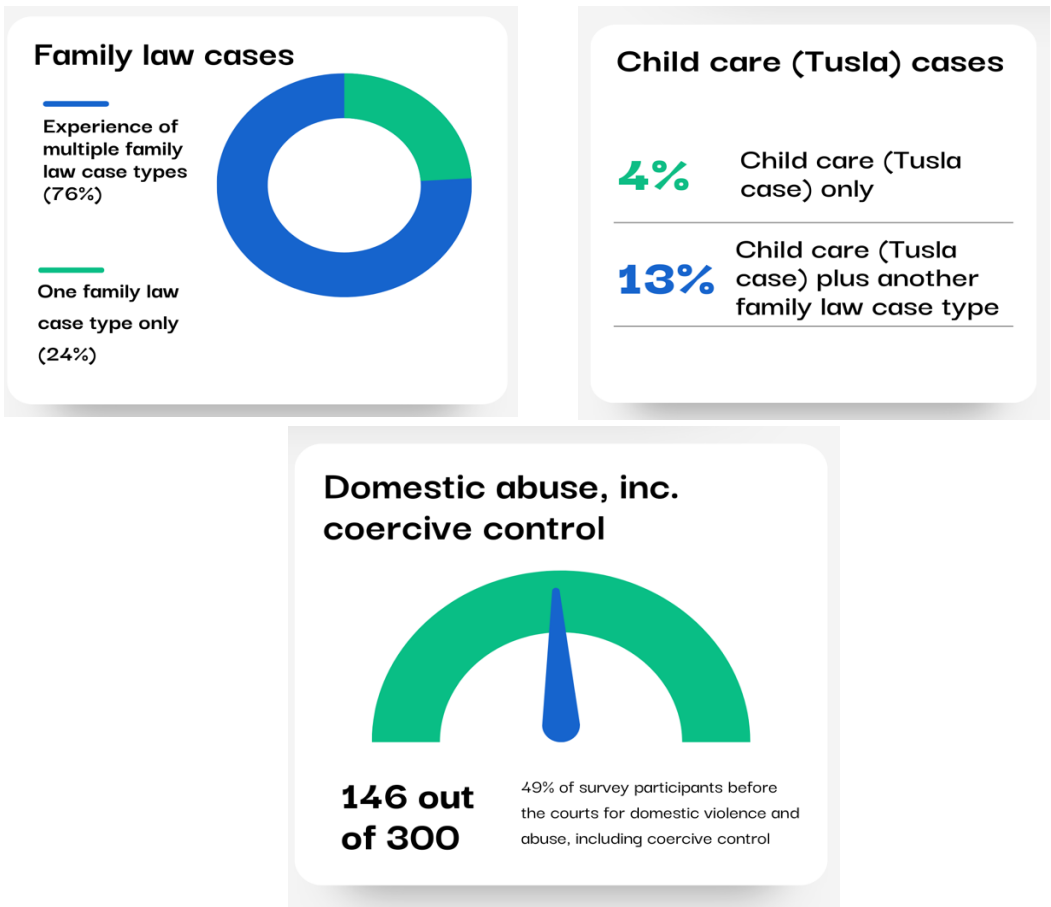
	No.
Guardianship, custody and access	200
Maintenance	151
Domestic violence and abuse, including coercive control	146
Divorce	134
Separation	96
Public child care (cases involving Tusla)	35
Other	23
Adoption	3
Total	788*

*300 participants completed this question. This figure is greater than the total sample size as a significant number of survey participants were before the courts for more than one case type.

Of those who completed the online survey questionnaire:

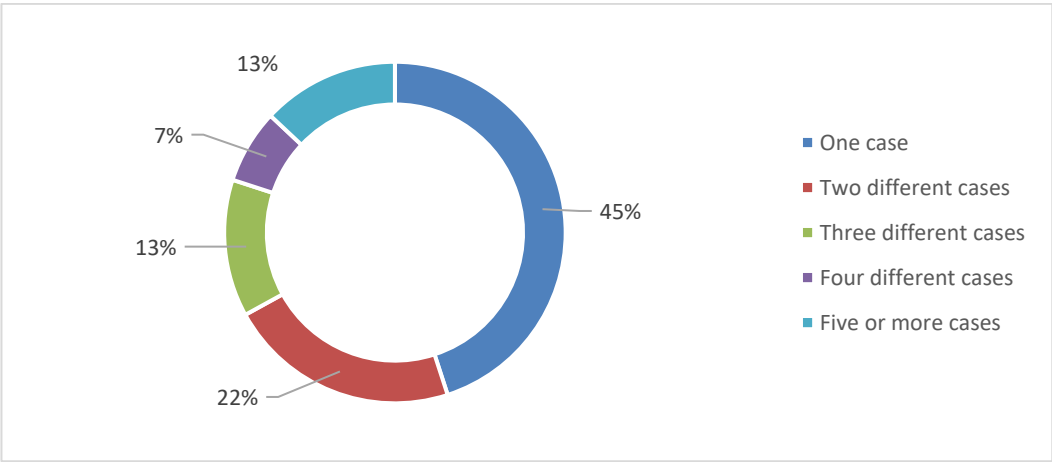
- Just over three-quarters of the sample (n=229, 76%) had an experience of **multiple** family law case types.
- Just under a quarter were before the courts for **one** case type only (n=71, 24%).
- Guardianship, custody and access was the most prevalent case types that survey participants were involved with, followed by maintenance, domestic violence and abuse (including coercive control), and divorce.
- Of the 146 (49%) participants who indicated that they were before the courts for 'domestic violence and abuse, including coercive control', 126 were in private family law cases and 20 were before the courts for public child care cases involving Tusla.
- 38 (13%) of participants had an **experience** of a public child care (Tusla) family law case. Of these participants, only 12 (4%) of the survey respondents had participated in a **public child care (Tusla)** case only (ten Tusla cases, one adoption, one fostering).

Figure 4.3: Infographic: case types before the courts



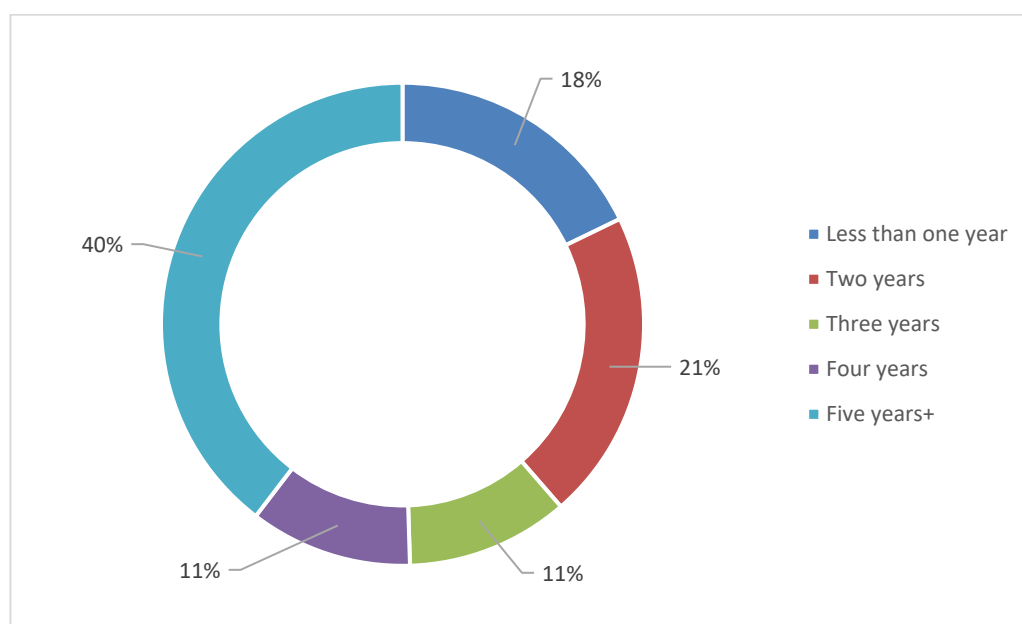
The data above refers to case types; one case could address more than one issue (e.g. separation, divorce and maintenance). When participants were asked to categorise their engagement with the court by the total of cases that they were party to rather than case types, a different picture of their engagement with the family law courts emerged with 45% (n=134) identifying that they were before the courts for one case, with 13% (n=39) before courts for five or more cases:

Figure 4.4: Number of cases in the family law courts that participants were party to



34% (n=103) of survey participants indicated that their case was resolved at the time of completing the survey, 23% (n=67) said that their case was resolved but that they anticipated being back to the family law courts soon, and 43% (n=130) indicated that their case was ongoing. For those whose case was resolved (56% of the total sample, n=170), 18% (31) had their case resolved in 'less than one year', and 40% (n=68) indicated that it took 'five years +' to resolve their case.

Figure 4.5: How long did it take to resolve your case?



Participants with cases heard in Dublin, Cork, Meath and Galway were the largest contributors to the survey. 34 (10%) participants had cases heard in two counties, five participants in three counties, and one participant had an experience of attending courts in four counties.

Table 4.4: Counties in which your family law cases were heard

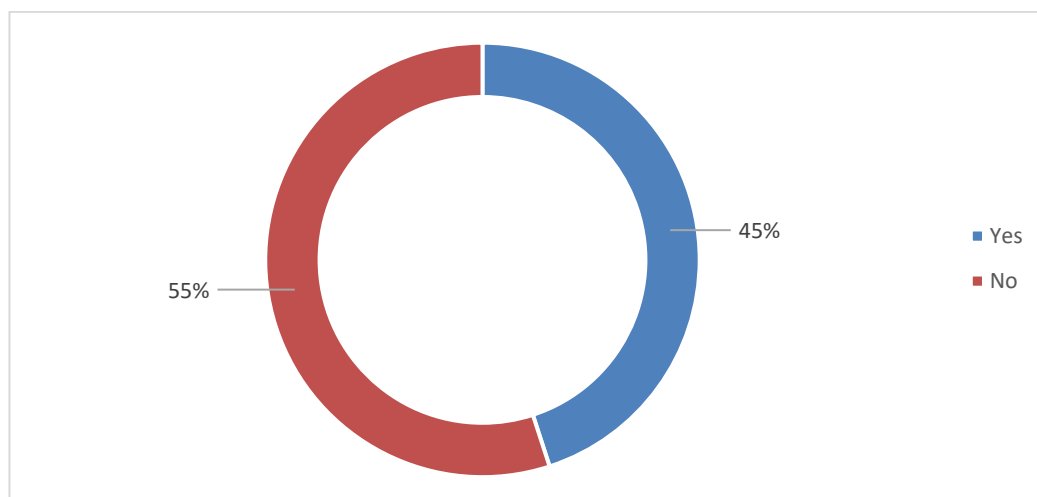
County	# (%)	County	# (%)	County	# (%)
Carlow	7 (2%)	Kilkenny	9 (3%)	Offaly	6 (2%)
Cavan	7 (2%)	Laois	8 (2%)	Roscommon	1 (0.3%)
Clare	5 (1%)	Leitrim	3 (1%)	Sligo	4 (1%)
Cork	57 (16%)	Limerick	6 (2%)	Tipperary	6 (2%)
Donegal	10 (3%)	Longford	4 (1%)	Waterford	8 (2%)
Dublin	108 (31%)	Louth	10 (3%)	Westmeath	4 (1%)
Galway	16 (5%)	Meath	18 (5%)	Wexford	8 (2%)
Kerry	9 (3%)	Mayo	8 (2%)	Wicklow	12 (3%)
Kildare	12 (3%)	Monaghan	1 (0.3%)		
				Total*	347

* 300 participants completed this question. This figure is greater than the total sample size (n=300) as some participants were involved in family law cases before courts in more than one county. Does not total 100% due to rounding.

Awareness and knowledge of the *in camera* rule

55% (n=165) of survey participants said that the *in camera* rule was not explained to them during their family law case(s). There were no differences between males and females in their responses to this question. For those that had the *in camera* rule explained to them, unsurprisingly, solicitors were the group who explained the *in camera* rule most (n=114), followed by a Judge (n=20), barrister (n=19), and support organisations (n=14). A small number of participants (n=36) had the rule explained to them by more than one person. One might expect that those with a higher number of cases before the courts were more likely to have someone explain the rule to them, but this was not the case. For example, 22 of the 39 survey participants with an experience of five+ cases said that no one had explained the rule to them.

Figure 4.6: Was the *in camera* rule explained to you?



Just over one third (37%) of survey participants either strongly agreed or agreed that they had a clear understanding of what the *in camera* rule allowed.

Table 4.5: Survey participants' understanding of the rule

	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree	Not applicable
I had a clear understanding of what the <i>in camera</i> rule allowed	9%	28%	13%	26%	23%	1%
The professionals in my case were clear about the limitations of the <i>in camera</i> rule	8%	19%	20%	23%	26%	4%

Close to half (49%), said that they did not have a clear 'understanding of what the rule allowed' (combined 'disagree' and 'strongly disagree'). There were no differences between males and females in their responses to this question. Participants felt that their lack of understanding of the rule was, in their view, matched by close to half of

professionals (49%) in their cases not having clarity on the limitations of the *in camera* rule.

What participants understand the *in camera* rule to mean

Participants in the survey were asked to explain the *in camera* rule in their own words. All survey respondents (n=300) answered this question.

A minority (n=18) of participants stated that they simply “*don’t know*” what the *in camera* rule means or “*never heard of it*” or indeed queried their own understanding of it. One participant said that while they “*thought it meant you could not post about it on social media...it was more*” (Participant 111). Another participant stated: “*I think it means private, but confusing with the word in camera, as you feel watched*” (Participant 208). Similarly, one participant understood it to mean that “*the camera is on recording everything*” and that “*you’re not allowed to disclose anything that was in camera*” (Participant 282). A participant queried its meaning stating, “*I guess it means someone can attend a [family law case] by video?*” (Participant 333).³⁶⁵

However, the majority (n=282) of participants conveyed a general understanding of what the *in camera* rule is. Responses varied in detail with some understanding the *in camera* rule as a mechanism that is “*supposed to protect the identity and privacy of the parties and any children to whom the proceedings relate. Any information, documents are details [that] cannot be shared outside the court or legal teams*” (Participant 286). Others simply stated that “*what happens in the courtroom stays in the courtroom*” (Participant 115) with some describing it as a “*private hearing*” (Participant 306), “*a rule that protects the children of the parties involved in litigation*” meaning that “*no one is allowed in court only the family*” (Participant 310). Others specifically mentioned the prohibitions on the media to ensure that “*children [cannot] be identified in the press*” (Participant 334).

The survey findings indicated that some participants had an overly cautious interpretation and understanding regarding the consequences of not adhering to the *in camera* rule. One respondent said that they were told they “*Couldn’t mention one thing about (their) case to anyone*”, and if they did, they could be “*put in jail*” (Participant 73).

56% agreed or strongly agreed and indicated that they felt constrained in accessing support services due to their interpretation of the rule:

³⁶⁵ Some of the study participants have a participant number greater than 300, as there were also 17 participants who were excluded from the study due to not meeting the selection criteria.

Table 4.6: The *in camera* rule as a barrier to accessing supports

	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree	Not applicable
The <i>in camera</i> rule prevented me from accessing supports from services, as I was worried about talking about my case outside of the court	34%	22%	12%	17%	10%	5%

Some participants understood the *in camera* rule as something that prevented them from seeking support describing it as a “gagging order” (Participant 72), “an NDA” [non-disclosure agreement], their “voice been taken away” (Participant 133) and something that can silence people from sharing their story as a survivor of domestic violence. One participant described the *in camera* rule as “a naïve rule”, that “clearly denies the reality of plaintiffs/respondents gossip with new partners, family, friends etc. and also the reality of legal professionals and Judges sharing details outside of court” (Participant 261). Another participant understood the *in camera* rule to be a “rule for life” (Participant 267). Some of these themes are given further consideration in the following sections. Whether the rule is a “rule for life” will be further examined in the qualitative data in Chapters Five and Six.

Benefits of the *in camera* rule

Following an explanation of the *in camera* rule, survey participants were asked to consider what the benefits of the *in camera* rule are (and for whom) and to give some examples. A total of 300 participants provided narrative responses. Participants identified privacy as being a cornerstone of the *in camera* rule with n=150 participants identifying privacy as its key benefit. An additional n=34 also cited privacy as important, while also expressing strong reservations about whether the rule, in practice, achieves privacy (see Table 4.7 below). For those who identified privacy as an important feature of the rule, they cited their own privacy, but also the need to protect their children’s privacy and keeping private family business out of public view. The importance of the *in camera* rule in keeping family law cases out of the media, especially in more rural parts of Ireland, was also identified. As can be seen in Table 4.7 (see below), a combined 36% either agreed/strongly agreed that the *in camera* rule protected their privacy.

Protecting privacy

Survey participants made general statements about its benefits stating that “it provides a level of privacy to all parties” (Participant 54). Others said that it “prevents outsiders from being in the courtroom” (Participant 93) and that it provides “privacy, confidentiality, security. Stops potential embarrassment and distress from having private family matters opened to the public” (Participant 49). One participant described the benefit of the rule in

the following way: *“Privacy. No intimidation from my ex’s family”* (Participant 96). Another participant was of the view that *“it maintains privacy...it also ensures only the parties involved are present.”* (Participant 101). Another saw the benefit of the rule in keeping *“family business [out of] public”* (Participant 104) while another said they *“would [not] have been able to tell the Judge the information necessary if the hearing was not in camera”* (Participant 77).

Others were of the view that the *in camera* rule has an important role in protecting the privacy of children with many stating that the rule *“protects the identity of the child”* (Participant 210) with another stating its dual purpose in that it *“protects the identity of children in family law cases and the privacy of the family”* (Participant 251). Some viewed the *in camera* rule as having an important function with regard to the publication of material both on social media and in newspaper media. One participant said that the benefit of *in camera* rule is to *“protect their [children’s] privacy and prevent some parents putting the information on social media”* (Participant 83). Similarly, one participant was of the belief that it *“...prohibits not only the media, but also the parties involved from using the media to influence the outcome of a case”* (Participant 197).

Another participant was of the view that the *in camera* rule has benefits *“...for the child... if names and court business from District Court were published it would potentially cause prejudice towards that child and their family”* (Participant 79). This was echoed in other responses where one person stated that the *in camera* rule *“clearly protects the privacy of the family involved and prevents a media circus”* (Participant 226). Another believed the benefits were that *“News reporters can’t disclose your case to the public. Children won’t read about their parents’ case. Protects children’s identity”* (Participant 112).³⁶⁶

Some participants cited the protection that the *in camera* rule provides, particularly in some of the more rural parts of Ireland *“...where rumour, innuendo and gossip are common”* (Participant 63). Another said that without it, it would compromise peoples’ privacy as *“Ireland is a small place even with few details people may put two and two together”* (Participant 101).

The negative effects of the *in camera* rule

A large number of participants (n=269) indicated negative effects of the *in camera* rule in their case. Survey respondents spoke in volumes about the negative effects of the *in camera* rule across numerous survey questions (for example in the questions relating to the definition and understanding of the *in camera* rule; the question relating to the benefits of the *in camera* rule; the question about how breaches were addressed, etc).

While people believed there is a benefit to the rule (as detailed in the previous section above), close to a third simultaneously expressed reservations about it. One participant said that *“the purported benefits, particularly in terms of protecting children (their interests*

³⁶⁶ Members of the media are allowed to attend public and private family law cases, but the volume of reporting is somewhat low.

being ‘paramount’ is simply an illusion), which does not match with reality” (Participant 261). Another person summed up their reservations by saying while the *in camera* rule “*protects privacy of people involved in family disputes, it undermines the principle that hearings should be held in an open court*” (Participant 230).

Others queried its application indicating that “*It [the in camera rule] would be beneficial to protect vulnerable people if it was properly applied*” (Participant 38) and that “*if correctly applied, it may protect parties*” (Participant 71). Another stated “*it is not universally applied*” and that “*this results in the child’s private business being effectively broadcast to the world at large and usually in front of a packed courtroom of dozens of people*” (Participant 147).

There were opposing views among participants as to whether the *in camera* rule protected privacy in their case with 36% combined agree/strongly agree and 43% combined disagree/strongly disagree. There were no differences between males and females in their responses to this question.

Table 4.7: Protection of privacy

	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree	Not applicable
The <i>in camera</i> rule protected my privacy in this case	15%	21%	16%	17%	26%	4%

Lack of accountability and transparency

Many of the participants focused on the negative impacts of the *in camera* rule. There was a feeling that the *in camera* rule can facilitate a lack of accountability of those who work within the system (e.g. Judges, solicitors, barristers). It was the contention of some survey participants that the *in camera* rule can in fact operate to protect professionals engaging in problematic behaviours rather than those it was designed to protect. Participants believed that a downside to the *in camera* rule is that it can result in silencing parties to the proceedings. Some held the view that the *in camera* rule shields professionals from the consequences of their mistakes.

Another participant described the negative effects of the *in camera* rule as they see it:

The negative effects relate to the behaviours of a) Judges and b) the solicitors and barristers. Bad behaviours by these parties cannot be revealed outside of court because of the in camera rule. This is an unfair application of the in camera rule which was designed to protect the applicant, respondent and their children. It was not intended to protect Judges nor the professionals who practice in the Court (Participant 178).

In relation to Judges specifically, there was a perception amongst some participants that the *in camera* rule serves to hide certain judicial practices, and limits accountability and transparency. The potential for the *in camera* rule to protect perceived judicial bias was referred to by some participants with one person commenting that in their opinion “*Judges can say and do what they like. Judges are not answerable to anyone*” (Participant 51).

Similarly, another participant felt that *“Judges’ decisions can’t be examined for bias”* (Participant 265). It was also claimed that *“There are none [benefits], Judges have free reign to be biased and people can slur without any evidence”* (Participant 236). There were several lengthy narrative responses that spoke to this theme including the following:

It [in camera rule] greatly perpetuates injustice, abuse, inequality, bullies, dishonesty. We, the taxpaying public, should know what is going on in family law courts. We need statistics on what is happening, and to know the judgments of each judge so biases and discrimination can be identified and challenged. The biggest beneficiaries of the in-camera rule are the legal industry which can play on fear and insecurity which the in-camera rule encourages. We pay more to protect ourselves because we don't have the knowledge of what's going on because of this secrecy. (Participant 63)

Another indicated that if they could change the family law system it would be *“to allow judges decisions to be scrutinised”* (Participant 83). It was the contention of one participant that *“Justice should be seen to be done”* and that *“this is not possible with the in camera rule”* (Participant 48). Referring to their own case, they said: *“my own experience is that the judiciary actually break/flaunt the law and the in camera rule facilitates that behaviour”* (Participant 48).

The potential for the rule to limit judicial accountability was highlighted, particularly where *“... Judges who at times made wildly inappropriate comments and questionable decisions”* (Participant 323). Removal of the rule would mean for some that *“... Judges would be held accountable, and they would be forced to look at cases properly and protect children and women / victims of abuse. The in camera rule allows misogyny to flourish in the courts”* (Participant 84). These claims also extended to other professionals. One participant claimed that in practice, the *in camera* rule allows, what they perceived, as the mistakes of solicitors and barristers to be hidden and buried, protecting them from being held accountable. It was described by one participant in the following way:

In regard to the practice of solicitors and barristers, the in camera rule also protects them. Solicitors and barristers, who likewise are human, make mistakes. These mistakes cannot be discussed outside of the court. These mistakes are thus hidden and buried. In an open court, all is in the open. Mistakes can be discussed and published ... As a result, the mistakes of solicitors and barristers go undocumented and unvoiced. (Participant 178)

Another participant was of the view that the *in camera* rule only benefits the court and said:

The rule benefits the court by keeping the outrageous behaviour of Judges secret. It benefits the other professionals involved, particularly the unqualified experts, solicitors and barristers from the public understanding what is really going on. (Participant 58)

Other participants stated that in their view there are no benefits to the *in camera* rule with one participant commenting that *“the benefits in our case were solely for the abuser”* (Participant 241). Another queried the protections that the *in camera* rule provides and said:

Everything is well hidden and nobody is actually aware of what is going on. Judges have too much power and can get away with the ill treatment of women and children. I naively thought we'd be protected. How wrong I was - it brought me back to being abused all over again. It made me realise

stay quiet and accept what your being given. It's like being in a chokehold - there is no way out.
(Participant 69)

Participants expressed numerous concerns that the *in camera* rule can be used as a weapon of ongoing abuse within the family law system. This will be given some attention in the following section.

Does the in camera rule play into the hands of abusers?

The claim was made that the *in camera* rule is being used as a “weapon” (the terms “weapon” and “weaponisation” were used by a number of participants across the study), while others emphasised the lack of repercussions when the rule is breached, which can serve to further compound the impact of the abuse. A number of participants, while alert to the overall intentions and aspirations of the *in camera* rule, queried whether the rule always does what it is supposed to do and if it is, in fact, open to abuse. One participant articulated their reservations as follows:

It should be of benefit to children first and foremost - so that details of their parents' case(s) are kept private. It should protect the privacy of adults, but it doesn't as it is abused by adults also. There should be a right to privacy in family life even if your family life hasn't worked out. (Participant 56)

Participants spoke about “*silencing victims of abuse*” (Participant 53) with another believing that “*domestic and emotional abuse within the court system goes unchallenged*” (Participant 322). A survey participant described how, in their view, the *in camera* rule works in favour of the abuser, protecting them and their identity. They described it in the following way:

Abuse is buried and [the] victim is forced to continue to engage with [the] abuser. If abuse was dealt with in an open court, it might bring more awareness and address the situation and problems which is rising every day. Abusers should be named and shamed. (Participant 121)

Similarly, another participant conveyed their concerns about abusers not being identified, a ‘protection’ that, in their view, comes with the *in camera* rule. They said:

The perpetrators are not identified in domestic abuse cases and the public are not aware of the danger should they move on to new relationships etc., especially when there may be children involved. If the person is a serial abuser, it remains unknown and is a risk. (Participant 320)

One participant articulated that they “... fail to see ANY benefit(s) to the *in camera* rule. Keeping matters ‘confidential’ lends itself to lies not being exposed” (Participant 205) (CAPS emphasis in original quote). Indeed, many participants expressed concern that the *in camera* rule plays into the hands of abusive men. It was the contention of one participant that “*abusive men can do anything they want. They are answerable to no one*” (Participant 67). They dismissed any benefits further by stating that, in their view, “*misogynistic Judges can hide how abused women are treated viciously by their judgments and protect, celebrate and enable abusive men.*” They further stated that “... *in camera* rule is a playground paradise for abusive men and a clearly misogynistic judicial system and society” (Participant 67). Similarly, another participant claimed that the rule:

...benefits those who have something to hide. It benefits false accusations and manipulation of facts. It allows coercive control within the court. It allows unacceptable behaviour [to] be hidden. It benefits the manipulation of children who are being used as weapons in family law. (Participant 134)

Another participant expressed serious reservations about the *in camera* rule claiming that it achieves secrecy and not privacy. They said:

Secrecy not privacy is what in camera actually achieves...the fact that such secrecy pertains, literally leads to the potential of unchecked misbehaviour by Judges and legal professionals in such cases...For example, currently, Ireland is experiencing an increase in cases of rape where the victims are choosing to be identified in order that the perpetrator is publicly exposed and rightfully [sic] shamed. This development is being applauded by many, including women's groups and myself. We should by now have moved past the simplistic unworkable 'silence' culture of our Catholic-dominated culture with all of the exposés over recent decades of abuse across a range of societal sectors. Removing the in camera rule is an opportunity to grow up as a society, to act as adults, to hold everyone involved, including Judges and legal professionals to account for their behaviour and to provide real, knowledge-informed and knowledge-directed non-gender discriminatory support for children of troubled relationships and for those couple who each, in their own way, are traumatised by their experiences. (Participant 261)

In fact, the survey had numerous examples where participants were quite condemnatory of the *in camera* rule. One participant stated that instead of benefits to the rule, it *"protects abusive men. End of. Forces mothers into silent subservience"* (Participant 72). Another participant was very clear that the rule carries *"no benefits"* and went on to describe it as *"a tool of oppression and control on the part of the State"* (Participant 109). They characterised it as *"demeaning and dehumanising"* stating that in their view *"justice must be done in public"* as the *"in camera hides all sorts of corruption that would not be let happen in a public court"*.³⁶⁷ Many others were of a similar view, calling for more accountable practices in the family law courts with the belief that the *"in camera rule protects abusers and fraudulent professionals and lazy power-hungry Judges"* (Participant 79). One person suggested that the *in camera* rule has resulted in a *"lack of transparency [that] covers up the most egregious decisions and errors made by the courts, and lawyers"* (Participant 48). It was their view that *"removing this rule would make all accountable. Name and shame abusers, especially regarding maintenance and domestic violence"* (Participant 79). There was a strong sense amongst many of the survey respondents that the *in camera* rule results in concealment and that *"secrecy only promotes lies and bias"* (Participant 155) with one participant claiming that *"it protects these [Judges] from public scrutiny and ensures that they can operate their court on a 'seat of the pants' basis with no oversight"* (Participant 255). Another participant said that, in their view, every professional in the family law field has *"blanket security... that being that they can say, do and act as they like with no oversight or accountability whatsoever"* (Participant 110). One participant described the *in camera* rule as *"a convenient way of covering up and masking transparency"* (Participant 56). They continued by saying: *"...it is random, random, random. Potluck with whatever Judge you come before"* (Participant 56).

³⁶⁷ No actual examples of 'corruption' were presented in the data.

Participants recounted their experiences of the family law system where they identified what they saw as the stringent rules of *in camera* rule having a direct impact on their well-being. This will be discussed next.

Well-being compromised by the in camera rule

Generally, there was a feeling amongst many survey respondents that the operation of the *in camera* rule negatively impacted their well-being. Respondents provided the following descriptions: *"It made the experience more stressful. I felt I was treated like a second-class citizen"* (Participant 48); *"I feel alone in my struggles"* (Participant 79); *"Daunting/intimidating"* (Participant 63); *"Emotional distress and torment"* (Participant 266); *"I can't think of a single victim-survivor who has been positively affected [sic] by the in camera. We are all further victimised by it. Period"* (Participant 239); *"Abused people feel more alone when they are unable to discuss or challenge the inadequacies of the court system"* (Participant 322); *"Some people may feel silenced because they misunderstand the purpose of the rule"* (Participant 293).

Indeed, the negative impacts experienced went beyond mental health with one participant describing how it compromised their physical health. They said:

Basically the court will abuse you and assist your abuser to continue harassing you, while making you keep it a secret so your body must store that trauma and you become sick because your nervous system can't handle the abuse". (Participant 58)

One participant went so far as to say that they had considered suicide believing the family law system *"protects abusive men and a misogynistic judicial system in secret"*. They went on to say *"as a domestic violence victim, I was humiliated, bullied, shamed, blamed and vilified for trying to protect my children from an abusive man. I have considered suicide."* (Participant 248). Another participant described having reached *'breaking point'* and said:

When you are at the lowest point in your life, in terms of health, wellbeing, future outlook on life, you are told that you cannot discuss your case with ANYONE. It riles me to read and hear the hypocrisy from Government about the importance of mental wellbeing etc. Nobody really cares. Anyone I contacted in Government informed me that "they couldn't give legal advice or get involved in the Family Courts". So the in camera rule stopped me from getting vital supports I now know I could have got in the early days of my case when I was at breaking point. (Participant 248)

It is difficult to determine from participant responses if the *in camera* rule was the single biggest issue. It is possible that it was a precipitating factor amongst the many issues and broader concerns that were identified with the family law system and the issues that brought participants into contact with the family law system.

Linked to the theme of well-being, the *in camera* rule as a barrier to accessing necessary supports was explored within the survey.

A barrier to accessing necessary supports?

As outlined in Table 4.6 above, 56% of participants in the survey either agreed or strongly agreed that the rule prevented them from accessing support services. The negative consequences experienced were exacerbated to some extent for some participants by

the perceived inability to access relevant support for mental well-being. The *in camera* rule was described by one participant as something that “*has been used as a threat against me for seeking support amongst others*” (Participant 323). Indeed, several participants found the *in camera* rule served as an obstacle to accessing support in cases where trauma is already present with one participant clearly stating that, “*It prevents anyone from accessing support*” (Participant 37). Another participant described that “*... it left me unable to discuss my case with anyone but my representation. I didn't know who else I could turn to for support. I was isolated and terrified*” (Participant 44). Similarly, a participant referred to the trauma of having to disclose details of their abuse and being unsupported in the process: “*The negatives are relating to domestic abuse/violence cases. The victim is not able to bring any support with them to help them through the trauma of having to recount the events of their abuse*” (Participant 174). Another spoke about feeling they were not allowed access support and said: “*the abuse escalates for the victims. Victim feels they cannot reach out for supports because of in camera rule*” (Participant 162).

A number of participants (n=146) who identified themselves as victim/survivors of domestic violence said they felt retraumatized because they could not bring a person to court with them for support. There were several comments that illuminated the emotional toll that the court process has on people. One participant referred to re-traumatisation and said:

Leaves the victim to be re-traumatised once again by the system, reliving the abuse and being alone in the court with no support, not even DVR [Domestic Violence Response] allowed in with you. Leaves the victim feeling alone and scared. Scared to tell your story for fear you get fined or imprisonment. (Participant 292)

Another spoke about “*not being able to talk about domestic violence and coercive control if any of those things or events were documented in the court file. Lack of support while in the courtroom with my manipulative and abusive ex-husband*” (Participant 285). One participant referred to the triggering effect it had on being in the same place as their abuser and advised that: “*I would have liked to be able to bring a friend or support worker in with me as my ex is a major trigger for me as I am a victim of coercive abuse and it's very hard to be in the same place as him*” (Participant 316).

The negative impacts to mental well-being also extended to children, the very cohort of people the rule is supposed to protect. One parent said: “*Children are having their lives ripped apart and you don't know how to explain what is happening to them. Mine asked why do I have to leave you and my dog and my home?*” (Participant 58). Another participant said: “*You can't talk about your kids. Tusla did wrong and admit it, but I can't tell anyone. My kids are traumatised but can't tell anyone. For what it's worth, I would go to jail for breaking the rule, but I couldn't find anyone to publish my story*” (Participant 98).

Other participants indicated how the *in camera* rule prevents their children from accessing support services: The rule “*... prevents parties from seeking appropriate supports for their children, i.e. therapy where parents cannot speak openly about their concerns for their children*” (Participant 310). One parent shared the following concerns:

My son was unable to get help after he made disclosures because his GP etc. wouldn't listen due to the in camera rule. It makes all the professionals involved, including my own supports as the mother, act scared of any information. It makes them want to distance themselves and not be implicated by just being told something. It's very isolating and distracts from what is really important which is the child's wellbeing. I had recordings of threats from staff and disclosures from my son and even my own solicitor refused to listen to them. The Gardai were originally worried after hearing these recordings but also refused to help. (Participant 268)

The survey also highlighted concerns in relation to how information is shared with foster carers for children in the care of the State.

Foster parents and the in camera rule

From the perspective of foster parents (n=6), the *in camera* rule does not allow them to access relevant information about children under their care, thus potentially affecting their roles as carers and parents. Furthermore, they stated that they cannot access information discussed in court even when it is about them or their roles. It is also used, in their view, to prevent them from seeking support from professionals for the children. One foster carer put it as follows:

Social workers use it as an excuse not to relay very important information to foster families. It prevents us as foster parents from seeking supports from professionals as we are not permitted to discuss the details of the case and therefore are met with a brick wall and left to deal with the fallout of a very difficult job, fostering. Tusla are also using it to their advantage all of the time and they are free to say anything within the court about foster families within the courts that is often untrue. I have known this to occur very regularly. (Participant 177)

The difficulties foster parents experience in terms of supporting the children they are taking care of due to the operation of the *in camera* rule varied. For example, foster parents do not have access to court orders or recommendations made in respect of a child under their care. One foster carer described their experience of being kept in the dark when it comes to information sharing:

Siblings/foster parents in foster care have no access to knowledge, unable to share assessments to secure support for child. Recommendations/orders are not shared with foster parents and as a result the child has no one to ensure Tusla are compliant or that child receives the support. (Participant 287)

The foster parents also experience a type of double barrier in terms of providing necessary information to schools because they are not privy to the court orders and recommendations made and are not a party to the proceedings. It is up to the Child and Family Agency to apply to the court to request a lifting of the rule to ensure that a child's needs are being met on a day-to-day basis:

It's very difficult as a foster parent to care for a child when information/reports cannot be shared with other services like school, primary care and needing additional support for the child and family. (Participant 288)

The inability of foster parents to talk freely to professionals and family members about the case concerning the child under their care due to the operation of the *in camera* rule was another concern raised:

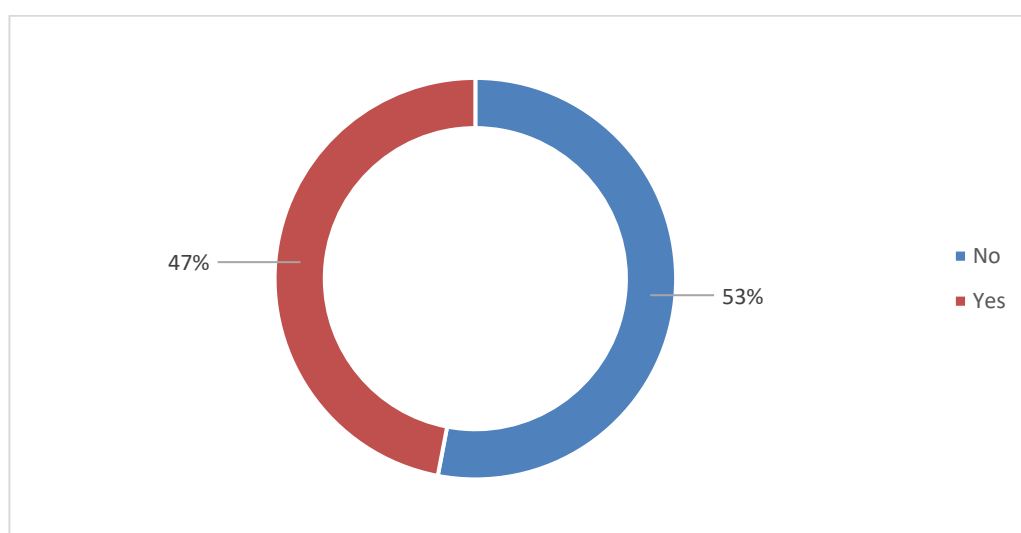
Unable to speak about the case with loved ones and professionals. Unable to access support services for children in care when the social workers prevent us from seeking supports. They believe the child doesn't need the help even though we are the foster parents who know the child best. Our social worker actively stopped us seeking mental health services for the child and we weren't allowed to do it ourselves because the State is the parent and not us. This is the reality of fostering. The child loses out. (Participant 299)

Breaches of the *in camera* rule were also given some attention in the survey instrument.

Breaches of the rule

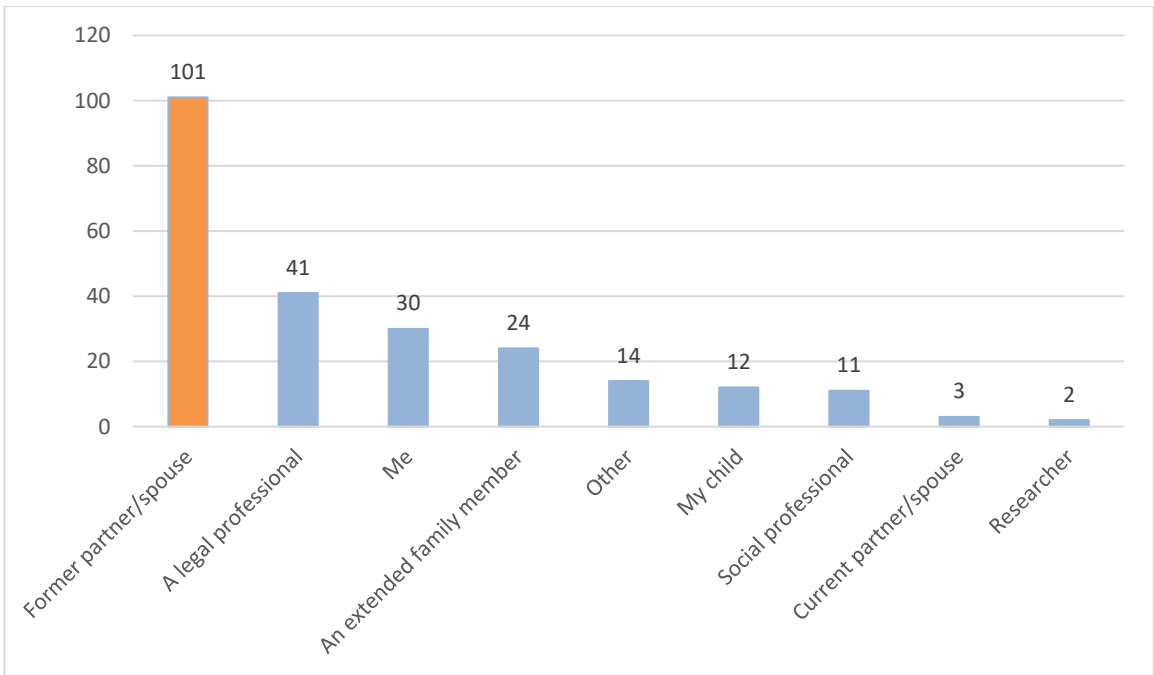
Close to half of the participants (47%, 140) indicated that the *in camera* rule was breached in their case.

Figure 4.7: Was the in camera rule breached in your case?



When the *in camera* rule was breached (n=140), in most cases, the person responsible for the breach was a 'former partner/spouse'.

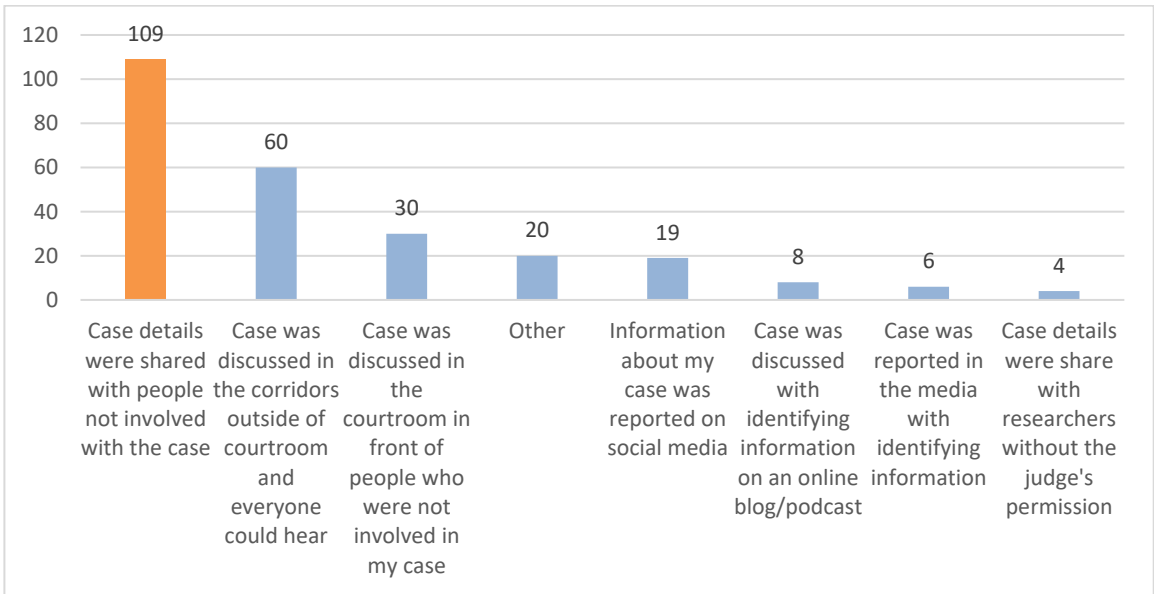
Figure 4.8: Who breached the in camera rule in your case?



* The total figure of n=238 is greater than the total number of cases where the *in camera* rule was breached (n=140) as some participants indicated that the *in camera* rule was breached by multiple persons in their case(s).

The most common way for the *in camera* rule to be breached was for case details to be shared with people not involved in the case (109), followed by their case being discussed in the corridors outside of the courtroom (60).

Figure 4.9: How was the in camera rule breached in your case?



* The total figure of n=256 is greater than the total number of people who answered this question (n=134) as some participants indicated that the *in camera* rule was breached in multiple ways in their case.

27 people indicated that the *in-camera* rule was breached either through social media, or an online blog/podcast which is lower than expected. However, when asked about social media and the *in-camera* rule, slightly over four in ten (44%) participants agreed or strongly agreed that social media has made keeping privacy in family law cases harder. There were a significant number of participants in the neutral category (30%) on this issue.

Table 4.8: Social media, privacy and the *in camera* rule

	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree	Not applicable
Social media has made keeping privacy in family law cases harder *	19%	25%	30	15%	7%	6%

* Does not equal 100% due to rounding.

In just over six in ten cases (61%, n=85) the breach was not brought to the Judge's attention; breaches were brought to the Judge's attention in 29% (n=40) of cases. 11% were unaware if the breach was reported to the Judge. In cases where breaches of the *in camera* rule were brought to the Judge's attention, responses concerning consequences included it being ignored or dismissed, nothing being done, an admonishment by the Judge, being asked not to do it again, and being threatened with jail. What was clear is that from the perspective of family members, there appears to be no consistency in approach to breaches of the *in camera* rule. For example, one participant claimed that *"the Judge was unconcerned"* (Participant 143) while another claimed that the Judge *"made fun of me"* (Participant 148). In one case, where a parent:

...had informed the school what was happening [in the court proceedings] on a sick note because the child was stressed. The Judge said this was a breach. The Judge offered the perpetrator to apply for breach of in camera rule or defamation. (Participant 111)

Many reasons were provided by litigants (both lay litigants and those who were represented) with experience of both child care proceedings and family law proceedings concerning why breaches of the *in camera* rule were not brought to the Judge's attention in their case. In the main, participants gave the impression that it was their view that there was little point in highlighting a breach of the *in camera* rule in their case. Reasons for these included feelings that notifying the court of a breach would *"make matters worse"* (Participant 77) with litigants wanting *"it over with, with as little drama as possible"* (Participant 86). A lack of evidence to prove the alleged breach was another reason given by some litigants, with a number of participants claiming there was no point in highlighting the breach as they felt they wouldn't be listened to, with one participant of the opinion that *"Judges don't listen to lay litigants"* (Participant 119) and two participants with a similar perception *"I didn't bother cause Judges don't care"* (Participant 319) or they *"didn't think the Judge would care"* (Participant 107). Others commented: *"There is no punishment for breaking it"* (Participant 115); *"The person who follows the law respects it... while the person who breaks the rules and don't care never get punishment by the courts"* (Participant 184). *"Nothing is done if rule broken"* (Participant 277).

Where participants were represented, some claimed that their solicitor “*refused to do it [highlight the breach]*” (Participant 162) or “*didn’t bother*” (Participant 194), whilst some reported that their solicitors actively discouraged their clients from raising it as the other party would receive a mere “*slap on the wrist*” (Participant 123) or it was considered to be “*...a waste of time distracting from the issues at hand*” (Participant 291). According to one participant, the reason they didn’t bring the breach to the Judge’s attention was “*because I was informed by SC that the cure was worse than the disease*” (Participant 116). In the context of a child care proceedings case, one parent claimed that the system, including the Judges, in many ways violated privacy in their case when they were removing the children. They said:

... we had to attend a family meeting with Tusla and our children’s school principals were present it was appalling and humiliating and led to the school’s apathy in helping keep my traumatised children in education. My daughter who was in boarding school was 18 and Gardai tried to remove her from school, my sons were removed from school with other parents in car park so it was topic locally, and my home had three Garda cars on the day outside ... (Participant 173)

Other examples and issues with the effective operation of the rule were referenced in relation to the court procedure of the call over. One participant made the following comment saying that it was a “*waste of time reporting to the Judge as it was discussed in open court during call over in front of Judge*” (Participant 219).

A couple of fathers who were trying to establish access arrangements with their children through the court proceedings, were of the mind that raising breaches before a Judge would not serve them well, with one father claiming that he had to strike the balance between being strong and confrontational, and another father stating that his “*best chance at getting equal time with my son was to suck it up and not rock the boat*” (Participant 191). The same father continued that, in his view, “*the chance of my son’s mum’s family actually being held accountable for breaking the in camera rule was very slim also*” (Participant 191).

In one instance, a participant claimed that in their case, a professional who compiled a report for the court had breached the *in camera* rule:

I’m not even sure whether the ethical breach was primarily a breach of professional ethics or a breach of the in camera rule or both - the report writer discussed my case with someone without my permission and noted this in the report. Based a recommendation on that discussion! (Participant 318)

In the context of cases settled outside of court, there was no opportunity to highlight a breach before the Judge “*Because my legal team kept me out of Court at every cost. Everything was always ‘settled’ out of Court, and I have never got to explain my situation to a Judge*” (Participant 248).

When litigants went to the Courts Service for support when a perceived breach had occurred, the “*Courts service were unable to articulate the process for dealing with breaches, and claimed they were not authorised to provide legal advice*” (Participant 220). A number of breaches occurred after the case had finished and litigants felt they could not bring this to the attention of the court as a result.

Survey participants were asked whether they were in favour of abolishing the rule or keeping it/reforming it. They were also asked how the *in camera* rule could be improved and were asked to put suggestions forward in the survey. This will be discussed next.

4.3 Suggestions for improving the *in camera* rule

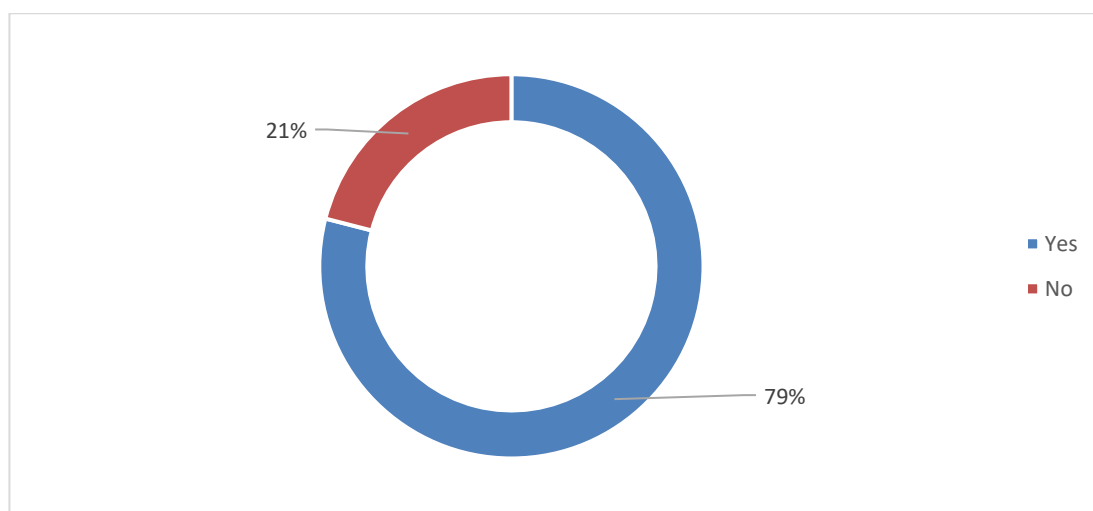
The users of family law courts in Ireland that participated in this survey expressed a strong view that the *in camera* rule is currently not operating well. Nearly two-thirds of survey participants (65%) disagreed or strongly disagreed with the statement that ‘the *in camera* rule is fine, no need to change it’. Just over half of survey participants (52%) either strongly agreed or agreed that the *in camera* rule should be abolished.

Table 4.9: Abolish / reform of the *in camera* rule

	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree	Not applicable
I think the <i>in camera</i> rule should be abolished	36%	16%	18%	11%	18%	1%
The <i>in camera</i> rule is fine, no need to change it	15%	10%	10%	16%	49%	<1%

When asked whether the *in camera* rule be changed, close to eight in ten participants (79%, n=236) recommended that it should be changed.

Figure 4.10: Should the *in camera* rule be changed?



Respondents were asked if a magic wand were to be waved and the *in camera* rule could be amended, what form that should take. In total 236 participants provided narrative responses to this question. Of those respondents who referred to children, there was general agreement that the privacy and anonymity of children in family law and child care

proceedings should be preserved, put by one participant, so as *“to prevent publication of a child's name is the only part that should remain but also have the ability to apply for the in camera rule in other cases”* (Participant 117). In addition to recognising the need to protect children through anonymisation, some respondents were of the opinion that a complete removal of the rule would help introduce an element of accountability for participants in the proceedings. It was felt by one participant that the stigma that used to attach to family breakdown was no longer relevant in today's society. One suggestion was that the rule could be waived where both parties agree.

It was recognised that reform of the operation of the rule was not something that can be done in isolation and it should be connected with a wider reform of the infrastructure of court, and the system which would include:

Ensure better privacy in court buildings public areas, provide appointment system for cases, provide room to consult legal team and for any support, advocacy, family present, in summary show some respect...training for Judges and court staff, court liaison for people involved in cases. Dignity and respect in effect is required. What we have is medieval ... (Participant 239)

Having a proper appointment system in place for families was also suggested as being important in the context of protecting privacy: *“Each couple has a set time to attend court. Not 40 couples arriving at 10 am and potluck. Sit in public ‘til 5 pm”* (Participant 73).

While there was a lot of variation in terms of the recommendations made concerning the future operation of the rule, there were three overarching themes along with some practical recommendations which will be explored in more detail below, some of which have already emerged in earlier sections above.

Accountability of Judges, professionals and perpetrators

The theme of accountability and transparency was a strong theme that emerged in response to the question about the negative aspects of the in-camera rule. There was a strong feeling amongst a significant number of respondents that there is need for more accountability and transparency within the system which would encompass Judges, legal professionals as well as other professionals such as court assessors and GALs. Responses ranged from *“Get rid of it completely. We need to allow and accept accountability”* (Participant 227) to the fact that removal *“...could open the courts to transparency and accountability and consistency, preventing misconduct and bias”* (Participant 117).

While recognising that privacy is still important, some respondents indicated that there is a need for more transparency in family law proceedings. There was a perception that parties to the proceedings are not always shown respect, and that the legal community are operating in a closed type of system whereby *“Judges, solicitors and barristers look out for one another and don't care about clients and people who have committed no crime, but their marriages have broken down”* (Participant 217). Another commented that *“in camera means protection of the club”* (Participant 255) and this should no longer be tolerated. However, how such accountability could be better achieved in practice was less

clear. One suggestion was that “cases should be video recorded to hold all parties to account. Only to be released for examination...this would change things for the better” (Participant 200).

This concern for accountability was not limited to the Judges, however, and extended to all other professionals involved in the wider family law process. If the *in camera* rule were to be amended, legal professionals would be, according to some participants “...held accountable for errors of Judgement & obvious bias” (Participant 103). Speaking about their wish for change, one participant described what it would look like for them: “Convictions can be spoken about. Judgements are public, Section 32 assessors are transparent and accountable, and the voice of the child is upheld” (Participant 241).

One participant said that if a magic wand could be waved to bring about change “it would expose the trauma and inequality of the process and hopefully make participants more accountable for the things they say. Barristers can be very ‘smartass’ and try to be witty at the expense of the other party” (Participant 78). Another participant said for them change would mean that the “Guardian ad litem to no longer be protected from giving bad reports because you can’t challenge an under-qualified person from giving misconstrued reports” (Participant 104).

In thinking about more transparent practice within the context of the family law courts, participants highlighted the role of media and reporting as a key component in bringing about public awareness to decisions made in court.

Role of media, reporting and scrutiny of decision-making

Family members referred to the important role that the media have to play in terms of promoting accountability for all those who have a role to play in family law or child care proceedings. While the media can report anonymously in such cases, this practice is not common and so possibly has resulted in the public feeling that they cannot do so. For example, one participant believed:

Reporters/media and family members/witnesses should be allowed to attend family cases. They should write about cases (perhaps without using real names) which might allow for some accountability in the courts. If someone is a danger they should be named. If someone doesn’t pay their child maintenance, they should be named. The family law/ judicial system will not improve so long as the in camera rule is present in the courts. (Participant 84)

Thus, the latter survey respondent was unaware that members of the media may attend and report on cases; however, this response was expected given the low attendance rates by members of the media in private family law cases.³⁶⁸ Another respondent felt that a balance could be struck between maintaining anonymity of children and family members while also introducing an element of transparency by having the media or journalists

³⁶⁸ In February 2025, Coimisiún na Meán launched a funding scheme to fund journalists to undertake court reporting, Coimisiún na Meán, Local Democracy and Court Reporting Schemes: <https://www.cnam.ie/e5-7m-awarded-under-new-journalism-schemes/> (Date accessed: 28/2/2025).

present. The importance of gathering statistics in the area of family law was also pointed out:

Journalists, others, etc. should report more on what is going on in family law courts but must by default keep litigants' and children's names anonymised in publications. The in camera rules hides everything, the courtroom must be open to select observers and every case must be reported on, statistics gathered... (Participant 60)

Others believed that the public in general need to know how justice is served with one participant commenting that there are “*no written judgments from the District and Circuit Court, which means that parties to a case have no relevant precedent that can guide them or that they can rely on*” (Participant 310).³⁶⁹

In the context of cases where there is alleged or perceived professional misconduct, the role of the media was also seen as important. One participant said, “*let the media into the courts so that Judges are publicly held to account for the wild and frightening findings and statements they make against victims of abuse*” (Participant 286) with another of the belief that while “*the privacy of parties should be maintained ... media should be allowed in regularly to report on the type of cases that appear*” (Participant 176). Similarly, one participant said that “*media could attend and report by not mentioning details about identity. Media could report on clear bias, bad decision-making, Judges' behaviours towards parties, etc*” (Participant 186). Many respondents were of the mind that it was in the public interest to “*have media sit in every family law case. Judges' rulings should be reported and just don't use names*” (Participant 73). Another person claimed that “*...the media could report on more cases so that patterns and trends could be exposed and discussed especially re the court assessor system*”. The media should be able to publish non identifying information about the way that fundamental rights are being abused in family courts’ (Participant 196).

Similarly, another participant said that there should be “*no need for media to request court permission to publish. Once it's anonymous, no one is harmed and it's in the public interest to share these difficult journeys*” (Participant 44). One participant gave more details concerning what sort of information would be helpful in terms of promoting transparency:

All statistics relating to every family law case would be published - without anybody being named. We need to know about gender bias: what percentage of fathers get 50:50 parenting in a court when the mother refuses; how long each legal process is and why; how many court appointments and the nature of those appointments in each case; how much fees are for each service from court appearances to letters; analysis on how unnecessary most meetings and fees are; in how many cases is the family home sold and what is the equity divide; a clear record of the prejudices of each Judge - for instance, we should know if a Judge consistently refuses to give 50:50 split of parenting and equity and then that Judge's prejudices should be held to account by a governing body of the family law courts; etc, etc... (Participant 102)

Financial information in the context of family breakdown was also suggested as something that should be made public. Further suggestions made in the context of promoting

³⁶⁹ Judgments are published on the Courts Service website and are publicly accessible here: <https://www.courts.ie/judgments-year> (Date accessed: 16/05/2025). However, there are only a small number of published judgments each year on family law cases.

transparency included: “... *publish court orders and summaries and remove identifying detail*” (Participant 61). One person suggested that: “*In order to facilitate transparency, etc. ‘provide anonymised reports on the government website whereby the facts could be analysed so as to measure major problems in family courts...’*” (Participant 51).

Participants put forward some suggestions regarding the *in camera* rule and those who blatantly disregard court orders and in cases of domestic abuse.

Perpetrators of abuse

In cases where one of the litigants is abusive or disregards orders made by the court, the possibility of lifting the rule was raised. It was felt by one participant that in an ideal world in cases where domestic abuse is a feature, the *in camera* rule would be “...*waived at the victim’s discretion should they want to tell their story and take back control of their lives - perpetrators need to be held accountable and not be further fuelled with power by being protected by the in camera rule which allows them to continue their abuse*” (Participant 88). Similarly, another respondent felt that “*perpetrators should be named*” (Participant 65) as the *in camera* rule “*protects abusers from public shame and Judges from being answerable to anyone*” (Participant 67).

This was not only felt to be appropriate for those where domestic violence was an issue but also in cases where there was non-payment of maintenance: “*where orders are broken or non-payment, abusers should be named and shamed*” (Participant 121). Similarly, ‘*if an agreement is broken, [a] victim should have the choice to lift the rule or where no maintenance is paid*’ (Participant 69).

Participants made several suggestions regarding the *in camera* rule and having supports present in court proceedings.

Support for people in court

Many participants felt that the *in camera* rule could be amended in a way that allows for support for family members in family court proceedings in general. While a survey participant admitted “*I would not have made it without the support of a close friend*” (Participant 344). There was a strong feeling amongst some participants that parties should be able to benefit from supports. One participant said it was their wish “*that you could have some support in the courtroom*” (Participant 43) with another of the view that “*at least one family member [should be allowed] to attend as an observer: for emotional support and to record notes*” (Participant 60). Similar comments reflected this need for support with one participant of the view that “*support people should also be allowed in’ and that ‘asking a distraught parent with depression to do it alone is cruel*” (Participant 98). Others were of a similar view believing that people should be “*allowed to bring family members in for support*” (Participant 124), *that it would be beneficial “to have the option of support in the courtroom”* (Participant 126) and to “*allow supports to be present on hearings*” (Participant 152).

However, the critical importance of being allowed to have supports present in court proceedings where there was the element of abuse was also raised. One person was of the view that people should be *“able to access the supports and have them [support persons] in court to give their recommendations if needed”* (Participant 100). They further highlighted the real need *“to have support there in cases of abuse [where] ‘...support family members allowed to attend, all documents to be freely given to plaintiff and defendant”*.

Another participant referred to *“the importance of domestic violence victims being able to have a support person with them in court”* (Participant 163). In addition, they suggested *“publishing the domestic violence orders granted. Being able to have a support person in the courtroom with you. Letting the support person read reports as they may have more focus and be able to ask questions”* (Participant 163). Similarly, another participant reflected this view and said: *“I believe support workers from women’s aid etc should be allowed into court, people should be able to explain what happened in court without fear of reprisal. The in camera rule often protects the abusers and leaves the victims feeling unlistened to”* (Participant 172). Where a party is unrepresented, the need for support in court was also raised. This participant said that, in their view, *“at least one person should be allowed to support a party who has no legal team especially when other party have full legal support”* (Participant 105). Linked to this, was support outside of court where support services may ask if a domestic violence order is in place and where, for an effective safety plan to be made, the victim should have the ability to share certain risks to relevant parties. The *in camera* rule prevents this at the moment which potentially leaves parties at risk.

In the context of reforming the operation of the *in camera* rule in child care proceedings specifically, there were a relatively small (N=6) sample of foster parents who made the argument that there is a need to be more inclusive of foster parents in the child care proceedings, or at a minimum keep them informed of developments related to the children in their care – *“Consideration should be given to foster carers as they are a huge part of child’s life and very often their only safe place”* (Participant 305). The argument was made that:

...foster parents need access to the courtroom to be able to voice their concerns or otherwise and to seek supports for their foster children. These are very highly traumatised, vulnerable children in the State’s care and they are being left behind, unsupported without proper legal representation... foster parents are the ones taking on the parental role 24/7 and are completely ignored and they have no route to advocate for the children as social workers do not take on board anything we say, and anything we do say can often turn into Chinese whispers and doesn’t get relayed correctly whether intentionally or otherwise ... This is solely to allow TRANSPARENCY [CAPS in original] and truth to be obtained for everyone involved. It will allow for children in the State’s care to see, that some people do genuinely care for their future and want to do what’s right for them. (Participant 177)

This was supported by other respondents who suggested that *“foster carers [are] given [a] say in court proceedings as we are living with/raising children not professionals”* (Participant 141). Another suggested *“to include foster parents who are working with...the children* (Participant 346). In a similar vein, it was suggested that *“information that benefits a child should be released/shared with trusted persons. Foster parents to be included in proceedings”* (Participant 287). One participant commented: *“as a foster parent all I want*

is to support our children and get the support needed for us. Knowing what ... children have been through and exposed to would help us understand and support behaviour and healing" (Participant 288). Another foster carer was of the view that they should be allowed "access to the courtroom" as *"the child lives with us, we know them best"* (Participant 299).

4.4 Summary and analysis

Overall, there was a strong sense from participants in the data that the *in camera* rule attempts to do something positive. For example, participants felt that it protects children, it provides privacy and protection for litigants, and limits who can attend proceedings. This means that participants can tell their stories without an audience watching them. While participants believed there were benefits to the rule, many simultaneously expressed reservations about it, with some querying its application. For example, if privacy is indeed one of the aims of the rule, then 43% of participants either disagreed or strongly disagreed that it achieved this aim. Furthermore, two-thirds of participants felt that the *in camera* rule needed to be reformed, with slightly over 52% of participants agreeing or strongly agreeing that it should be abolished.

A large cohort of participants were very critical about how the closed, private nature of family law proceedings due to the *in camera* rule led to a reduction in transparency and accountability. Participants often expressed strong views that instead of protecting litigants, the rule instead protected the professionals and Judges from scrutiny. It was not the focus of this study to examine this issue. However, in combination with the low rates of court reporting by journalists, the low number of published judgments, and the lack of an independent systematic reporting process in private family law, participants have become highly disillusioned with the system, which for many is the only system to help resolve their family law issues. While the media can report anonymously in such cases, this practice is not common, and therefore possibly has resulted in the public feeling that they cannot do so. The strengthening of court reporting by journalists is something that Coimisiún na Meán³⁷⁰ (Ireland's media regulator) is seeking to bolster with its recent funding scheme, although Coulter (2024) has recently argued that "the law permitting media reporting ... is not fit for purpose and requires substantial amendment if the media is to attend contested private family law proceedings".³⁷¹ Due to the low levels of those with experience of child care proceedings (public family law) participating in the survey, there were no mentions of the Child Law Project attending cases.³⁷²

A further issue regarding transparency and privacy was that a number of participants strongly expressed a view that the *in camera* rule protected abusers due to the limitations on reporting. There was a strong sense amongst many of the survey respondents that the *in camera* rule impacted their physical and mental health as a result of the person alleged to have abused being 'shielded' by the rule. Some participants questioned whether the

³⁷⁰ See <https://www.cnam.ie/e5-7m-awarded-under-new-journalism-schemes/> (Date accessed: 16/05/2025).

³⁷¹ Carol Coulter (2024) "Seen to be done", *Law Society Gazette*, December, p. 22.

³⁷² The Child Law Project is a respected reporting and transparency mechanism in public family law, child care proceedings cases (see data in later chapters).

rule could be amended so that, for example, applications in domestic abuse cases could request to waive their anonymity so that abusers in domestic abuse and coercive control cases can be named, like in rape cases.

Survey participants felt that the exclusion of support persons attending family law proceedings due to the *in camera* rule had a negative impact on their welfare. Participants sought clarity about what they could share with support services about their case in family law proceedings. Participants noted that such a lack of clarity about the *in camera* rule creates a barrier to seeking out support from external services due to a fear of breaching the rule.

Close to half of the participants (47%, n=140) indicated that the *in camera* rule was breached in their case; in most cases, the person responsible for the breach was a 'former partner/spouse'. The most common way for the *in camera* rule to be breached was for case details to be shared with people not involved in the case (n=109), followed by their case being discussed in the corridors outside of the courtroom (n=60). In slightly over six in ten cases (61%, n=85) the breach was not brought to the Judge's attention due to a lack of confidence in how it would be dealt with. Judges' perspectives on the tools at their disposal to address breaches of the *in camera* rule are examined in Chapter Five, particularly in the context of social media. Yet, a surprising finding was that only 27 participants indicated that the *in camera* rule was breached either through social media, or an online blog/podcast. However, when asked about social media and the *in camera* rule, slightly over four in ten (44%) participants agreed or strongly agreed that social media has made keeping privacy in family law cases harder.

The data in this chapter strongly suggests that there is a need for clear, consistent, guidance on the nature and scope of the *in camera* rule. In addition, participants highlighted the need for increased transparency so that they have a more comprehensive insight into how justice is administered in practice in the family law courts. Participants are seeking access to reliable knowledge and advice on what is acceptable in terms of bringing a support person into court, and what is allowed when sharing information with support services about the issue which brought them to be involved in family law proceedings in the first place. Judges' and professionals' views on these matters are addressed in subsequent chapters.

The survey data elicited strong responses from participants regarding the *in camera* rule with mixed advice and recommendations from participants. It is difficult to determine from participant responses if the *in camera* rule was the single biggest issue or if it was a complicating factor amongst the many issues and broader concerns that were identified with the family law system. It was not always possible to assess as they were sometimes intertwined in the data.

Chapter 5: Judicial views on the *in camera* rule

5.1 Sample overview

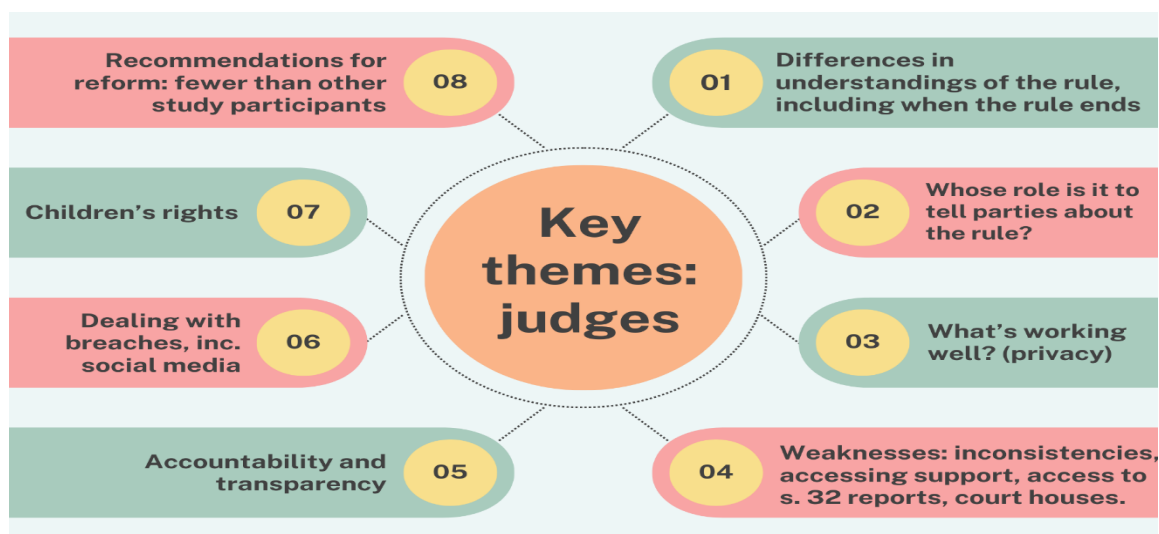
Being the only group of participants responsible for legally interpreting the rule in court where required and addressing situations of breach that arise, the data from the judicial interviews is presented separately to professionals, academics and community groups. All sitting Judges in Ireland with experience of family law or child care proceedings and the *in camera* rule were eligible to take part in this study. Thirteen Judges volunteered to take part in semi-structured interviews (10 female and 3 male) and they were given the option to meet either online or in-person.

Table 5.1: Interview participants

Court	Number
High Court	3
Circuit Court	4
District Court	6
Total	13 (10 female, 3 male)

Permission was sought and secured from the Legal Research and Library Services Subcommittee on Judicial Participation in Research Projects. All interview participants could withdraw for up to two weeks after data collection – none of the Judges interviewed withdrew from the current study. The key themes that will be examined in this chapter are outlined in Figure 5.1:

Figure 5.1: Key themes from judicial interviews



5.2 Judges' understandings of the in camera rule

Judges were asked to outline their understanding of the *in camera* rule. Responses varied in the level of detail provided. Some Judges explained the origin of the term *in camera*, it being a Latin word, meaning 'in the room' with the original meaning being that it is in private (Judge 10, Circuit Court). Judge 10 further explained that there is a constitutional imperative that justice should be administered in public, but there is an exception to this where family law cases are held otherwise than in public. Another Judge went into detail about when the *in camera* rule commences and that *"it doesn't begin until there's legal proceedings of some sort. I think up to that point, people can do and say what they want..."* (Judge 4, District Court). Judge 5 (High Court) said that in their view *"the primary objective of the in camera rule is to protect the privacy of somebody who would otherwise not avail of the protections of the law, or the reliefs that the law affords"*. Judge 9 (Circuit Court) indicated that *"if you want them [parties to the proceedings] to honestly tell you that, they have to be assured of confidentiality"*. Judge 9 expressed the view that there is, in fact, no *in camera* rule:

There is no in camera rule. The rule is the hearings are heard otherwise than in public. There is no in camera rule. That's a shorthand. It's a jargon in and of itself. And obviously it's in Latin and it means in the room. It means in the room in Latin, it's the Italian word for room. It's nothing to do with the Polaroid or a mobile phone." (Judge 9, Circuit Court)

Another Judge said that they understood the *in camera* rule to mean *"family litigants can have their cases heard in private without onlookers"* (Judge 3, Circuit Court). According to Judge 4 (District Court), *in camera* means *"there should be no discussion of what happens in the proceedings or the outcome of the proceeding"*. A High Court Judge pointed out that *"the in camera rule is there for one purpose and one purpose only and that's really protecting the family...they are family law proceedings, they're not an individual's"* (Judge 2, High Court). It was summed up by one Judge in the following way:

What happens in the court is to remain between those parties and is not to be discussed with third parties or any documentation in relation to the in camera proceedings, not to be shared or published outside of the courtroom without leave of the court (Judge 13, District Court).

As part of their understanding of the *in camera* rule, Judges explained that parties must apply for a lifting of the *in camera* rule if they wish to share information that forms part of the proceedings. Examples given included the release of financial documentation or information needed for criminal proceedings.

What emerged from the responses in relation to Judges' understanding of the *in camera* rule was a clear understanding of what the *in camera* rule means in its strictest legal sense (technical application). However, alongside this was broad insight into the reality of what happens for parties to family law proceedings. For example, Judge 4 (District Court) said "... technically, you shouldn't come out and tell your parents what happened in your divorce or your children what happened in your divorce, which of course is complete nonsense". One Judge made the comment that "people have adopted it [*in camera* rule] as an excuse for a lot of things that aren't covered by it, but I regularly hear people saying they're covered by it" (Judge 9, Circuit Court). In fact, Judge 5 (High Court) and Judge 2 (High Court) talked about the perception that's out there that people are prohibited from telling their stories or sharing their experiences, with one Judge taking a very pragmatic view, "there is absolutely nothing in my view in the *in camera* rule which stops you discussing your life experience outside of the proceedings" (Judge 5, High Court). The distinction was made by one Judge between evidence that is given in court (which cannot be shared) and a party's personal experience (which can be shared). The distinction being that evidence given in court is not the same as one's personal experience of being in court *per se*.

In relation to children in care, Judge 9 (Circuit Court) understood the rule not to prevent young people from sharing their care status and described some interpretations of the *in camera* rule as "overreach" and noted that there are some grey areas to the rule: "*The in camera rule covers the proceedings and...there is always a fuzzy grey area between the evidence that was given in the proceedings and what happened to you of which evidence was given*".

Is the *in camera* rule for life?

Judges' views concerning when the protection of the *in camera* rule begins were unanimous with proceedings being issued as being the starting point. While the issue of where the rule ends was not discussed in all judicial interviews, where it did not come up, viewpoints tended to differ. For example, in respect of child care proceedings, Judge 12 (District Court) stated:

I think logically the in camera rule only is there to protect a child, 1) during their minority, and 2) to protect the integrity of the proceedings. So, once the child is no longer a minor, and once the proceedings no longer exist...it's a restriction...So, it's got to do with, it expires at the time when the child is no longer a child or when the proceedings are finished, whichever is the latter.

In respect of child care proceedings, Judge 13 (District Court) was of the view that “*I don't think there's any expiry date on it*”. In relation to private family law proceedings, Judge 8 (Circuit Court) similarly stated:

I would think that it's indefinite...there is no limitation in relation to divorce proceedings, family law proceedings, domestic violence proceedings. So, there's no limitation on it there. There's no time limit. So, it's indefinite in all of those proceedings.

Judge 4 (District Court) was of the following view in relation to the duration of the *in camera* rule:

If you've a court order for a decree of divorce or District Court proceedings or something like that, then I still think five years down the line after the procedures have been terminated, you still shouldn't be telling everybody about them or telling people about them...

During the course of judicial interviews, Judges were also asked about communicating the *in camera* rule and whose role it is to explain the rule to parties of family law proceedings. This will be discussed next.

5.3 Communicating about the *in camera* rule: whose role is it?

Members of the judiciary were asked about communicating the *in camera* rule and whose role it is to explain it to parties to the proceedings. It was the general view of Judges that if people have legal representation that the *in camera* rule would be explained to them by their legal team. A reminder that in Chapter Four, 55% (n=165) of survey participants said that the *in camera* rule was not explained to them during their family law case(s). One Judge said, “*I would always take it as a given when people are legally represented that they will have been told*” (Judge 8, Circuit Court). Some Judges believe that for the most part, they have some responsibility in conveying the *in camera* rule to people who come before them in the courts. There was also a belief that the *in camera* rule needs to be more carefully explained to lay or in-person litigants. Judge 4 (District Court) said “*I suppose it's the Judges, really, I suppose. And the lawyers, the lawyers who are advising them ... Yeah, I suppose. Who else would it be?*” This was the view of many of the Judges who said that from the outset, “*it should start with the solicitor*” (Judge 2, High Court).

Judge 12 (District Court) believed that the responsibility for giving information about the *in camera* rule doesn't rest with any one individual. In their view, “*there's a role actually pretty much is a role for everyone in this context*”. They went on to say the following:

I think their very first port of call is going to be, first of all, a lawyer, right? That's going to be the very first solicitor who meets them first is going to that's crucial. But secondly, if it's a litigant in person who contacts the Court office first, they're not going to contact the Judge first. So, there's a role for the relevant registrar or just simply the official in the court, whether it's Circuit Court or wherever it is, to make sure that one of the first pieces of advice that litigant gets is that proceedings are in camera, if they're family law proceedings, which means you can't reveal the details to anyone (Judge 12, District Court).

There was a general consensus amongst members of the judiciary interviewed, that in situations where people have no legal representation, it falls on the Judges to explain the *in camera* rule. However, it was presented as being both problematic and time-consuming. This was expressed by Judge 6 who said: *“...where people are legally represented usually you know, they will have been well warned in relation to the in camera rule. They’ll get a letter setting out what the in camera rule means ... But where they’re not legally represented, that’s your problem”* (Judge 6, District Court).

Similarly, it was the view of Judge 13 (District Court), that *“if you’re legally represented, it would fall to the legal representative to explain that [in camera rule] to their client. It is part of...the party’s obligations coming to court to comply with that”*. However, they said that if one party has no legal representation *“it’s a lot to go through every time ... if it’s to be done in court”*. Another Judge was of the view that if a lay litigant doesn’t have their own lawyer *“it’ll be fairly smartly pointed out to them by the other side’s solicitor or barrister, either in a letter or in court, if the... Judge will explain fairly clearly that you can’t, you know, be showing these things around”* (Judge 10, Circuit Court).

Judge 7 (District Court) said that while you would expect that peoples’ lawyers are explaining the *in camera* rule to them, *“that doesn’t mean that ...you don’t have to remind them”*. One Judge was of the view that the more acrimonious cases are, the more need there is *“to remind the parties that they’re not to involve the children, they’re not to speak to the children. They do weaponise the children”* (Judge 8, Circuit Court). Judge 7 (District Court) believed that lay litigants have to be advised *“often regularly and again, about the in camera rule and oftentimes you’d wonder are they taking any notice of it...”* and continued by saying that *“by process of elimination, it generally is the role for the Judge because there’s nobody else to do it if they’re not advised”*. Another Judge (Judge 9, Circuit Court), however, was of the view that if people choose to represent themselves, then it is their responsibility to inform themselves:

... if they’re a lay litigant, they have an obligation to inform themselves, strictly speaking ... If you choose, make the choice to be a lay litigant before our courts, ignorance of the law is no defence. You have to inform yourself (Judge 9, Circuit Court).

Judge 2 (High Court) said they would often tease out the competence of a lay litigant and ask them directly what their understanding of the *in camera* rule is only to find out that they *“don’t even know what it means”*, leaving them to explain its meaning and information related to breaches of the rule.

Judges were asked about the strengths of the *in camera* rule, and what, in their view, is working well with the *in camera* rule. This will be given some attention in the following section.

5.4 Strengths: what is working well with the in camera rule?

Protection of privacy

People don't want to be washing their linen, their dirty linen in public. (Judge 7, District Court)

Judges were asked about the strengths of the *in camera* rule and what is working well with the rule. Most Judges were clear in their contention that the *in camera* rule serves to protect people's privacy, but especially the privacy of children and it is achieving that aim well. Very simply put, Judge 5 (High Court) said:

One, it gives them a sense of, you know, privacy and confidentiality in terms of the proceedings, and two, they have a sense that this is not going to be in terms of how they give their evidence and two they've got, they have a strong sense that [it] is not going to be on the paper the following day...

According to Judge 1 (District Court):

... the strength of it is that, as I say, protects children, particularly small children, who can't express their views ... Obviously, anybody under the age of 18 has protection in law in a variety of ways anyway, and then it can protect, say, a victim of domestic violence, or, you know, just in almost any family dispute that you can think of. It may be, it can be weaponized by one side, and publicity can actually have a detrimental effect on the other side. So, for that reason, I think it's an important protection. It's a necessary protection.

Other Judges emphasised the importance of the *in camera* rule believing that without it, it might deter people from coming to court if they knew that their private business would be in the public arena. Judge 13, a District Court Judge said that *"like in terms of strength, the matters that do come before the family court are family matters...things that the family would like to remain private."* They continued by explaining that *"it's hard to see how you could have family law proceedings that were in public"* (see Chapter Three for an analysis of two systems that hold their family proceedings in public - Australia (common law) and Sweden (civil law)). In fact, it was their belief that:

It would put a lot of people off coming to court and that may be a good thing in some cases, but not in others. It would just mean that everybody would know everybody's business. Would have access to, you know, they'd be court reports that would use people's names. ... I think it's hard to see how a family law court could function without the in camera rule...from that point of view, so I suppose that's the major strength of it. I assume that was legislators' intent at the time that, you know, family law proceedings wouldn't have to be aired in public (Judge 13, District Court).

Similarly, Judge 5 (High Court) said:

But I do think the primary objective of the in camera rule is to protect the privacy of somebody who would otherwise not avail of the protections of the law, or the reliefs that the law affords, and I suppose it is a kind of a situation that if that is a minority, then that's still justifies the rule.

Judge 2, (High Court), was of the view that due to the very sensitive and oftentimes acrimonious nature of family law proceedings that the *in camera* rule is an absolute necessity. They highlighted the fact that cases can be complex and multifaceted and are not for public consumption. They explained it in the following way:

...sometimes the children become just pawns in what is being played out as their family law proceedings. So, I think it's essential. So, the strengths are, these are clearly very personal proceedings for these parties. They can be very acrimonious. They can involve highly sensitive information, sometimes more challenging, you know, the needs of the children that can also up the ante. Then you can have allegations of such child sexual abuse, some of which are unfounded, unfortunately, and that has been the case in a number of cases, and perhaps mental instability of one or another party. So, when you've got all these issues at play, they can only be dealt with, in my view, in in camera proceedings. Because it just, this is not a sport, a blood sport. It is not something that you know should whet a public appetite for viewing these types of proceedings. They have to be done, in my view, in private if you're going to resolve them in a meaningful fashion.

In addition to the strengths of the *in camera* rule, Judges were also asked to reflect on the weaknesses, if any, of the *in camera* rule.

5.5 Weaknesses of the *in camera* rule

Although some weaknesses were identified, they varied from Judge to Judge. What distinguishes this group from the other groups of professionals that took part in the research, is that they did not identify as many weaknesses. One District Court Judge who has served on the bench for many years said that they could not think of very many weaknesses and that *"it never sort of caused any difficulty for me, personally or any of my clients"* (Judge 1, District Court).

The *in camera* rule is "too blunt an instrument"

One Judge (Judge 11, High Court) was very firm in their view that *in camera* rule is *"too blunt an instrument now and that it should be more nuanced and more proportionate, which is the way...EU law has us all thinking along the lines of ... let's do this in a more practical and proportionate way."* In fact, they went as far as to say that *"it's not realistic to say that nobody should be told."* Judge 13 (District Court) referred to a downside to the *in camera* rule which is the reality that people will want to lean on their families and will want to seek advice and get opinions from family members, but *"technically, that's not allowed under the in camera rule"*. They continued by saying that there are also *"restrictions ... on people getting support."* Judge 2 (High Court) spoke about the *"fine line"* when it comes to the *in camera* rule and seeking support:

And if they've been told they can't talk to anyone about it without somebody rationalising that and saying but of course, you can say, you know, you were very troubled, you've found it all very stressful. Of course, you can talk about it, but you can't talk about the finite detail of you know, what the assessor said about your children, what they said about your husband because the court hasn't made any findings. And you know, so it's difficult. I know it's a fine line.

Another weakness that was identified by one High Court Judge (and which is also referred to in the focus group findings section) relates to the use of initials in judgments. Judge 11 (High Court) spoke about the practice of anonymising parties and using initials to protect the identity of people in adhering to the *in camera* rule. This practice, they said, is something they *"have a problem with ... because my own personal view is we should use*

pseudonyms with the permission of the parties". They said that despite their reservations, they've had to come in line with what has become the norm of using initials. They continued by saying, "a few of the Judges, including the Judges of the Court of Appeal, who are very keen on initials, have persuaded me to come into line with everyone else and use initials" (Judge 11, High Court). This Judge was of the view that this is not a good idea and that apart from it being very difficult to remember the name of any cases, it is also difficult for law students trying to remember what a case was about. They expressed their frustration about this and said "so the more I talk about it, the more I annoyed I get about it. But anyway, so at the moment I'm using initials and I'm sometimes changing gender" (Judge 11, High Court).

Section 32 reports - "the downsides are the section 32 reports"

Some Judges referred to Section 32 reports in the context of the in camera rule. However, this was not mentioned by all Judges, but those that did mention it were exercised in their views about it. Judge 4 referred specifically to the practice of prohibiting people from getting copies of reports which have been prepared for court. They described it in the following way:

And the reason it stopped is because people were publishing them online and they were sending copies of them. And people started to behave very badly with very sensitive information. So, there had to be a blanket rule put in place that people couldn't get copies of the reports. But it it's a very it's a terrible thing, I think, to do to people who may be educationally disadvantaged in an awful lot of ways to say to them, sit down there now and I'm going to read that report to you only 15 minutes to go through it and hurry up now because we have to go in. Sure. How did they take on board what's in the reports? You know, so that's the downside of it (Judge 4, District Court).

They continued by saying "... the number of times, people will even say to me nowadays as a Judge are you, are you having a laugh? I can't see [the report]? I paid €5,000 for this. And you're telling me that I have to do it over the course of half an hour and I've, I always think it's terrible..." (Judge 4, District Court). Expressing their dismay at this practice, Judge 4 added that "it's nearly symptomatic of the whole in camera rule thing. It's like a sledgehammer to crack a walnut". Judge 11 (High Court) while not entirely dismissing this practice queried whether this blanket practice, which was identified as a weakness by others, could be dealt with in a more proportionate way. They said:

... but like everything, it should be proportionate. So, it might depend on the contents of the report. So maybe the answer is again a compromise that that should be perhaps the general rule, but that it's like a rebuttable presumption. You can persuade a court that in this case it's for instance, a litigant, a person who's been responsible in every other way. Why not let them have a copy of the report, particularly if it doesn't? It's not likely to damage anybody. (Judge 11, High Court)

Another Judge (Judge 12, District Court) identified this as a weakness of the in camera rule, and in fact described it as "a disaster". They said the following:

A practice developed, which came out of obviously one or two bad circumstances, which led to... and it's a big disaster when it when it comes to, for example, section 32, 1(a) reports and stuff like that and it's not a practice that I apply, but plenty of Judges seem to still apply it, and I would have a questionable view on that because it seems to me not to fully...respect how serious the in camera

rule is, and if you do respect how serious the in camera rule is, then there's a sufficient protections to allow people have and see these reports.

The issue regarding section 32 reports was also spoken about by Judge 13 (District Court). They said that if you are lay litigant and have paid for the report, or contributed to the report or, are the recipient of Legal Aid, you are not given a copy of the report. These litigants must come into court and make an appointment with the court officers to sit there and somebody literally sits in the same room with you as you read it. They described the difficulties with them having to enforce this and said:

I think that's a difficult ask even for me, telling people that that's what has to happen. You know, I think that's certainly something that could be looked at, but I think the High, the Superior Court's decisions on that lean towards not giving a copy of those reports to lay litigants again. So, we are tied by that. So again, like if you forked out €2,000 for this report that you're not even allowed to have a copy of...I find that difficult. (Judge 13, District Court)

Infrastructure of the court buildings

Some Judges spoke about the poor infrastructure of court buildings not being conducive to the *in camera* rule. For example, one Judge referred to the “*court facilities, courthouse facilities*”, which “*have an impact on the effectiveness of the in camera rule*” (Judge 6, District Court). The same Judge said that sometimes they have seen practitioners try to “*mislead*” them, trying to get them [a friend of the family] in on a nod and a wink”. Judge 13, (District Court) said that “*the building here, I suppose isn't fit for purpose for the volume of people coming in here at the minute*”. They spoke about the lack of consultation rooms and that when walking in the public areas you can hear “*snippets of cases*”. Judge 2 (High Court) expressed similar concerns regarding the infrastructure of court buildings and questioned how people can fully adhere to the *in camera* rule when court buildings, especially “*courthouses down the country*” were not designed with this in mind. However, they were of the view that even though conversations of a private nature can be overheard, generally parties are not known to one another. They said: “*if they can hear the solicitor speaking to the client, they don't know the parties. So, they don't appreciate the significance of what's being said*” (Judge 2, High Court).

The next section discusses the theme of accountability and transparency of the *in camera* rule from the perspectives of members of the judiciary.

5.6 Accountability and transparency

The theme of accountability and transparency in relation to the operation of the *in camera* rule also featured in the interviews with members of the judiciary. Judges were generally of the view that the public need to know what goes on in family law cases and child care proceedings. Many of them cited the work being carried out by the Child Law Project. One Judge (Judge 1, District Court) pointed this project out as an “*exemplar*” of how public law cases are reported. However, they pointed out that “*there isn't the same degree of attention paid to private family law cases, the way the child care law reporting project*

worked” and that “it’s important that the general public know what goes on in family law cases, what goes on in child care cases”. It was their view that “There’s an awful lot of myth. There’s an awful lot of misinformation” (Judge 1, District Court). Similarly, another Judge (Judge 4, District Court) said that they cannot understand why there’s not more reporting of family law cases like the Child Law Project. They said they were aware that it may not continue this year due to a lack of Government funding and described it as “just completely shocking” (Judge 4, District Court).³⁷³ The same Judge went on to describe the differences between family law courts and criminal courts in terms of the reporting of both. From a judicial perspective, they described not being under the same amount of scrutiny in the family law courts as the criminal courts:

... there is no doubt about it that when you walk in the door of a family court, you’re just not quite as subject... you SHOULD be...you’re just not under quite the same level of scrutiny and pressure as you would be in an ordinary court where the press are there getting ready to write every eejit-y thing you say down and where there’s punters watching to make sure you trip up and or to watch yourself trip up. (Judge 4, District Court)

In a similar sentiment to those expressed by many participants in the survey, this Judge continued by referring to the lack of transparency and hidden elements of family law:

But when you go into the family law courts, it’s a different story. And I would like to think that I have been in it for so long and I take it... because the welfare of families is just such a huge issue. But there are people who just don’t take it seriously or who maybe don’t take it as seriously as they should. And all of that’s hidden by the in camera rule because you can’t report then on if a Judge does something dreadful or says something dreadful. Now, look, I suspect it probably doesn’t happen that often, but it does happen. (Judge 4, District Court)

However, this cloak of invisibility does only operate to protect Judges from allegations of misconduct, it can protect the parties too. For example, Judge 7 (District Court) alluded to the fact that because private family law is not reported on, that perhaps parties believe they can get away with things that they might not get away with elsewhere:

I think sometimes it might give, might give a cloak of invisibility to parties and maybe sometimes parties who are responsible for things they shouldn’t be responsible for and might give them a little bit of ... encouragement is the wrong word, but it might. It might give them a sense that you know. Really. You know things they can do. They can do things in family law that they couldn’t do otherwise because it’s not reported on in, in, in that sense of the word. (Judge 7, District Court)

Judge 3 (Circuit Court) was a little uncertain as to whether the Child Law Project, that while it is “good in terms of the public oversight, if you like, of what’s happening”, has it actually helped to improve anything in practice for those involved. They continued by saying that the problem with the *in camera* rule is that “there is no transparency” and while “...being able to have your private issues dealt with in private is good ... the downside of it then is that there can be a perception that people are being treated unfairly in the court in how justice is administered.” They continued by saying “I suppose you need to achieve that, and you could achieve that by having researchers like yourselves...” (Judge 3, Circuit Court).

³⁷³ A new contract for court reporting in child care proceedings has been agreed and reporting will resume in May 2025.

Judge 2 (High Court) spoke about “*the ... potential weakness ... if family laws aren’t being reported, then how are the public at large to know what goes on behind closed doors? And that’s where it comes to reporting*”. However, they continued by saying that:

... things are better regulated now. So that is perhaps, as I say, used to be, one of the weaknesses. I think, really good reporting is all that’s required to retain the in camera rule for reasons that it’s required. So, on balance, my view is that it has to remain if you’re going to appropriately deal with family law proceedings. (Judge 2, High Court)

Members of the judiciary were asked to discuss the issue of breaches of the *in camera* rule and sanctions for breaches. This will be discussed next.

5.7 Breaches of the *in camera* rule and sanctions

Examples of *in camera* breaches

Judges provided various examples of how and in what ways parties have breached the *in camera* rule including: sharing information to school principals on aspects of court orders; sending documents to commercial competitors; speaking with family members about court proceedings; where people receive copies of the reports and they either accidentally leave them on the kitchen table so that everybody sees them or they actively show them to children or they show them to family members; YouTube videos showing Judges in the content; parents recording proceedings and child care proceedings; legal practitioners in and out to the courtroom in family law proceedings that aren’t involved in that case; books and pleadings left in public spaces.

Social media

When the question of breaches was broached in the interviews with Judges, a number of Judges spoke about breaches specifically in the context of social media. Many referred to social media as making it easier to breach the *in camera* rule. Judge 1 (District Court) said that breaching the *in camera* rule is a “*pretty common problem*” and “*that’s quite a difficult problem*”. Similarly, Judge 10 (Circuit Court) said that “*it’s much easier to breach the in camera rule because everybody has a phone in their pocket which has a camera and they can just take a picture of something or they record*”. They said that they are acutely aware that people are recording in court. However, Judge 1 (District Court) also said that you have to become aware of the problem before you can address it. They continued:

If you are made aware of it, I think we do take a fairly hard line on it. I have had occasion myself to call in, say, a parent or grandparent or a cousin or relative of somebody been before the court who’s put something up on social media. And I’ve had to explain to them, look you can’t do that, need to take down whatever you put up. You need to give me an undertaking, that you’re not going to put it up again. And if you do, or if you fail to honour your undertaking, there will be consequences, I can fine you or imprison you, and you might say that to parties as well who’ve breached the rule. Now, you know there are sort of nuclear options. You tend not to want to inflate an already very difficult situation by fining or locking up somebody. But if somebody’s being very, you know, obdurate and deliberate, doing it sort of more in an inflammatory or provocative way. Sometimes it’s the only way

to deal with them and I think again, I don't recall ever having somebody taken into custody for it, but I've threatened it certainly.

Many Judges spoke about intentional versus unintentional breaches of the *in camera* rule. One Judge differentiated between “*minor and understandable breaches*” and “*more significant breaches*” (Judge 4, District Court). Judge 1 (District Court) said that while people might intentionally post things on social media, they are not always aware that it is a breach of the *in camera* rule. Similarly, Judge 12 (District Court) said “*If it's done naively, you know, if it's done innocently, if it's done maliciously, you know, I would take a much stronger view*”. They went on to say that a deliberate breach “*has its own sanction, because it's given the court really valuable insight as to how that person's mind is operating*.” Another Judge 11 (High Court) talked about the importance of having a proportionate response to breaches. They gave the example of having presided over a case where one party breached a court order, but where, if the person had asked for permission they would have given serious thought to the lifting of the rule.

It was apparent from the judicial responses that some breaches are deemed more serious than others, and again, social media featured as a breach that was taken more seriously. Judge 10 (Circuit Court) said:

... it's not just going home and saying to your mother over a cup of tea, oh my God, you can't believe what he said, 'cause I mean, look, we're all realistic, we know that that happens, but it shouldn't. But it's a very human thing. But that's totally different from taking a picture of something and flipping it around on the TikTok or whatever, you know, is happening.

When it came to addressing breaches of the *in camera* rule, Judges discussed the difficulties this posed for them. This will be discussed in the section below.

Difficulties in dealing with breaches of the *in camera* rule

Members of the judiciary talked about the difficulties in dealing with breaches of the *in camera* rule. There was a general consensus that there is a very light touch approach when it comes to addressing breaches of the *in camera* rule. There was also recognition given to breaches that are deliberate egregious breaches that are taken more seriously as opposed to smaller unintentional breaches.

It was the view of one Judge that “*each case has to be dealt with on its own merits*”, but that “*it's very, very it's a low blow in a family law case*” (Judge 10, Circuit Court). The Judge continued by outlining the options that are available to them in dealing with breaches: “*you can penalise them in costs...you can penalise them in various ways...I mean right up to the whole thing of having them attached and committed for a breach of the in camera rule, but I haven't seen that happen. But that's not to say that it couldn't*” (Judge 10, Circuit Court).

Judge 1 (District Court) said “*sometimes the difficulty with that is that the damage can already be done. The identity out there and in a small community, the gossip circulates much more quickly. Sometimes you're dealing with a fait accompli, you can't put the toothpaste back*”. The same concerns were expressed by Judge 10 (Circuit Court) who asked the question “*Well, there. It's out there now. Like, what are you going to do? Like*

the Genie is out of the bottle, you know". Judge 13 (District Court) was of a similar view stating that *"in the case of something like that where domestic violence order has been published and is out there, it's hard to reverse that"*. They stated that *"there aren't really any sanctions that are going to rectify that"*.

Judge 12 (District Court) talked about the difficulty with sanctions for breaches of the *in camera* rule. They said:

You try to give warnings... but the reality of the situation, I'm not so sure how serious the State are taking the in camera rule when they have really not provided the District Court with the rules and procedures for proper enforcement of the in camera rule by way of contempt of court. So, I think there... there may be a certain amount of lip service in relation to it.

Similarly, Judge 13 (District Court) pointed to the difficulties in addressing breaches and said, *"You have to hold a contempt hearing and there's no clear path as to what happens when it is breached either"*. Judge 3 (Circuit Court) was of the view that generally once breaches are addressed with parties then it resolves things. They said, *"mostly people seem to pull in their horns when they realise that look, there could be serious consequences. You generally don't have to implement the consequences"*. Judge 4 (District Court) admitted *"there's little or no sanction really for breaches"*. Judge 5 (High Court) was also of the view that there are few or no consequences for breaches and said the following:

So, the question is, you know, they breached the camera rule, they come in and Judge huffs and puffs and rants and raves and, you know, at the end of the day, there's a very limited amount of things you can do in order to, you know, other than give out and rant and whatever ...

In essence, Judges seemed to indicate that, in most situations, parties are given a stern talking to when the *in camera* rule is breached unless it is a very serious or repeated breach.³⁷⁴ In some cases, parties will be asked by the court to give an undertaking not to breach the rule again. There was a sense of uncertainty expressed by many Judges when it came to having a clear definitive approach to applying formal sanctions for *in camera* breaches. Judges were also acutely aware of the fact that once a breach has taken place, the damage has already been done. In addition to difficulties in dealing with breaches, the research also threw up difficulties when it came to consistency and the *in camera* rule.

³⁷⁴ A forthcoming study from the *Social Media Abuse, Online, & Digital Abuse of Social Workers and Probation Officers* research team at University College Cork will present findings on how breaches through social media of the *in camera* rule in child care proceedings in Ireland are addressed. See <https://www.ucc.ie/en/appsoc/research/projects/smoa/>

5.8 Inconsistencies

“It’s the Wild West out there as far as the in camera rule is concerned”. (Judge 4, District Court)

There was some level of inconsistency amongst the judiciary with regard to the dos and don’ts of the *in camera* rule. One Judge said it is like opening a Pandora’s box as to “*what can be done, what can’t be done*” (Judge 3, Circuit Court). Another Judge both acknowledged and summed up the inconsistencies that exist amongst the judiciary by saying:

... doctors differ and patients die. Judges differ. You know, some Judges are, you know, very controlling. They like to really control their space. They take a very headmistress type of approach to life and they like shouting at people for no apparent reason, and they, you know, so you get this very controlled and everything is restricted and whatever. (Judge 5, High Court)

Similarly, another Judge 7 (District Court) said that while the judiciary understands the *in camera* rule in terms of the technicalities, they were sure there are different methods of implementing it. Judge 8, (Circuit Court) referred to the differences in approaches as a matter of discretion rather than interpretation. Some were of the strict view that anything said during court proceedings cannot be spoken about in counselling and that parties are not permitted to confide in family members. One Judge said the following:

... you can get your counselling for what happens to you in your marriage or whatever, but you are not allowed to talk about what happens in court with anybody else and you’re not allowed to show them the documents. And they can say, you know, they’re because quite often people say, oh my God, in his pleadings, he said I did this, that and the other, she said, I did this, that and the other I didn’t. And look, there it is you know, you’re not allowed to do that. So, too bad. (Judge 10, Circuit Court)

Judge 2 (High Court) took a more lenient view in recognising peoples’ need for emotional support while going through family court proceedings. They indicated that once people are confining what they disclose to close family members, then perhaps that is acceptable or at least realistic. They said:

... if you have a very distressed, perhaps spouse who needs to go home and ring her mother and tell her about what happened, simply just to ease the stress and to allow somebody to give her perhaps some reassurance, then clearly, there’s nothing wrong with that, as long as it’s a close family, I suppose, relative and somebody who’s going to keep that information to themselves.

Similarly, it was described by another Judge 4 (District Court) as “*complete nonsense*” to think that parties would not naturally speak to close family members about their experiences of being in court. They pointed out that the technical rules of the *in camera* rule do not align with the broader reality of what parties to proceedings do and said:

... no discussion of what happens in the proceedings or the outcome of the proceedings and that would extend in my view as to whether now this is right or wrong, is another day’s work, but that would extend to not saying that technically you shouldn’t come out and tell your parents what happened in your divorce or your children. What happened in your divorce, which of course is complete nonsense.

Other Judges while clear on the “technical” aspects of the *in camera* rule, had perhaps, a softer and more realistic approach to people seeking counselling and described it as:

... pure insanity not to allow that... Oh, can I just say let's, let's be realistic as well because again, I know a lot about the other context, which is a rape case, never, never in the context of any rape case which is protected by the in camera rule from beginning to end. Never have I heard anyone suggest that a complainant who goes to counselling and talks all about the rape is breaching the in camera rule, so I think people have a certain amount of common sense around this. So, if she comes home and her mother says you need to go to a professional, nobody is ever going to say, well, that was a breach of the in camera rule to go to a psychologist or a psychiatrist and tell that counsellor the details of what she says because it is nothing to do with the adversarial system. And in fact, I'm delighted that recently they've lifted this, or they've decided they're going to stop the practice whereby counselling notes are disclosed in rape cases that's only recently been announced, because the purpose of the counselling is completely different. It isn't to prove a case... it isn't to, it's therapeutic and it's the opposite of therapeutic if you think ... it's going to be used against you. And also, here if it's in breach of the in camera rule to get therapy for this, that's putting people in an impossible situation. So short answer, that's why the in camera is crazy at the moment because it might look on paper as if it is breaching the rule. (Judge 11, High Court)

Judge 12 (District Court) said that *"there's a lot of inconsistencies and there's a load, there's a significant load of ad hocery"* when it comes to the in camera rule and that people can talk about their experiences, of, for example, domestic violence once they don't go into the details of court orders that were made. This point also emerged when Judges spoke about their understanding of the in camera rule. Similar to Judge 12 (District Court), Judge 2 (High Court) said there is nothing to stop people from telling you about their experiences in court once they are not sharing identifying information or going into the finite detail. They said, in fact, *"the last thing you want women or men in this day and age to feel that they're being shut up... by the in camera rule"*. Another Judge said that in their view the in camera rule is applied in an overly strict fashion, while another Judge said *"there are people who say the in camera rule doesn't even allow you to say that there is an order. Never mind what the order says"* (Judge 4, District Court).

The theme of inconsistencies and the in camera rule also came up in relation to what information from in camera proceedings can be provided to mediators. Mediators were of the view that they sometimes needed access to court orders to work with clients on other areas to be mediated:

So, there's a flow between the court system and mediation and whether existing court orders and the clients come to mediation to vary existing court orders. We should not technically be seeing the existing court orders. It's a technicality. That's my view. That's the way I'm taking a view at the moment because we need to see the existing court orders because as a mediator, if you don't understand the existing court orders, where is your starting point for the negotiations? Because the parties invariably don't actually know what the court orders are themselves because there's solicitors might have a copy of it or they got a copy of a copy or part of a copy. And so, people's understanding and taking away of the documentation from a court is really poor. (Participant 2, Mediators Focus Group).

However, some of the Judges interviewed didn't see the need for mediators to have access to court judgments or documentation, while others felt that there was no issue with getting the rule lifted in such cases where necessary.

Third party supports in proceedings

Many Judges spoke about the possibility of third parties being present in family or child care cases to support parties in court. For example, Judge 6 (District Court) recognised “*the importance of advocates*” and went on to say:

I think ... that it's really important for people with additional needs and that support person can help in that. I suppose if you think about let's say if you come out of court and you have particular needs and you want like ...at least if you had an advocate there, if you kind of can't understand things that you can talk to your advocate, I think they play a really important and valuable role in because you know, if you kind of want to work out what happened rather than having to talking to your sister about it or talking to your child, worst of all, you can talk, you can ring up your advocate. I think the role of the advocate is very important.

Similarly, Judge 8 (Circuit Court) referred to the need for some parties to have a support person or representative from Women's Aid, for example, to accompany them. They said:

... I would have people accompanied. Sometimes by, say, Women's Aid, a representative from Women's Aid and personally, I feel there should be more involvement on that level...It's by way of a McKenzie friend, but not it's not quite the same. It's more of a support issue. Uh, you know the specific requirement that McKenzie friend taking notes and maybe can whisper advice and so on. But ... when a domestic violence application is brought. Umm, I'll often find ...a litigant in person would say may I bring in someone from Women's Aid I will always allow that and... I I'm required to remind them... You know these proceedings are in the camera now. If they're from Women's Aid, they tend to know that or from Barnardo's. You know...they're professionals. And even the volunteers are quite professional. I find they're well-trained.

Judge 9 (Circuit Court) acknowledged the need for support for parties who might have a particular difficulty:

... if I had somebody in court who had a particular difficulty maybe, you know, somebody might be hard of hearing and I might admit a member of their family or, you know, a friend or somebody in with them to assist them or explain things or help them

Interestingly, there was no mention of parties (without additional needs) requiring support during the court process, something that was highlighted as an issue by survey respondents who described the court process as a daunting, emotional and frightening experience (see section 4.2 in Chapter Four). Another issue that arose during the course of judicial interviews, and that has previously been touched on under the ‘weaknesses’ section, relates to the release of Section 32 reports.

Release of Section 32 reports

Judges differed in their opinions in relation to the release of reports such as Section 32 reports (also referred to above). One Judge stated they had “*a questionable view*” on the practice of not giving copies of reports to people, and was clear that they don't sign up to it. Another Judge firmly believed clients are entitled to read and have the reports. Judge 5 (High Court) said that withholding reports from parties “*isn't what the legislation says*”. They went on to say:

So, my order now is that the report is released to the parties with a reminder that it is subject to the in camera rule and with the caveat that if they wish to make an application for the report to be shown to children, that that is an application which must be specifically made to me (Judge 5, High Court).

Others were of the firm view that parties cannot be given a copy of their reports, and this is just the way it is. This is despite the fact that the legislation states that parties shall be given copies. Judge 10 (Circuit Court) explained the rationale for this practice:

The reason for that is that there has been extensive breaching of the in camera rule when parties were given copies of reports and it still goes on when parties get hold of reports and we find that they're disseminated far and wide and used and shown. And the other thing is that there, you know, they're thrown up against the, you know she said this to the councillor and then I said that and I didn't say that. And why didn't the councillor or the assessor do this? This, that and the other. So that's the reason why there's usually a direction that the parties are not to be given a copy of the report.

Judge 8 (Circuit Court) said they would stick firmly to the rule of not giving parties a copy of their report without exception. According to Judge 13 (District Court) the reasons why parties are not given a copy of their Section 32 reports is *"a High Court decision that would seem to take a different interpretation of that... this High Court decision, which seemed to imply that, you know, it just shouldn't be given to lay litigants and that's where the issue is. I think it's the, it's more the decisions of the Superior Court rather than, you know, a literal reading of the legislation"* (Judge 13, District Court).

Judge 12 (District Court) demonstrated an awareness of inconsistency regarding this practice. They said that once clients comply with the *in camera* rule then you cannot interfere. In essence, they were saying that you cannot tar everyone with the same brush just because some parties have, in the past, not complied with the *in camera* rule with regard to reports. They said the following:

[I've] had a few strong arguments with various different Judges when I was not a Judge about that, I took the view that for fairness for clients and in order for them to consider the seriousness of the situation, they needed and were entitled to read the reports and have the reports at home and consider these reports and consider them and consider them and consider them all the time so that they can reflect because a lot of the reports, whether they were child care reports or whether they were psychologist reports or otherwise, usually it was often what wasn't said than what was said that they needed to reflect on and to see the nuance in these things. I got into a lot of conflict with a lot of Judges because I fundamentally disagreed that they weren't entitled to these reports. And I usually put it up to them say, okay, you make an order that I can't do it and I'll go, I'll go to the High Court on it, if that's what you wanted to take the view. Because I said, this is my view, I believe the law's totally on my side.

Indeed, Judge 11 (High Court) seemed to think that a more proportionate view should be taken and perhaps there is an argument to be made in favour of *"a person who's been responsible in every other way"*. Members of the judiciary were also asked about their experiences and views of holding remote hearings and what impact these had on the *in camera* rule. This will be presented next.

5.9 Remote hearings and the *in camera* rule

The COVID-19 pandemic witnessed the introduction of remote court hearings in order to facilitate the courts continuing its work during this time. One Judge reflected on his experience of this recalling: *"We had no rules in place for remote hearings. We were doing them very ad hoc and...at the start we'd no statutory basis for them"* (Judge 9, Circuit Court). Although Judges recognised that it allowed their work to continue, they were also acutely aware of the downsides to remote hearings in terms of the *in camera* rule. Judges described the online hearings as *"impossible to monitor"* (Judge 10, Circuit Court), *"porous"* (Judge 4, District Court), *"an unsupervised environment"* (Judge 3 Circuit Court) while another said during COVID *"you were sort of fearful that there might be a breach of the in camera rule"* (Judge 1, District Court).

Many Judges said that while they would not be opposed to a hybrid model, the general consensus was that there were some especially important elements lost or uncaptured during online hearings. Some Judges spoke about the importance of seeing parties in front of them and in-person, believing they get a better sense of people when they can see them. One Judge described the online hearings as *"suboptimal"* (Judge 10, Circuit Court). Another said that *"reading a person isn't just about their face. It's everything about the way they present."* (Judge 11, High Court). Similarly, Judge 8 (Circuit Court) said that they need to be able to assess a witness including *"body language, eye contact, how they deal with the court, how they interact with Council, solicitor, and you're constantly, you know, you're watching people and you're making judgements. We all do it."*

Judge 11 (High Court) also described some judicial training they were involved in where a scenario was designed in such a way that one party had a hidden capacity issue. They said when this scenario was played out in person every single Judge identified the capacity issue, but when it was done online *"at least two or three of the Judges there just gave a ruling, which was really harsh"* having failed to pick up on the capacity issue which was role-played out. They continued by saying: *"That to me was a really stark reminder that hearings remotely, you are losing a third and a fourth dimension to the hearing. It is two dimensional. It really is. So, it's a really dangerous. It's great for a crisis"*.

Judges were generally of the view that online options are useful in some circumstances, oftentimes citing it as beneficial in overcoming resource issues and time constraints and a practical option. One Judge said they are happy to take the evidence of professionals in court remotely, but was of the view that *"it's useful when it's necessary"* and that they *"prefer people to be in court"* as *"you can get a better integrity of the evidence"* (Judge 12, District Court). Judge 2 (High Court) was of the view that a hybrid option for professionals is something that they would support once everyone agrees to it.

The perspective of Judge 13 (District Court) was that remote hearings can be beneficial in some circumstances such as domestic violence cases where the applicant feels that there is a risk to them if they were to come into court. They cited a situation where they facilitated a remote hearing due to the ill-health of one party. While they were of the view that remote hearings can be beneficial in moving cases on (case management hearings), they believed that *"in terms of having full hearings where parties need to be cross-examined and evidence produced, it's certainly better to do that in person"* (Judge 13 District Court). Judge 2 (High Court) was also of the view that while remote hearings can

be suitable for case management, they would not be suitable for full hearings in family law. They expressed their concerns as follows: *“There could be a coaching of witnesses going on, you don’t know who else is in the room. It’s, in my view, a big no no. Yeah, I would have a big problem with it, and I would not, especially in cases that are very contentious. The answer would be for a hearing, no, absolutely not”*.

Judge 5 (High Court) cautioned against the use of an online forum for giving evidence fearing that it might undermine or dilute the importance of the situation:

People need to know that when they give evidence that they’re not acting the maggot. Evidence is not a chat over, a bag of crisps and a pint of Harp. It is a serious thing and that you are giving oral testimony to a court and I think it’s very hard to get that sense of importance across to people. If they are doing it in their kitchen.

They questioned if people are dialling in from an uncontrolled environment *“what parameters are there then in terms of enforcing the in camera rule and who knows who’s recording what?”* (Judge 5, High Court).

Judge 9 (Circuit Court) was supportive of remote hearings in certain circumstances such as non-contentious divorce cases and those done on consent as well as for professional witnesses as they would expect professionals who are appearing as witnesses before the court to be aware of and comply with the *in camera* rule whether they’re in court or not. They reflected on remote hearings and how they compare to the realities associated with a courtroom and said:

There is something about a courtroom that’s very solemn. The solemnity of a court does engender truth telling in a way...whereas the informality or relative informality of the remote hearings people may have felt more open to that it was less of a court, or that there was going to be less sanctions, or because it was less solemn, they weren’t in a Courthouse, there wasn’t the trappings of the Courthouse, and maybe they might have felt that [there’d be] less sanctions if they breached the in camera rule. I don’t, but I don’t really think so. I think people who breach the rules breach the rules, and I don’t think the fact that it was remote made that a huge difference to that.

On balance, there seemed to be a preference for in-person hearings with an openness to some form of hybrid approach for some aspects of family law cases. Next, Judges were asked about the *in camera* rule in relation to children’s rights and this is given some consideration in the next section.

5.10 Children’s rights and the *in camera* rule

Every rule has implications for the rights of somebody. The in camera rule as it is applied to children, is essentially a paternalistic rule. And applied in a paternalistic way. And yes, any paternalistic rule infringes rights. (Judge 9, Circuit Court)

Judges were of the view that the *in camera* rule serves to protect children in the context of any private or public law proceedings which impact them. While there was an acknowledgement by one Judge that it is *“... artificial to say the children don’t know what they’re going to court about ... their parents are having a divorce or judicial separation. And the question is where they’re going to live. I think that’s artificial to think that they don’t know that...”* (Judge 10, Circuit Court). There was also a feeling that children should

not be told what is happening in court, a practice which comes within the bounds of the *in camera* rule. Many Judges justified this paternalistic approach towards children in these cases on the basis that it might ‘... *prevent influence being put on a child to say a thing, or not say something*’ (Judge 10, Circuit Court); or we ‘*do as much as you can to keep us from actually traumatising a child*’ (Judge 11, High Court).

In respect of Section 32 or Section 47 expert reports specifically, the question as to whether a child would have access to a court report is generally a matter for the Judge to determine:

That might sound very draconian or Machiavellian, but there are sometimes very good reasons for it, because the expert might be of the view these children are being played and that effectively, they are being used as a pawn in what the parties have decided is now a game of one-upmanship... it’s important to keep the children away from further conflict. They’ve been living in conflict (Judge 2, High Court).

Significantly one Judge noted:

...that inappropriate abuse of the rule or misinformation about the rule is much more infringing of children’s rights...to a child who wants to do a podcast. Well, that’s not the in camera rule. That’s the misuse of... misquoting or a misuse of the in camera rule that’s infringing that child’s right to have a podcast (Judge 9, Circuit Court).

Finally, the research pulls together some suggestions for change of the *in camera* rule that emerged from the interviews with members of the judiciary. These suggestions are captured in the next section.

5.11 Potential changes to the *in camera* rule

I think there’s a large degree of misunderstanding on the part of all of us. And that’s everybody from Judges right across the board. I think there are people who misunderstand, including myself. Can I say I’m not pointing the finger at anybody, but I absolutely think it would be helpful if it was codified and parameters were set (Judge 4, District Court).

Members of the judiciary made some suggestions with regard to potential changes that could be made in relation to the *in camera* rule. Some believed that there is not too much wrong with it as it is and that some simple solutions would be sufficient. For example, Judge 3 (Circuit Court) was of the view that the family law system is under-resourced and said “*I think that the in camera rule honestly is the least of the problems. That’s what I think.*”

Judge 13 (District Court) said at a very basic level, “*the language itself is not entirely clear*” and that “*It does say in camera, but again without an explanation. You know people aren’t going to quite understand what that means*” (Judge 13, District Court). According to Judge 9 (Circuit Court) “*There’s a lot of misinformation and disinformation about the in camera rule*”. It was also their view that people should not “*...take the legal advice from somebody who isn’t a lawyer. Take it from somebody who’s qualified*” (Judge 9, Circuit Court). A High Court Judge spoke about the different interpretations that people have about the *in*

camera rule and that people do not know the dos and don'ts. They summed it up as follows in making the distinction between people having the freedom to share their experiences but not the content of proceedings:

... it's a bit like, you know, you [are] carrying out your research, and people tell you about their experience in court, of course, they're entitled to tell about their experience in court. Now, if they came in and said, my name is Mary X, let me tell you what happened when I've had my divorce with Johnny X. ... that's a breach of the in camera rule. So, there's nothing to stop people and again, that's lack of knowledge, lack of education, people not properly explaining to them (Judge 2, High Court).

Some Judges said that the rule needs more clarity with Judge 12 (District Court) stating that *"it's unclear and I do think it should get some clarification"* but cautioned that *"we need to be careful of changing one thing until unless we change everything"*. However, Judge 11 (High Court) had a stronger view on the need to reform it: *"Yep, rename it obviously, rename it, define it, and make it a consistent concept across criminal and civil proceedings"*. Another District Court Judge supported the view for clarity and said that *"the boundaries have to be clarified in relation to what's considered a breach of the rule or not, and the extent to what can be shared and what cannot be shared"* (Judge 13).

Others indicated that more could be done to explain the *in camera* rule. There was acknowledgement by some that there needs to be more of an emphasis on breaking down the meaning of the *in camera* rule to those who use the family law courts. In fact, one Judge referred to *in camera* as *"a ludicrous phrase"* and said that *"even very well-educated people don't understand outside of this context."* (Judge 11, High Court). They questioned it against the backdrop of a *"whole system [that] is supposed to be to serve people"* and went on to say that *"it doesn't serve them if they don't understand what's being said"* (Judge 11, High Court). They suggested *"a compromise and a proportionate version of the rule"*.

Judge 3 (Circuit Court) proposed that at the start of each case perhaps a reminder of the *in camera* rule and short summary of what it involves should be given:

I don't think there is a kind of a cigarette box warning that's kind of given and maybe that is something that should be maybe there should be at the start of everything... Maybe the Judge should at the start of each case say: this case is covered by the in camera rule and give a short synopsis of what that involves.

Judge 1 (District Court) was of the view that the *in camera* rule *"probably needs more public awareness of it, more information about it for people involved in family law and child care."* Similarly, Judge 10 (Circuit Court) said there is probably a need for *"more public education and for the lawyers just a refresher...on what is covered and what isn't covered...and for people like social workers"*. Judge 9 (Circuit Court) also pointed to the need for more education and said *"Tusla need a bit more education, I mean, I think social workers need to clean up their act and I think they need to cut out the laziness saying to somebody that you can't be in a school photo because of the in camera rule is not correct"*. See section 6.4 in Chapter Six for an explanation from social workers and solicitors from Tusla's Office of Legal Services, and others, as to why they feel the lack of clarity around

the *in camera* rule leads to such conservative decisions in day-to-day decisions in practice.

Some Judges believed that simple signage in the family courts would help in communicating the *in camera* rule. Judge 2 (High Court) said that *“if there was a sign at every family law court, I know it sounds a bit basic, but just so that people can get it, done in the simplest of language, so that people understand it.”* A similar suggestion was put forward by Judge 8 (Circuit Court) who proposed that *“perhaps there should be a notice on the door of each court. These proceedings are in private”*. Judge 6 (District Court) believed that the Courts Service have a role to play in explaining of the *in camera* rule and said, *“When people are making an application to the court, I think it should be the Courts Service should explain it straight off the bat to people when they make their application...”*. Judge 6 (District Court) indicated that *“posters...and interactive things playing”* around the courthouse explaining the rule would be helpful.

One High Court Judge pondered the idea if waiving the *in camera* rule in certain circumstances would be a way forward. They said: *“I wonder [in] domestic violence cases where there were no children involved, perhaps that I and I don’t know if there’s any movement or appetite for that, or if anybody is trying to move that on. But I could see, I could see the rationale behind that.”* (Judge 2, High Court)

Judge 7 (District Court) also thought that waiving the *in camera* rule in certain situations might be appropriate as well as some other *“tweaks and balances”* such as education starting at a young age who said, *“we should be talking to people about this and about lots of lots of societal and legal matters when they’re very young”*.

Another Judge queried whether the lifting of the *in camera* rule would be beneficial for research purposes. They were of the view that while some further qualitative research would be useful, they didn’t think it would be possible to lift the *in camera* rule for that purpose (see section 6.3 in Chapter Six for data from academics on similar concerns about how the *in camera* rule’s lack of clarity limits certain types of research like qualitative research). They said:

I agree that for the purpose of carrying out objective research and getting some statistics that might help us to understand what’s happening, it would be very useful to have researchers be able to speak to participants. And I think that would be a good reason to lift the in camera rule for. But I think you can’t allow” (Judge 3, Circuit Court)

Finally, Judge 9 (Circuit Court) advised that *“it needs to be very clear what we’re doing. Are we criminalising breach of the in camera rule..?”*. They said there are simple things that could be done such as create a divorce register. They also said that we should have processes in place to provide extract orders for people, so they don’t have to disclose orders.

5.12 Summary and analysis

There were many areas where there was general agreement amongst Judges concerning the operation of the *in camera* rule in family law matters. Unsurprisingly, all the Judges interviewed agreed that the main strength of the rule lies in its ability to protect the privacy of parties to the proceedings, and more importantly, any children impacted as a result of the proceedings. In addition, all Judges were very much aligned in their understanding of where the rule begins: that is when proceedings are instituted. However, the strength of agreement amongst Judges deteriorated as more aspects of the rule's operation were explored. Not all Judges agreed as to when the rule's application ends.

In relation to understandings of the rule, there were some Judges who took a very strict and technical interpretation of the rule's application. For example, some Judges were of the view that if someone wanted to talk about their experiences of the family law proceedings, they are prohibited from accessing such support without the leave of the court. Most Judges, however, took the view that it was not problematic for people accessing the family courts to speak to their experiences with close family members as long as they didn't disclose the content of the proceedings. The challenge here for someone is being able to make the distinction between the content of the legal experiences and one's experiences thereof.

Judges were of the view, generally, that where someone is legally represented, it is the role of their legal representation to explain the *in camera* rule to them. For lay litigants, it was less clear as to whose role it should be with one Judge suggesting that all stakeholders have a role to play including the Judge, the registrar and even the legal counsel for the other party.

While fewer weaknesses were identified by the Judges as compared to the other stakeholders in this study, drawbacks to the current operation were highlighted, including: restricting parties' access to support services, the use of initials for parties to the proceedings, the inadequate infrastructure of the family court buildings, and the lack of public reporting in private family law. Judges were aware that the operation of the rule can restrict parties' ability to have copies of section 32 reports even though the legislation recognises that the parties shall be given a copy of the report as well as any child (when appropriate to do so).³⁷⁵ Significantly, amongst the cohort of Judges interviewed, there was a difference in opinions concerning whether the reports should be released to the parties. There was limited discussion concerning the impact of the *in camera* rule on the transparency of the administration of justice in the family courts. However, it is worth noting that a small number of the Judges interviewed acknowledged that Judges and professionals are not under the same level of scrutiny as they would be in open criminal courts, resulting in actions being hidden from public view and less opaque.

³⁷⁵ Section 32 (4) (a) and (b) of the Guardianship of Infants Act 1964. In this case of children, this is qualified by a number of considerations as set out in Section 32 (5) including the age and maturity of the child to understand, the impact on the child and on his or her relationship with the parents, the best interests of the child and whether the child would be better informed from a parent/ guardian/ next friend/ expert about the content of the report.

The picture painted of sanctions for breach of the *in camera* rule was that it is a mechanism that lacks teeth. Ironically, for a rule that is taken so seriously within the family law system, the consequences for a breach of that rule are at best vague and weak, and at its worst, non-existent. However, data from the national survey of parents (see Chapter Four) noted that 61% of breaches of the rule in participants' cases were not brought to the Judges' attention. Indeed, many examples were provided of breaches which have been brought to the attention of Judges with quite a lot of attention paid to the challenges posed by social media in particular. The spectrum of breaches ranging from unintentional breaches at one end of the spectrum to malicious breaches at the other were made clear. There was general agreement that a light touch approach tends to be taken by Judges to breaches of the rule, with admonishments and undertakings being the response of choice, which appear to work in most cases. There was a general view amongst the Judges that breaches tend to be challenging to deal with in practice.

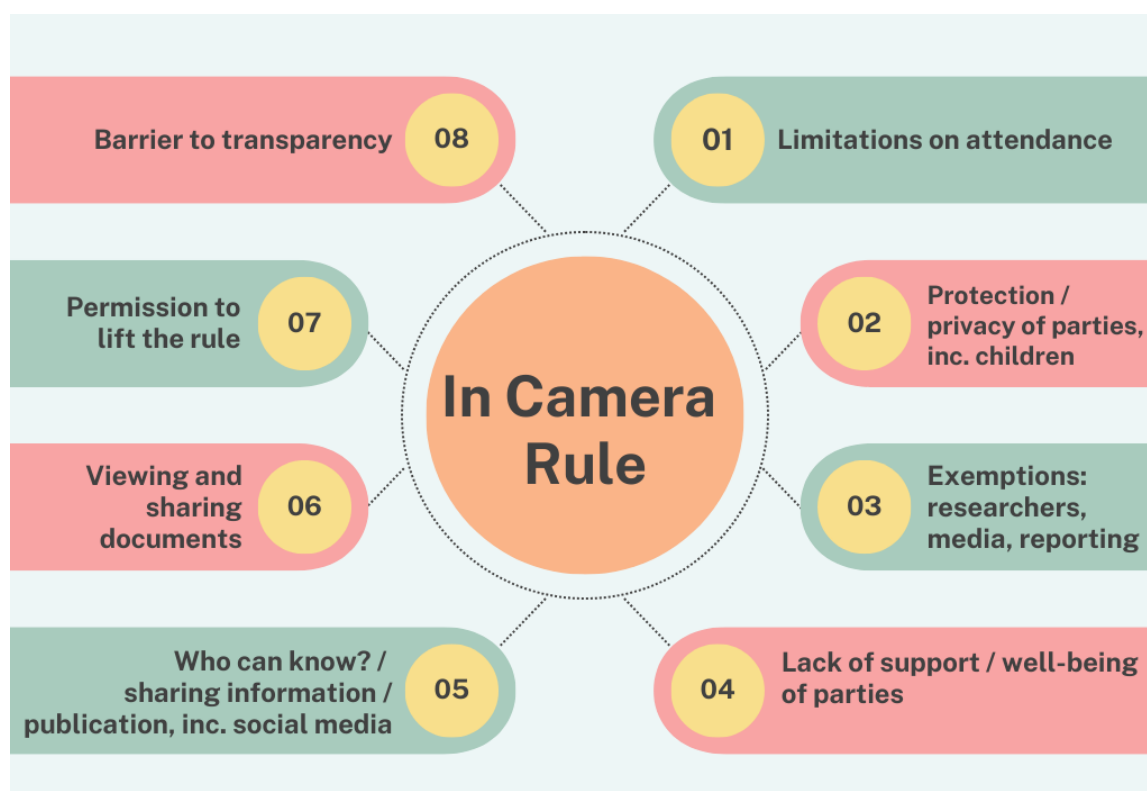
Finally, Judges also referred to the use of remote hearings and the *in camera* rule. There appeared to be an overall preference to hear family law matters in person with an acknowledgement that there may be some circumstances – such as the hearing of professional evidence or victims of domestic violence, where a remote hearing may be a better option. Remote hearings as a more efficient measure for case progression was also suggested.

Chapter 6: Professionals', community groups', other organisations, and academics' views on the *in camera* rule

6.1 Understandings of the *in camera* rule

In the absence of a comprehensive explanatory framework for the *in camera* rule, this study sought to learn how those working with children and families involved in family law matters understand the rule. In particular, the study aimed to explore the extent to which agreement exists between professional groups and organisations in relation to the main facets covered by the rule and, whether understandings were consistent across courts and regions, and between public and private family law? Figure 6.1 outlines the key themes discussed by participants in focus groups with professionals, community groups, other organisations, and academics.

Figure 6.1: Understandings of the *in camera* rule



By way of reminder, a total of 18 focus groups were conducted with professionals, academics, policy makers, media and community organisations. Focus groups with professionals, especially legal professionals, often started out with some degree of certainty about the operation of the rule. However, as focus groups proceeded and

information was shared between practitioners and sometimes between colleagues in different services and parts of the country, the degree of certainty sometimes faded with many leaving the focus groups with more questions about the *in camera* rule than answers.

In conveying their understanding of the *in camera* rule, participants simultaneously referred to the weaknesses of the rule and the lack of clarity and uncertainty surrounding the rule's current operation. Many participants also referred to a collective misunderstanding of the rule when speaking about how other professionals and parents understand it. One participant summed it up when they referred to *"...the lack of guidelines around the rule and the lack of parameters and understanding for everybody involved in the legal system about what parameters are of the rule and what are the sanctions if you break the rule..."* (Participant 1, Policy makers focus group). Furthermore, this uncertainty has been copper-fastened by what appears to have been *"... a very loose or...broadening interpretation of what the parameters are as a result of the in camera rule"* (Participant 3, Policy makers focus group). Another referred to *"overly zealous understandings of the in camera rule that also inhibit access to information at the systemic level"* (Participant 4, Academics and researchers focus group A). This lack of certainty was felt regardless of whether it is in the context of family law or child care proceedings. Similarly, reference was also made to the *"... total stretching of the interpretation of the rule and to whose advantage, I'm not quite sure"* (Participant 3, Policy makers focus group).

Lack of clarity

The Latin terminology used to explain the *in camera* rule has further contributed to the lack of clarity surrounding the rule, being *"a very unclear kind of legal term that's kind of effectively ... framed as one thing, but it's possibly being asked to do quite a lot or has been used to do quite a lot too"* (Participant 1, Child Law Project focus group). Another participant was of the view that the term '*in camera*' is itself confusing for some people, and not communicated in simple terms:

... some of the parents that are coming in would not have high literacy levels and ... They won't make a distinction between privacy and in camera. They think in camera is you can't bring in a camera, you can't take photographs, or you can't video the thing. They don't always understand that in camera means unless it's really pointed out to them when you go out, you can't talk to anybody else, and you can't talk to the child about what we have discussed. That's a privacy rule and you'll be in trouble if you break that rule. Sometimes it's, Judges explain it quite simply to the parties, but others then don't. They just they just assume that they know. (Participant 5, Child Law Project focus group).

In the context of social media, one participant talked about people not making the connection between the *in camera* rule and putting things up on social media. They said:

...I don't think they make the connection at all. They see that as something completely different. They appear to anyway. Either that or they put stuff on social media later at night when they've already consumed alcohol and the in camera rule is the furthest thing from their minds yet (Participant 5, Child Law Project focus group).

Some participants spoke about how the *in camera* rule is understood by professionals, including Judges, and how information about the *in camera* rule is conveyed to parties. The following participant queried if Judges themselves have a comprehensive understanding of the rule and called for a more transparent system in communicating the rule:

I think if a Judge doesn't have a proper understanding of the rule, how can a lay litigant have a proper understanding of the rule? So, it's not consistently applied. It's not quite transparent. So, I think it would really add to the transparency and the accessibility of the court system if there was better information provided by the court system on the website ... and also if support groups had access to that and could provide that if people are approaching support groups (Participant 2, Ombudsman for Children's Office focus group).

One solicitor admitted their lack of understanding of the *in camera* rule and said whatever about “*parents who don't understand the nuances of the 'in camera' rule. Sure, we don't understand them ourselves because of the lack of clarity*” (Participant 1, Office of Legal Services, Tusla focus group).

Others questioned Tusla's understanding of the rule in the context of sharing information:

We've observed incorrect positions taken by Tusla with respect to what the in camera rule means with respect to even just sharing information, what happened in court today? We've seen enough of that and to the extent that it's caused difficulties. An adverse effect on young people, in respect to the clarity of communication or what happened in court today, we were unable to share that with you and your advocate (Participant 3, Ombudsman for Children's Office focus group).

Most focus group participants believed that aside from many professionals not having a clear understanding of the rule, parties to proceedings are not aware of the complexity of the rule and need a lot more guidance on it. One participant said that “*when lay people talk about the in camera rule, they have no idea how complicated it is* (Participant 4, Office of Legal Services, Tusla focus group). Others said that while Court Services, legal professionals and Judges understand the rule the public in general does not. One participant shared the following observation:

I can absolutely, categorically say after 612 mediation cases of the families that have been in court that have come to me, they have zero understanding of the in camera rule and beyond ... advocacy groups over the years that have reached out to me at different times and they have zero understanding of the in camera rule because they tell you straight away what happened in court and you have to quickly say I'm sorry, there's an in camera rule (Participant 2, Mediators focus group).

This participant emphasised the importance of clear guidance for everyone so that people subject to the rule have a comprehensive and accurate understanding of the rule:

...talking to your mother about what's going on versus posting it on social media, two very different things. So, I think that what circumstances, for what purpose and with what level of restrictions. So... the person who is subject to the rule needs to have some guidance, but those who are actually implementing the rule have to have to have guidance as well (Participant 3, Community organisations focus group).

Similarly, this participant called for more transparent policies, procedures and explanation of the rule for parents:

I'm thinking about the parents I'm working with at the minute. You know, they might know that it's in camera, that it's in private, but do they really understand about the old concept about photograph, social media and all the rest until something goes up? So, I think [what is needed is] clarity, it needs to be written down, [some] policies and procedures about it explaining it for parents (Participant 2, Social Workers, Tusla focus group).

Participants discussed some issues with the rule and interpretations of the rule, especially in one of the focus groups with academics:

... it's turned into a big privacy thing rather than a protective thing... I feel that it is very much a lockdown on the courts and yeah, it works to the extent that even the Judges don't discuss with each other what's going on in the cases which that's kind of ridiculous. I mean that the Judges can't all get together and discuss cases is, I mean, that's crazy, but they seem not to (Participant 2, Academics and researchers focus group B).

Some participants, understanding the *in camera* rule to mean “absolute privacy”, questioned whether such an emphasis on privacy fits with modern-day Ireland. This was also raised by a significant portion of parents in the national survey examined in Chapter 4:

I would question whether absolute privacy should be one of its purposes, and I would dispute that it should be, and I think we've kind of moved into a world now where we realise that transparency is much more important. I mean, we're not in the 1960s anymore and we don't have to hide that we have children outside marriage or whatever. We don't have to hide that our relationship is broken down. We're in a very different place to where we were when this was first dreamed up in. Well, I mean, I know it was around before, but, you know, the kind of 1970s as opposed to the modern version of it (Participant 2, Academics and researchers focus group B).

Some of the points raised by participants in describing their understanding of the rule discussed in this section will be given some further consideration in the following section on strengths.

6.2 Strengths: what's working well with the *in camera* rule?

The key strength of the rule as it currently operates is that it works in providing privacy for parties and protects the integrity of the proceedings. Professionals felt that applications to lift the rule were dealt with well by Judges, and having the rule in place helps vulnerable applicants to have confidence to bring cases to court for protection knowing that members of their community will not find out about their circumstances.

Privacy for parties to the proceedings

The protection of the privacy of parties to the proceedings, especially for children and young people, was important for participants with participants commenting that it is “*good in the protectionist field*”, particularly in more rural locations to protect children’s private information (Participant 7, Legal professionals focus group). Similarly, one professional said that “*it is working to the point where it generally does safeguard the privacy of adults and children and family and child care proceedings*” (Media focus group, participant 1). Another believed that “*... the rule definitely protects children*”. The benefit of the rule in protecting children’s identity from appearing in local media outlets was also commented on: “*what’s working well is that the names of parents or children don’t appear in the local newspapers or on social media*” (Domestic violence practitioner interview).

Such privacy affords applicants support to make an initial application to the family law courts knowing that it will not become public knowledge. A number of participants referred to the “*sense of security [the in camera rule] gives for issues to be aired and addressed*” (Participant 3, Policy Makers focus group). The *in camera* rule allows “*individuals...come forward and be frank and open in terms of their discussions, which enhances the ability of the Court to administer justice in those types of cases*” (Participant 2, Office of Legal Services, Tusla Focus Group). The point was further commented on with one participant saying that “*the rule definitely protects children. I don’t think it’s in anyone’s interest that children are identified or identifiable in any of these situations*” (Participant 1, Media focus group).

Another participant spoke about the security that the *in camera* rule affords people:

I think the strength of it is...the environment that it creates, and a sense of security it gives for issues to be aired and addressed in that forum...if you entirely remove the in camera rule, it will have an absolute chilling effect on the proportion of people who will be willing to actually engage with the system, including those who around seeking support for protection from domestic violence (Participant 5, Community organisations focus group).

There was some agreement amongst participants that in addition to the rule providing for privacy, attendance, and protection for parties to the proceedings, it also places limits on the publication and sharing of documents. Focus group participants spoke to their understanding of the rule in saying that “*everything in this court is private, you can’t talk about it outside*” (Participant 2, Legal Aid Board solicitors focus group). Another referred to the rule allowing for “*a protective space so people will be able to speak freely...about sensitive matters*” (Participant 3, Ombudsman for Children’s Office focus group). The “*protective*” aspect of the rule was further described as:

... a rule that applies in respect of certain proceedings to ensure that the information that’s generated in those proceedings is protected and can’t be disclosed unless there is the authority of the presiding Judge to or the District Court Judge to release that information. So, it’s a protective rule in terms of the privacy of the parties to ensure that individuals can come forward and be frank and open in terms of their discussions, which enhances the ability of the Court to administer justice in those types of cases. (Participant 2, Office of Legal Services, Tusla focus group)

Another spoke about the protection that the *in camera* rule affords young people in care and said that their understanding of the rule is that “*any child who’s ever been in care shouldn’t be identified in any aspect or their identification shouldn’t be published in any aspect of the media*” (Participant 1, Office of Legal Services, Tusla focus group). It was summed up by another participant in the following way:

My understanding of the in camera rule at the individual level is that it restricts access to the physical courtroom...but also limits the use of information that’s generated in those proceedings and the sharing of information beyond the court environments itself (Participant 4, Academics and researchers focus group A).

Another participant highlighted the strength of the rule when they spoke about it as an important mechanism that protects children affected by these proceedings saying that *it’s confidentiality, it’s [a] private hearing. That’s [the] child’s business that really shouldn’t be conveyed in an open court scenario*. (Participant 2, Social workers, Tusla focus group A).

While participants identified one core strengths of the *in camera* rule, they also identified several weaknesses. These will be discussed below.

6.3 Weaknesses of the rule

I know it’s there to safeguard the children, but it doesn’t always feel as if they’re protected by it.
(Participant 4, Legal professionals focus group)

A number of weaknesses were highlighted by focus group participants in terms of the practical operation of the *in camera* rule, some of which had negative consequences for children as well as the family members it is designed to protect; and others which impacted the integrity of the family law justice process more generally.

The scope of the rule's application

Focus group participants were asked for their perspectives on how long the *in camera* rule applies for. While all were agreed that the *in camera* rule begins with the lodgement/initiation of proceedings, responses in respect of when the *in camera* protection ends varied to a great extent, thus indicating the lack of clarity around the scope of the rule. This lack of clarity concerning where the rule ends was also evident amongst members of the judiciary. In the context of child care proceedings, for example, some participants were of the view that it lasts until the child reaches the age of 18 years:

I suppose we would take it that the in camera rule would no longer apply, I suppose in reality, when everyone’s an adult, you know when your children are 18 or 19, you know, I presume, well, first of all, the court has finished, has made the order and is finished with you, so what’s to stop everybody getting together and talking about it is my view in one way...if people, you know, get back in touch with their parents and siblings and at some stage start talking about what happened... (Participant 2, Legal Aid Board focus group).

Other participants were of the view that it “... lasts for the lifetime of the young person that has been in the care system, that they can never technically say I'm in care without technically breaking the law” (Participant 1, EPIC focus group). Similarly, according to another professional, it “...applies throughout the care order, the period of the care order ..., into adulthood, for as long as that child is alive, unless as an adult, they wish to breach it themselves’ (Participant 4, Social workers, Tusla focus group A).

Professional understandings regarding access to court reports after a Section 18 care order has been granted were slightly different however, with one participant noting:

...But for reports, we notify our legal, but we don't have to return to court to get the in camera rule lifted to share the reports. Now, ... we always notify our legal so that we have it to say that we've told them we're doing it, but they have never requested us to go back to court to have lifted (Participant 6, Social workers, Tusla focus group A).

However, according to one professional, the idea that the *in camera* rule applies for life to those who are in the care of the State can be problematic. This is because in some contexts, this information could be relied upon as evidence in other types of proceedings. This was pointed out by one solicitor who said:

It can often actually interestingly be maybe a little bit misused, as it can often be used as a means to construct a defence, where maybe their experience in care wasn't as bad as perhaps the defence solicitor is trying to make out. It's awful to think that growing up in care is an automatic defence to a criminal prosecution. It can be, of course, if they've had a bad experience in care, if they've experienced multiple, you know, placement breakdowns, lack of placements, bouncing around SCAs,³⁷⁶ and all of that. But it's not an automatic defence to have grown up in care. You know, so, but it does have that negative connotation. And you do hear defence solicitors using it as a mitigation factor. (Participant 1, Solicitors representing Tusla focus group)

This possibility was commented upon by the Child Law Project where they also pointed out some of the complexities involved for young people having been in State care. They said:

And then as part of the criminal proceedings, they may say this child was in care and they're obviously being named at that point. So, there is that sense of actually, we should probably extend the not naming of individuals for a few more years when they're very vulnerable young people... (Participant 1, Child Law Project focus group).

It was suggested that “because there's no clarity around that [when the rule ends], journalists are terrified to actually name and interview somebody for fear of being sued” (Participant 7, Community organisations focus group).

³⁷⁶ It is likely that the participant is talking about Special Emergency Arrangements (SEA). SEAs are *ad hoc* care arrangements for children in need of care used by Tusla, Child and Family Agency when an approved foster care or residential care placement is unavailable. See: <https://www.rte.ie/news/primetime/2024/0509/1448106-babies-in-State-care-placed-in-private-unregulated-settings/> (Date accessed: 10/02/2025) for further information.

Does the rule really protect children and families in practice?

There were many examples provided of how, despite the existence of the rule, it fails to ensure absolute protection for children and families. Put by one professional: *“it’s completely not operating as I think it’s meant to, which is to serve the purpose of ensuring the confidentiality is considered”* (Participant 3, Social workers, Tusla focus group B). For example, in the context of child care proceedings, there appear to be very strong rules designed to protect the identity of a child in care to the extent that *“some of them [children in care] feel that they can’t have a social media account or I think they’re getting information from somewhere saying that it will breach the in camera rule and that they’re treated differently from other children”* (Participant 7, Legal professionals focus group). There were also concerns expressed as to whether child care reviews are operating in breach of the in camera rule given the extent to which personal information is shared amongst professionals. One participant contributed the following view:

... schools and kind of professionals like that are part of childhood care reviews. A lot of those, that information is shared in those forums. So that’s nearly maybe breaching the in camera rule without even knowing that you’re breaching the in camera rule because I’ve seen that time and time again where assessments are shared in either meetings, strategy meetings, professional meetings, or child and care reviews where it should be just the parties that are privy to the court proceedings, which wouldn’t necessarily be the schools, but yet they’re getting that information without going back into court or anything being lifted (Participant 5, Barnardos GALs focus group).

Where necessary information needs to be shared for legitimate purposes, for example, making a school aware of access arrangements, this results in parties having to apply to the court for a lifting of the *in camera* rule. It was reported by participants in the focus groups that the Judges are very open and accommodating in relation to applications of this nature. However, the reality of this in practice is that parties must make an application to the court for the lifting of the *in camera* rule. This comes at a financial cost to the parties concerned, many of whom may not have the resources to do so. It also adds to the courts’ workload in terms of resources as the only person with authority to lift the rule is a Judge. In addition, there was an inconsistency in approach to lifting the *in camera* rule reported with one participant providing the following:

In Dublin, certainly, there’s notice given to the parents, ... if we’re making an application to lift the in camera rule, they’re brought in. They give their view on it. But in other District Courts, it’s just basically the solicitor can walk in and get the rule lifted and nobody’s on notice. So, I’m wondering, who are you protecting in terms of.... is it the child? Is it the court process or are the parents, if they’re not notified, are their privacy rights just not being considered in various district courts around the country? So it is, the very application itself suggests that in fact there’s different views as to what the in camera rule is designed to protect. (Participant 2, Office of Legal Services, Tusla focus group)

In addition to heightening concerns over possible breaches of the *in camera* rule like those referred to above, there were also accounts given of situations where the protection promoted by the *in camera* rule is blatantly disregarded. One example of this was provided by a social worker who said:

we’ll have a lot of parents who are in criminal proceedings and then with the local newspaper where there’ll be a big write up, Dad says his two kids are in care and all; his name is there and he’s

identifying that his kids are in care. And it's written up in the local paper. I find that really hard because you're trying to protect all the rights and don't mention any names, but then it's fully reported on their website" (Participant 4, Social workers, Tusla focus group B).

Other unintended consequences of the exceptions to the rule include potential access to justice issues. The following example was shared by one participant:

I know that that has frightened some people from defending cases. I had a client who was..., there [for] a protection order against him and he never went back and defended it because he felt if he went back into court, he would be identified by the details that that reporter would have put in, you know (Participant 5, Child Law Project focus group).

Some focus group participants spoke about what could be referred to as unintended consequences of the *in camera* rule where individuals are negatively impacted due to its operation. One example of this is in the context of child care proceedings where a pathway to reunification is envisaged with a birth parent:

I would think of maybe a scenario whereby maybe somebody is seeking to increase access. There's an access plan in place or there's a pathway to reunification being envisaged, but there's no real scope for being able to provide that kind of information to the local authority, where they're maybe seeking, you know, an extra bedroom or something, say or, or more suitable emergency accommodation. ... But if you didn't have the Legal Aid Board representing you in the child care, or we're lucky enough to have access to a Community law service, you'd be very much fumbling around in the dark there. I don't see how you could make any progress or, you know, having the local authority come to understand your circumstances or you know, you could be very easily breaching the 'in camera' rule if you're trying to explain your circumstances... (Participant 2, Legal professionals focus group).

Another practical example given of how the operation of the *in camera* rule can be problematic is in the context of Student University Support Ireland (SUSI) grants due to the “*operational challenge...where court orders need to be circulated to other agencies*” (Participant 2, Courts Service focus group). The participant went on to say that this is a situation where people are required to submit a copy of their divorce order and may have to get the *in camera* rule lifted in order to do that. The participant was of the view that people are “*just sending court orders to agencies that require them without any knowledge at all of this [of the need to ask the court to lift the rule]*”.

One participant highlighted an issue with the apparent protections provided by the *in camera* rule in cases of child protection where emergency care orders³⁷⁷ are granted. They said “*... when we seek an emergency care order, for example, and we go to a house with the guards to remove children. You'll see that the whole community comes out. All people from around the house has come out. And then when we're leaving, you see that they go over to them*” (Participant 4, Social workers, Tusla focus group A).

Concerns were also expressed over the misapplication of the *in camera* rule with one legal professional stating that this is something that must be addressed. They said that they have observed “*the operation of it and ... misinterpretation of it - sometimes wilful, sometimes just absolute ignorance, including on the part of Judges*” (Participant 5, Legal

³⁷⁷ Section 13 of the Child Care Act 1991.

professionals focus group). They said that this can be “*detrimental at times in those instances where you can see children can’t have photographs that they can’t have social media accounts*” (Participant 5, Legal professionals focus group). They went on to say, “*That’s just nonsense*” and in fact it is “*contrary to the purpose of it. And therefore, contrary to the law, because everything has to be all law in relation to children, have their best interests as paramount*” (Participant 5, Legal Professionals focus group).

An unanticipated side effect of the rule’s current operation is the potential for a party to family law or child care proceedings to be identifiable either from a published family court listing or from a judgment that has been anonymised by the judiciary. Cases of this nature have led to litigation against the Courts Service which it directly attributes to the *in camera* rule. The following example was provided by a member of the Courts Service:

So, at various stages during the year...due to...error oversight and everything ... the publication of court lists online has caused us difficulties where we’ve revealed the identities of individuals and then had to pull down those lists and there’s a data breach and whatever else. And some people decide to litigate on that as well too. So, this in camera rule exposes us as an organisation. More problematic is the issue of judgments, judgments of the judiciary, particularly the higher court ones where the order or the judgments are judicial documents, they’re court orders or they’re court records and we ... are not allowed input into them. They are ... the Judge’s own work. And every so often there’s contents of those judgment that breach the in camera rule that we have to pull [them] down as quickly as we can. Now sometimes those judgments are up for quite some time, but because we as a Courts Service are hosting them, we are being sued for damages from that, even though they’re not our records.... There could be a number of judgments handed down on a possession case. Lo and behold, there’s family law proceedings and automatically, retrospectively, all of those judgments have to be revisited because of the existence of the family law proceedings then as well (Participant 1, Courts Service focus group).

The infrastructure of the Courts as an impediment to the operation of the *in camera* rule

The inability of the *in camera* rule to operate effectively in the current physical infrastructure of the family and child care courts, particularly in rural locations, was an issue highlighted throughout the research and by many focus group participants. Inadequate court facilities in some rural areas can, according to one participant “*make a mockery of the in camera rule*”. They continued by saying that emotions often run high in family law cases often spilling out into the courthouse where “*you can’t help overhearing everybody else*” (Participant 5, Child Law Project, focus group).

Similarly, this drawback to the rule’s operation was highlighted by the Courts Service focus group describing court lists in very rural locations where there might only be a handful of family law cases and parties are “*waiting in the same waiting areas*” where they know each other “*because they’re probably living in the same small community*” (Participant 2, Courts service focus group).

Similar practical considerations regarding the operation of the *in camera* rule and the court infrastructure were brought up in other focus groups. This included “*the lack of consultation rooms, often the legal parties are coming up and whispering something into*

your ear in the middle of an open court, trying to negotiate an access agreement in the open court, conversations happening in the corridor that other people can overhear easily” (Participant 2, Social workers, Tusla focus group A). In addition, the use of initials in family law cases was identified as being particularly problematic in terms of maintaining the privacy mandated by the *in camera* rule. This was pointed out by a legal professional who referred to the procedural daily call overs that take place in the family law courts. They said:

...the in camera rule to a certain degree, like was slightly nonsensical when you had to go through a call over where it was...A versus B or AB versus CD. And you're standing up saying yes, I am for AB and Mary Murphy beside me stands up and says she's for CD and then we both go outside to court and I go talk to AB and she goes talking to CD and anybody who wants to figure out who AB is who CD is can do it quite easily (Participant 6, Legal Professionals focus group).

Finally, in respect of the infrastructure more generally, the pressure on the courts to progress cases as much as possible has also presented problems for the effective operation of the *in camera* rule. For example, as acknowledged elsewhere in this report, there is a wide diversity in practice amongst family law and child care law Judges concerning how they apply the rule in their courts. Widely reported by family service users and professionals throughout this study, was the practice of some Judges to allow professionals to remain in the family law courtroom while awaiting their case. For example, in child care proceedings, one professional participant noted:

So, it's a huge amount of people in the court and which I think parents are finding hard because, you know, we would always say, well, it will just be the legal people and you know, me and the social worker and the team leaders there. But then there's, like so many people, I think it's trying to do with efficiency...And it just moves really, really quickly. But yeah, parents I think are struggling with that because it's just very daunting when you go in and there could be 50 people in the courtroom... (Participant 4, Social workers, Tusla focus group B).

Similarly, in another location in the country, it was pointed out that sometimes efficiency and convenience are prioritised over privacy required by the *in camera* rule. One practitioner said:

The Judges have a Tusla day, so generally the solicitors, if you're there, you're there before a Tusla case, but big solicitors will stay. It doesn't matter that they're not the particular solicitor for the case that's being heard. They just stay in, and the Judge allows it. And I think it's more to run things quickly. (Participant 6, Social workers, Tusla focus group A)

The impact of not having a strict application of the rule which applies to the professionals who are unconnected with cases was highlighted in the Child Law Project focus group who also spoke about the difficulty this poses for families who can find the experience of being in court intimidating. They were of the view that anybody who doesn't need to be in the courtroom should leave. They said: *“you can have social work teams that are just sitting in listening. You know, they're just not moving, you know, because there are cases up next, and they're going to stay in the room”* (Participant 1, Child Law Project focus group). This experience was not limited to child care proceedings and has also been observed in private family law where oftentimes *“There is no distinguishment made between who's a party to the proceedings and who should be there”* (Participant 5, Child Law Project focus group). They said:

... for family motions and you know, there could be ... divorce application motions, all the practitioners are allowed to stay for nearly all of that. And sometimes if people are representing themselves, you'll see them sitting there as well.

Abuse of the rule

In the sphere of private family law and child care cases, the operation of the rule was referred to by participants as a “vehicle for manipulation”, “...it’s almost become another weapon in the fodder of kind of solicitors who are trying to prevent things progressing forwards” (Participant 3, Social workers, Tusla focus group B). Indeed, this was also reported as being a concern in domestic violence proceedings where:

... from working with women who have been caught in very long, lengthy proceedings with post-separation abuse, ...the weaponization of the in camera rule itself, where you actually have perpetrators trying to enforce the criminal element of contempt of court and you know where you have women who have suspended sentences hanging over their head because it’s been deemed that somehow the in camera rule has been broken ... (Participant 7, Community organisations focus group).

In the context of child care proceedings, the *in camera* rule facilitates delays where in cases where parents or legal teams do not agree on joint letters for referral for assessments or the *in camera* rule to be lifted, it slows the entire process down and causes significant delays which may not be in the interests of the children concerned in practice, the rule makes the care planning process much more complicated and cumbersome. It was identified as a delaying tactic by one participant:

I have seen that sort of you can’t do X, Y and Z because that’s a breach of the in camera rule almost as a weapon to prevent something from happening. And that’s to me, my mind, that’s not what the rule is designed for. And I’ve definitely seen people using it as a delaying tactic or as a, you know, as a method of not really putting the child’s needs first (Participant 4, Child Law Project focus group).

Accessing supports

Individuals are being fettered in relation to telling their story. (Participant 2, Academics and researchers focus group A)

Some participants felt that a strict interpretation of the *in camera* rule was not realistic in and “is completely unworkable in many, many ways, ... both from the point of view of just human nature and what human beings are going to do after a case, and also because of the necessities of having to explain to certain people who were not involved in the case what a court has decided what orders are in place” (Participant 3, Academics and researchers focus group B). The unrealistic nature of the *in camera* rule was pointed out by several participants in study. It was put like this by one participant:

Most of the parties are discussing it with their relatives. Do you know what I mean? I know they’re never, never mind the professionals. Just their buddies. You know what I mean? And they’re comparing notes as to, you know, well, when I was here, they gave me this. When I when I wasn’t there, they gave me that. You know what I mean? And they’re comparing their stories. (Participants 3, Child Law Project focus group)

This was not only in respect of family members, but also professionals who admitted “...I suppose many of us do go back to the office and tell our colleagues how we got on that day and what happened. You know you might be sharing an office with that colleagues and I mean, they know all the details of the case anyway” (Participant 2, Social workers, Tusla focus group A). One participant referred to the “chilling effects that the *in camera* rule has always had is enabling somebody to share their story and their experience” (Participant 5, Support Group focus group). The unrealistic expectations concerning private communications regarding what happened in court with close family or friends was also noted by the Judges in the last chapter.

In relation to access to therapeutic supports for parents and children, many focus group participants acknowledged that the *in camera* rule essentially has a prohibitive impact as it “...has prevented people from accessing critical supports they need because they feel like they can’t talk about it or a particular Judge warns people incredibly strongly and they’re afraid to talk to even with a friend” (Participant 6, Community organisations focus group); “... it can actually block families from accessing supports which is a huge problem” (Participant 6, Community organisations focus group). According to one media professional:

It’s very dangerous territory. You know, if people want to talk about how bad the family law system is or how bad divorce or separation was and the whole system like... I think it’s important they be allowed to speak about that...but prohibiting from...actually talking about it or saying that this is a horrible system, whatever they want to say, you know. Yeah, I think that’s dangerous to go down that route. (Participant 2, Media focus group)

Court accompaniments

The *in camera* rule can also impact the extent to which parties can avail of support in the context of the proceedings themselves. Focus group participants referred to many examples of cases where participants may request that they be allowed to bring in a person to the proceedings with them. Responses of Judges to these requests varied depending on the circumstances. This embraced a variety of different contexts such as translators or interpreters for family members where English is not their first language, advocates for parents in child care proceedings as well as other third parties who may be deemed necessary for the litigant to be able to participate in the case. The common factor amongst all of these scenarios was that the third party would be aware that the proceedings were taking place and where the Judge permitted them to be present, they would also be privy to information that is covered by the *in camera* rule. One solicitor provided the following example:

So, if Mná Feasa or Men’s Aid, [are] the Mackenzie friend, sure they’re allowed into court as well, but at least on the Judge’s consent, but they have to have been told about what the situation is... You don’t have to be approved. They’re not approved by the Judge. So, these, people will come for their protection order, safety orders, usually domestic violence, with Mná Feasa in tow...now whether the Judge lets them in or not is another thing. But Mná Feasa and Men’s Aid will know of the situation (Participant 2, Solicitors representing Tusla focus group).

In some cases, the availability of these supports was viewed as essential but were not always permitted by the Judge:

A senior Judge of the High Court was refusing to let a party to a Divorce proceeding before that Judge bring in a decision making assistant that they had registered under the Assisted Decision-Making Capacity Act of 2015 and it was on the basis of the in camera rule... the Judge had literally threatened this person who needs a decision-making assistant that if they were to even discuss the fact that the family law proceedings existed with their decision making assistant, they would be in contempt, it would be subject to committal. So, you're taking somebody who's clearly vulnerable enough to need a decision-making assistant and you're threatening them with committal. Now, it didn't help (Participant 6, Legal professionals focus group).

Similarly, in cases where domestic abuse is at issue, an example was given about a Muslim domestic violence victim:

So, she had support from the Women's organisation to help her along. But then when they got to the court, no, no one else was allowed in with her, so she was safe to the position she was into. She was on her own in court. Maybe legal representatives, the interpreter was male, the ex-husband was there. They were all speaking together. So, it was a very... the imbalance was there (Participant 4, Policy makers focus group).

And in other cases, the Judge was more open to facilitating support:

You can have the situation where the person who's vulnerable comes in and says, can my mother come in with me to the hearing and sometimes the person looks very, he is very vulnerable ... I have asked the Judge on occasion and the Judges have said, 'oh yes, let them come in'... but in that particular case, the Judge has made a decision that it's more beneficial to the person to have someone with them than not have somebody with them (Participant 2, Legal Aid Board solicitors focus group).

Similarly, the new Parent Advocacy and Information Service³⁷⁸ provided by Barnardos is viewed as really important for parents who are involved in child care proceedings whereby:

a parent has somebody sitting beside them in court who hears what's been heard and they can talk to about it before, during and after. And they're completely, they're absolutely not breaching the in camera rule. That should be standard. I cannot imagine what it would be like for me to have nobody beside me while my child's been removed and all this information. So, I do feel strongly that that would assist. It also helps to break down the in camera rule for parents to continuously remind them what it means and why they shouldn't be breaching it. Solicitors do explain it, but my experience is it's done on the hoof really quickly. Kind of on day one and actually we're dealing with very stressed and distressed parents, many of whom have their own trauma or cognitive difficulties. So, I think it really would assist if we had advocates for all parents who are involved in family law proceedings and child care law proceedings' (Participant 1, Barnardos GAL focus group).

On the other hand, the presence of these 'third party actors' was sometimes viewed by the professionals involved as problematic, particularly when the case involves young people:

³⁷⁸ <https://www.barnardos.ie/parental-advocacy-information-service/> (Date last accessed: 10/04/2025).

... while they're claiming to be a support for the parent, they do make things really, really difficult in terms of meetings, you know, with social work and that, you know, and, you know, they seem to have a better understanding that they can't be present when the solicitor wants to talk to one of my young people. But they've certainly made things very difficult in courtrooms, outside courtrooms (Participant 3, EPIC focus group).

Other examples were provided of McKenzie friends who were of questionable character and motivation who:

...were involved in this group of McKenzie friends. Again, a dedicated like Facebook page and everything else. But they were actually going into court and were sitting in court and being allowed to by Judges and not challenged. And it should have been Tusla challenging it. It should have been Tusla challenging it and they weren't (Participant 5, Legal professionals focus group).

Similarly, one participant recalled the following:

I had a situation a few years ago where a parent [brought] in a McKenzie friend into the proceedings, and that person had been involved with, I suppose, widely publicised issues where people were camping outside our ...office. And, but that person came to Court, and we had reviewed...all their social media, obviously. They had to be questioned on their character and it looked like this person had been involved in all sorts of acts over the years ... had various different names, was involved in armed smuggling and all sorts of stuff, and the Judge in the case said to our solicitor, "I haven't heard anything that tells me that this person isn't an upstanding member of society. I haven't heard that he was, he was wanted for drug smuggling and everything like that". ...and it was only when the Guardian's solicitor then raised well, actually, on your media site ... you have a picture here ... with a Judge, with a noose around his neck. And you say under that that the in camera rule should be abolished and should never apply, and the Judge said. "Oh well then. You know, I can't. I can't accept that this person can be a Mackenzie friend". So, it was just that his disregard for the in camera rule influenced the Judge. Whatever about anything else about his character. It was, it was that specific piece (Participant 4, Social workers, Tusla focus group A.).

In addition, where parties do not engage legal representation due to lack of resources or for other reasons, this can also present challenges for the practical operation of the rule. Lay litigants seeking support from people who have no legal background was raised. For example, some parties may engage the support of an online DIY divorce company where, according to one participant they *"operate in a kind of a grey area in terms of they're helping people with divorces and they're obviously privy to very personal details about family law cases, while that's going on"* (Participant 2, Courts Service focus group).

Lack of transparency in the family law context

Moreover, similar to the views expressed by family members in the survey, the critical need for transparency in family law cases was also highlighted as being particularly important for the vast majority of professionals. There was a clear feeling amongst participants that the *in camera* rule is operating to restrict access to much needed information concerning what is going on behind the closed doors of the family law courtroom which should involve *"balancing the public's right to know with the with the*

protection of the family” (Participant 4, Support groups focus group). There was a belief that:

... it definitely is a problem in terms of people have no idea what goes on in, in family law courts in general. You know, there's nothing... very little published. So, people that do have to attend family courts don't really have any expectations of what's gonna happen? So, it does hinder people in terms of informing them about the family court process. You know what types or what, what happens in the court (Participant 2, Courts Service focus group).

Concerns were also expressed about the impact that a lack of transparency can have in terms of understanding how legislation is being applied. This participant talked about the “*culture of secrecy that we have in Ireland*” when it comes to the marital family. While they were of the view that children (and their identities) need to be protected, they were of the view that there needs to be more transparency:

...I think it's been misinterpreted as a complete and utter block on anyone sitting in on court cases. Anyone having an understanding of what's happening in court and family law practitioners are relying on a small number of reported judgments and it just leads to a lack of transparency and how the court process is being undertaken and also judicial conduct. We don't know how certain Judges are applying certain pieces of legislation because there's so much discretion for the Judges (Participant 2, Ombudsman for Children's Office focus group).

It was felt that if things were more transparent, professions such as “*Tusla would be open to scrutiny because the delays, there's no...assessments on children, that would all be in the public arena and there be a bit of an outcry... the courts would all, the courts would be open to scrutiny as well, and maybe that's a good thing as well*” (Participant 2, Social workers, Tusla focus group B). Furthermore, there were concerns expressed about the behaviour of some professionals during *in camera* proceedings and the way in which some parties are spoken to. Again, echoing some of the survey participants concerns around the lack of accountability of those working in the system due to the *in camera* rule, one legal professional observed:

... we all have the horrific stories of what has been said to people in the District Courts and so on by Judges who are maybe prone to language you know, colourful language, that's not really appropriate and which does interfere perhaps with the rights of the person in front of the Judge ... (Participant 4, Legal professionals focus group).

Moreover, there was a view amongst many professionals that in many ways, the *in camera* rule covers up inappropriate professional misconduct. For example, one legal professional said that “*there are very obvious concerns as to actions, comments and indeed the whole practice and conduct of proceedings by different Judges, it absolutely varies across the country*” (Participant 5, Legal professionals focus group).

It was stated by some participants that the benefits of having an independent reporting mechanism or indeed the media present in court went beyond facilitating transparency in family law cases, so that “*... Judges see a journalist in court or see the Child Law Reporting project in court and tend to behave themselves. So, the worst of the remarks*

are generally reserved for when they're not there" (Participant 4, Legal professionals focus group).

Similarly, the impact of media presence was also highlighted as a mechanism that changed the tone of the courtroom. One media professional said:

...sometimes obviously people tip you off to cases and you know it might be worth being in court ... But then afterwards, like you might have just sat through the case and it might be pretty uninteresting, you might not do a report, but one party might go 'I'm so glad you were there because the Judge behaved himself or the barrister on the other side behaved himself and they feel even the fact that the journalist being in the room that under the danger of this, maybe the, you know, what happened being reported today think that the hearing was held was run in a different way, or people behave different just because there's that kind of eyes and ears that the media are there in the room (Participant 2, Media focus group).

One participant from the media focus group did talk about how the reporting restrictions are sometimes too tight in cases and said that it feels *"like literally throwing the baby out with the bath water thing... You can report nothing and it's almost pointless in there. And it could be an extremely important case* (Participant 1, Media focus group).

Academic research

In the two focus groups with experienced academics, there was a unanimous view that there was a lack of clarity regarding the *in camera* rule and what is and is not permitted when undertaking research.³⁷⁹ An experienced legal academic in one focus group described the following:

As to exactly what that rule is, I am less clear on that because it's not written down anywhere and this is pretty unusual because it's a basic principle of law, that if you're going to have a law of general application that that law should be accessible to people, which means that they should be able to go and find out what that rule is, and even as somebody working in the area for two decades, I cannot see it written down anywhere. I can't see a court decision which has defined it. There is nowhere that is [an] authoritative source of the rule" (Academic focus group B).

The exceptions outlined in law³⁸⁰ were identified as helpful by during the academic focus groups. For example, as outlined in Chapter Two, there is a clear provision and protection for researchers to attend *in camera* family law proceedings if permission from the Minister for Justice is secured. Courtroom observations of child care proceedings have been undertaken by the Child Law Project³⁸¹ and are well-established practices in Ireland. However, there was a view expressed by researchers that other types of research approaches are not explicitly covered by the exceptions, which can lead to a chilling effect on the types of research that may be undertaken in the context of family law and child care proceedings. This lack of clarity is especially pertinent in relation to a lack of explicit permission to undertake qualitative research (for example, interviews and focus groups

³⁷⁹ Kenneth Burns, Conor O'Mahony, Caroline Shore and Aisling Parkes (2018) "What social workers talk about when they talk about child care proceedings in the District Court in Ireland". *Child and Family Social Work*, 23 (1):113-121.

³⁸⁰ Child Care (Amendment) Act 2007, and the Courts and Civil Law (Miscellaneous Provisions) Act 2013.

³⁸¹ <https://www.childlawproject.ie/> (Date accessed: 10/04/2025).

with parents, children, and/or young people) by *bona fide* researchers (see also data from Judges in Chapter Five). Researchers indicated that some would not conduct interviews with those who are participating in family law proceedings for fear of breaching the *in camera* rule.³⁸²

A question was raised by some researchers about how the *in camera* rule interacts with GDPR, and whether the rule was in effect operating as a *de facto* data protection rule. They said that it is important to consider “*how the rule is interacting with modern data protection rules. Right. Because in a way, it’s kind of morphed into a data protection rule, but it’s a really unclear data protection rule*” (Participant 1, Academics focus group B). Similarly, another academic noted that they are:

...encountering a difficulty with this whole in camera rule data protection and then the Judges that there’s this big diversity in understanding of how it works. And so, we have some Judges like really going overboard thinking they can’t tell you how much someone earns in a judgment, because the in camera rule, we have the whole problem, writing the naming of cases that there’s no consistent approach (Participant 2, Academics group B).

Accessing information, the need for systematic data collection and reporting of family law cases

The absence of data on the family justice system more generally was noted across the focus groups. One participant said that from the public interest point of view:

...having no ability to understand what might happen because there’s no ability to see what happens. I think that’s too restrictive. So, I don’t think it helps families...and I don’t think it helps the public understanding of what outcomes in court might be” (Participant 2, Mediators focus group).

Similarly, the need for more transparency concerning how the courts operate in reality was highlighted by another participant who said that most people do not know the practical reality of a court situation. In their view, it would be important to have “*even statistical data or more statistics held in relation to various aspects of it that make that can be shared with potential litigants, so that they know what they’re going into court*”. They said people need to have a sense of how it actually works, and, in this regard, it might even help parties in their choice of dispute resolution processes (Participant 3, Academics and researchers focus group A).

The lack of access to judgments and more detailed information concerning family law cases in the District Court was also highlighted as being particularly problematic where ‘*...the entire legal system is based on the ability to be able to see what’s happening in other cases...*’ (Participant 2, Academics and researchers focus group B).

³⁸² This issues was previously documented in O’Mahony *et al.* (2016) *Journal of Social Welfare and Family Law*, 38:3, pp. 302-322.

Another participant was of the view that it limits professionals' ability to advise and inform and said:

...more particularly for barristers and solicitors, to be able to advise their clients, it's important that they're able to tell, you know, to say what happens in the courts, what typically may happen. And so, I think the in camera rule, it clearly you know limits our ability as academics and lawyers to it to advise and to inform (Participant 2, Academic and researchers focus group A).

The lack of information concerning how the family law system operates in practice and how individuals experience this “... prevents improvement of services for people using those services” (Participant 4, Community organisations focus group) and “it's become a bit of a barrier to informed policy making” (Participant 3, Policy makers focus group).

Relatedly, restricted access to information generated about a child or family in the context of a court report as a result of the operation of the rule was raised by several professions as being problematic. Indeed, a practice has emerged over time where parties have limited access to the content of reports and cannot take a copy for themselves. This was further explained by a GAL:

What happens with parents is that if they're lucky, they will get to see the report the day before in their solicitor's office. But quite often they're reading through it with their solicitor beside them in the court, you know, in the in the waiting area, outside the court on the morning of court...So, you know they'll be going through and they [legal team] might be kind of like whizzing them through particular things and they might have an opportunity to read it all in depth. Sometimes you're kind of glad of that, if I'm being honest, but...they're entitled to read it and to be able to make an understand enough, but they're not entitled to have a copy of it” (Barnardos GALs focus group, participant 4).

6.4 Children's rights and the *in camera* rule

Focus group participants were asked to comment on whether or not they felt that the rights of children were impacted by the operation of the *in camera* rule. While there was general agreement amongst the participants that the rule can protect the right to privacy of children and young people in family law and child care proceedings, it was acknowledged that there is a “kind of presumption that we have to protect children at all costs even though now we don't know what children's experience of the justice system is” (Participant 2, Ombudsman for Children's Office focus group). It was further pointed out by this participant that “we don't know how their voices are heard properly.” They went as far as to say “We don't know if their best interests are being upheld. And I feel that the ‘in camera’ rule can be a barrier to us knowing that information”.

There was a view expressed amongst professionals that the *in camera* rule “...hasn't caught up with the times” (Participant 2, Ombudsman for Children's Office focus group). Indeed, some participants referred to the reality of the life experiences of a child whose parents are involved in family law proceedings and child care proceedings: “they're discussing about, you know, children, you know, again, there's not much that should be hid from children. So, I think we need to think much more carefully about the contours of

it and what it's actually preventing you from doing and why" (Participant 2, Academics and researchers focus group B). Others questioned whether it was realistic to think *"...that a 14 year old who's going through a very traumatic, you know, divorce, separation, costing disputes, whatever it is, is not going to tell anyone about it"* (Participant 3, Academics and researchers focus group B), with another participant pointing out that *"...it would be naive to think, children [don't] know if their parents are splitting up. I mean, it would be naive to think that they're in some way not party to the proceedings"* (Participant 4, Child Law Project focus group).

Other concerns raised about the potential negative impacts the rule has on the daily lives of children and, in this context, their rights included: further stigmatising children in care, a failure to recognise children as autonomous rights holders, and a failure to provide children with access to information, an essential pre-requisite for having an authentic voice in court proceedings and the protection of best interests.

Protecting children or exacerbating stigma?

The prohibitive nature of the *in camera* rule appears in some instances to outweigh the original protective motivation behind it with fears around potentially breaching the rule causing some professionals to adopt an overly cautious interpretation of the rule: *"the 'in camera' rule is being looked at as something to prohibit rather than protect and for children to feel marked out or treated differently. That's obviously really unfortunate"* (Participant 2, Legal professionals focus group).

Some focus group participants spoke about stories of severe admonishments given by the judiciary for alleged breaches of the *in camera* rule which served to have a significant impact on how some professions interpret the rule which in turn has consequences for the children under their care. For example, it *"frightened a lot of social workers and I think that's kind of spread and I know we've seen that a lot at that stage, that young people were really, really being stigmatised"* (Participant 1, EPIC focus group). Many examples of this were provided across focus groups with stigma being exacerbated for children in care when for example, an ideogram representing a smiley face is put over the face of a child in school photographs, not being allowed on school calendars, *"not being able to share certain information ..., that might be something that another child on the street could share quite freely, but they can't because their case is in front of the court ..."* (Participant 5, EPIC focus group) because they happen to be a child in care. Similarly:

... in 2013, we brought a group of them, ...to do a rap up at the end of the piece. We were told after that that we had actually broken the law, that we've broken the in camera for the 10 of them that were performing there that day because we had said that these children are in the care system, you know (Participant 1, EPIC focus group).

While numerous examples were provided by focus group participants from different professions, a common example was one which involved a child in care who had achieved something special and those around them wished to mark the occasion:

A child that was in a care order had won a prize in school and the local media were going to publish the photo of the child with the gold medal etc, and that's where the query arose and applying that provision strictly, the answer would be, no the child is in care, their identity cannot be published, end of story, as opposed to 'sure you can publish a child's photograph', but you're just barred from citing the fact that they're the subject of care proceedings. So, the confusion starts in the iteration of the law (Participant 1, Office of Legal Services, Tusla).

The potential for jigsaw identification breaching the *in camera* rule was also identified as an issue for professions involved with protecting children in care. However as one solicitor put it:

I think common sense has to prevail. You know, if a child is from [name of area] and suddenly they're on the paper having scored a goal for [name of area], it's kind of obvious to someone who might know the family that this child is obviously living elsewhere these days and not living at home with the family. But the child's not in the witness protection programme either. And the child has to be given some rights or entitlements to live a normal life. So, I think there has to be a happy balance (Participant 4, Solicitors representing Tusla focus group).

Prohibitive impact

Professionals from a majority of focus groups provided examples of how the operation of the *in camera* rule can have a prohibitive impact on children and young people. For example, it was pointed out that the *"the in camera rule can be used to restrict the children's rights, even simple things like passports, getting information to public bodies where people don't understand where they can share court orders and in what circumstances"* (Participant 7, Legal professionals focus group). In attempts to protect the anonymity of young people in care, professionals gave examples of when young people put material up on social media, *"... [t]he social worker, in my experience of those cases... the child isn't allowed to access that platform going forward until they prove that they're trustworthy again and you can't do anything about once the pictures out there is out there"* (Participant 3, Legal Aid Board focus group). In this context, the view of this professional was that *'... I know they've done it themselves, but they have to be saved from themselves because if they do it once, they'll go everywhere with it, but so they themselves put out into a public forum that such and such is child and care, so that's technically a breach'* (Participant 3, Legal Aid Board focus group).

There was general agreement amongst professionals that the voice of the child is hindered by the operation of the *in camera* rule due to the lack of information being provided to them about the court proceedings. Indeed, the *in camera* rule operates in such a way that makes it impossible to know the extent to which children are effectively involved in cases involving them, much less the extent to which their voices have been factored into the decision-making process. Moreover, one participant from the Ombudsman for Children's Office noted that children are *"...already almost this invisible member of the justice system...And then the in camera rule is maybe adding to that ..."* (Participant 2, Ombudsman for Children's Office focus group).

There was also a general consensus amongst the focus group participants that the fringes of the rule as it pertains to schools, creches, foster parents and other caregivers, lacks

clarity. This lack of clarity around the rule as well as when there is a need to apply to lift the *in camera* rule, can prove particularly problematic where care plans are being made, school arrangements are being made, or general information concerning the child is being sought. The following example was provided:

Sometimes we see schools sometimes in a bit of a bind...who is collecting this child in school today just classic old stuff about, you know, is it a court order? ...Who's the guardian? Who's this guy? Who's this person? Who's this? You know, they're kind of classic stuff that schools tend to dance on a pin and do it very well for years and years and years without clarity on should we get? Should we ask for a copy of the court order? Should we ask to see who should be collecting? They tend to just avoid that. And when they get complained about, schools do very well to sort of dance on the head of a pin and avoid the conflict (Participant 3, Ombudsman for Children's Office focus group).

Right to be informed and right of access to support

...there's an imperative right to keep children informed. So how do you keep children informed when you're bound by the in camera rule ...and how can children then input if they're not provided with the information? (Participant 3, Community organisations focus group).

The *in camera* rule can prohibit those who have been involved in court proceedings speaking about those proceedings outside of the courtroom, which can result in children and young people impacted being kept in the dark about the process. In this context, one professional acknowledged that “... Judges have, you know, warned parents, you know, not to go home now and speak to this about, speak to this, to the children, about this case today, you know. So, I've seen that arise on a number of occasions” (Participant 2, Courts Service focus group), something which was confirmed by the Judges in the previous chapter. Furthermore, participants from the Ombudsman for Children's Office voiced concerns about the *in camera* rule acting as a barrier to children's understanding of the court process, with these children feeling ‘as though they can't tell other people about what's happening or something bad that has happened, or if they've felt in some way negatively affected by the court process. It's kind of left... they're left alone, essentially’ (Participant 2, Ombudsman for Children's Office focus group). This can have a knock-on impact on other rights of the child including the right of the child to be heard in child care and family law cases affecting them. For example, it was claimed that the *in camera* rule:

... can kind of limit their ability to fully engage in it as well, because sometimes there's a misunderstanding about what the child is allowed to know. And that's just something we've heard through our helpline that often in those cases, while they're the subject of the proceedings, often people view them as not being allowed to know because of the in camera rule... Often they're told or because I'm not allowed to tell you anything about us (Participant 6, Community organisations focus group).

In acknowledging that the constitutional landscape has changed now to incorporate the rights of children, one participant from the Ombudsman for Children's Office was of the view that the *in camera* rule “warrants reform because children have expressed constitutional rights now, and we need to be able to balance these two things ..., I feel as though the 'in camera' rule isn't operating in their best interests at the moment as it is” (Participant 2, Ombudsman for Children's Office Office).

It was abundantly clear from this research that not only are children denied access to information about themselves, for example through access to court reports, but children and young people are not even being told about what is happening in their case due to the current operation of the *in camera* rule. Like adults, the lack of access to court reports for young people is highly problematic as was highlighted by one professional focus group participant (EPIC) as it can also serve to inhibit access to support:

... she wanted a copy of that report because she had been provided with therapeutic supports that she just did not click with that person, and she'd found her own counsellor. And she really felt comfortable with this counsellor and really clicked with this counsellor. And she wanted that assessment. She wanted a copy of it to go through it herself, to process it, to understand it and to be able to share it with her counsellor, and that was denied because it was a court report. But what felt so unfair was, as her advocate, I got permission to receive the report. I had permission to print it out. I had permission to go down to her house, sit down with her. I had responsibility to make sure she didn't photocopy. She didn't take pictures of it. If she had to kind of have a photographic memory to take in what was in it. And then I had to bring that copy home. And I just remember feeling that that that power imbalance was so often, so unfair (Participant 2, EPIC focus group).

It was further pointed out that the rule is paternalistic and '*assumes that children aren't autonomous individuals with their own specific rights as well*' (Participant 2, Ombudsman for Children's Office focus group). By way of conclusion to this section, it is clear that the operation of the *in camera* rule is seen by some for the myriad of reasons outlined above, as an '*impingement on young people's lives*' (Participant 5, EPIC focus group).

6.5 Remote hearings

The perspectives of focus group participants in respect of remote hearings and the operation of the *in camera* rule varied, as did their experiences. Those participants who were more open to using remote hearings made reference to it being a more efficient and less costly approach particularly for professionals providing evidence in a case: '*...And also, I've used it for, you know, gardaí, GP, medical witnesses where they're just too busy to leave where they are and you know, dawdle around the courthouse for too long. So, it's a huge, it's a cost reduction. It reduces time wasted by very busy professionals...who are important witnesses in cases*' (Participant 1, Solicitors representing Tusla focus group). Participants cited many examples of where remote hearings are currently happening in practice successfully with some parents joining virtually from prison, for example, for hearings and children in special care joining remotely to speak to the Judge.

Some participants favoured the use of remote hearings as a way of facilitating improved access to justice for people with challenging life circumstances such as "*...disabled women or people, people in rural communities, people with child care needs*" and the risks posed to *in camera* rule were seen as less important (Participant 5, Community organisations focus group). Similarly, one of the legal professionals was of the view that:

...the benefits of remote hearings would outweigh any risk... I think that's so important for people's access to justice... I think they're the way forward for people who are disenfranchised, who can't travel, people in rural locations who are dependent on a bus pass. And there's one bus a day, you know, I think that access to justice is so critical for people, and it's something that we're probably

overlooking, the fact that we can, we have the technology for remote hearings, but we don't always put it in place. I think that's a shame (Participant 7, Legal professionals focus group).

Other potential benefits included alleviating the pressure on the courts more generally, and from a privacy perspective, *"The remote hearing, is actually, it has far more potential for privacy for people's business anyway"* (Participant 4, Community organisations focus group) when compared with the busy hallways of the courthouses. In cases of this nature, it was acknowledged that it would be important in terms of maintaining the integrity of the proceedings, that remote participants – particularly family members would be in a controlled environment such as a family hub for example. In the case of child care proceedings, it was suggested that *"...an access centre where there would be...a fairly controlled space that they could come into and attend a remote hearing from a hub like, you know, Family Resource Centre could have a designated room" would work well* (Participant 1, Child Law Project focus group). There was also an acknowledgment that remote hearings would be beneficial for victim/survivors of domestic violence:

*... the in camera rule or the concerns about the in camera rule is actually a hurdle or a barrier to providing a better service to people in those emergency situations who, let's be honest, you know, are in fear. And wouldn't it be far better that they could appear remotely over Zoom or [Microsoft] Teams or something like that, and not have to drag their children with them into somewhere unsuitable like Dolphin House?*³⁸³ (Participant 1, Courts Service focus group)

On the other hand, some professionals spoke to the risks posed by using remote hearings including the risk that the *in camera* rule is being breached by others being in the room when proceedings are ongoing or by somebody just wandering into the room. Challenges with the reliability of technology were cited as well as potential issues with technological literacy. Participants from the media focus group cited examples of remote hearings which they were entitled to access and report on, but were automatically ejected online on several occasions due to a lack of a protocol around how media should report on remote hearings. A participant from the GALs group recalled a situation where a father was joining a court hearing from a video link in *"little cubbies that were set up for all the video link calls"* where *"the Judge stopped and said sorry, I can hear another prisoner's conversation loud and clear, which means that these proceedings can be heard loud and clear by the two people on either side"* (Participant 1, Barnardos GALs focus group).

An interesting question posed in the context of remote proceedings was *"if they were able to schedule for remote, do you know what I mean? Why can't they schedule for court? Do you know what I mean?"* (Participant 3, EPIC focus group).

Focus group participants were also asked to reflect on their experience of breaches and sanctions in relation to the *in camera* rule. This will be discussed in the next section.

³⁸³ Dolphin House is a building used by the Courts Service in Dublin for family law proceedings in the District Court: <https://courts.ie/dolphin-house> (Date accessed: 10/04/2025).

6.6 Breaches of the *in camera* rule and sanctions

Everyone essentially has a printing press in their pockets (Legal professionals focus group, Participant 2).

Focus group participants were asked about their experiences of breaches of the *in camera* rule. Social media was identified as the main pathway for breaches in all focus groups. One participant said that “*what is concerning is...the speed with which this can happen*” (Participant 5, Office for Legal Services, Tusla focus group) with the general view being that the whole area of social media is not only “*a menace*” (Participant 1, Media focus group) but also “*fairly lawless*” (Participant 5, Office for Legal Services, Tusla focus group). Similar, to many of the views expressed by members of the judiciary, it was felt that social media breaches can be difficult to deal with given the fact that “*once it’s gone out there, you can’t bring it back*” (Participant 1, Legal Aid Board solicitors focus group). However, breaches of the rule were not limited to social media, examples of which are provided below.

Examples of *in camera* breaches

Focus group participants gave numerous examples of breaches they encountered during the course of their work. They varied from: criticism online of behaviour of Judges; photographs of Judges being posted online; information relating to proceedings being posted on a father’s rights group and Mumsnet;³⁸⁴ parents taking pictures of the paperwork; recordings of counsel and solicitor and recording access visits; legal professionals leaving behind legal papers in courtrooms; and breaches taking place during the call-over of lists.

While many of the breaches discussed already in this report tended to focus on the actions of parents and family members, professional participants made reference to breaches which were facilitated by the judiciary and engaged in by the professionals. One participant in the Tusla Office of Legal Services focus group talked about a recent *laissez faire* approach taken by a Judge whereby all the social workers and even some professionals were sitting in on *all* of the proceedings just to get things moving quickly. They indicated that it was a new practice by a particular Judge, and they felt that it was very clearly a breach of the *in camera* rule, but they felt they couldn’t raise it. This practice was also noted by a participant in the Child Law Project who was of the view that “*we need to be looking at...exactly who needs to be in the room*” (Participant 1, Child Law Project focus group). Another participant noted that the approach to clearing the courtroom varies considerably between Judges and that “*a lot of them [Judges] just seem to get more relaxed about that over time*” (Participant 4, Social workers, Tusla focus group A). A focus group member was of the view the call-over list was in and of itself a breach and made the following comment:

³⁸⁴ Mumsnet is an internet forum/website where parents share parenting information and advice - <https://www.mumsnet.com> (Date accessed: 16/05/2025).

I've been in several courts around the country where just the call over thing where the in camera rule is broken all the time and then and it adds to the frustration of parties. You know, where hang on a second. The Judge is doing it. Everyone here is doing it (Participant 7, Community organisations focus group).

Other breaches outside the control of the families that were spoken about (and are also referred to in the weaknesses section above) related again to the infrastructure of the court buildings, where one participant summed the lack of privacy up as follows: *"the court arena is massive, so you can hear everything, all the court conversations that solicitors are having with their clients and they're reading reports with them..."* (Participant 1, Barnardos GALs focus group).

Sanctions for breaches of the *in camera* rule

It's an apology and a slap on the wrist (Legal Aid Board solicitors focus group, participant 3).

Focus group participants raised a number of queries in relation to sanctions for breach of the *in camera* rule. Many felt that the approach taken to breaches of the *in camera* rule and the sanctions applied differs from Judge to Judge. One participant said that *"some [Judges] take it [breaches] far more seriously than others and are better at playing the kind of role in terms of threatening the parents or telling them what will happen if they do continue to breach it"* (Participant 4, Solicitor representing Tusla focus group).

Some participants were of the view that there is no clarity on what the sanctions are in relation to a breach of the *in camera* rule. According to one participant from the Office for Legal Services, Tusla focus group expressed their confusion in relation to sanctions in the following way:

I suppose there's no clarity on what the sanction is...if one breaches the in camera rule, you bring it to the attention of the court. Is it a contempt of court? Do the District Court rules on contempt... my understanding is that they're actually not fit for purpose. And then is it proportionate? Is it human rights compliant to be bringing, hauling people up before the court for breaches of an in camera rule? That's not even clear to most lawyers let alone lay people. I don't think contempt of court is very human rights compliant and I think that the sanctions are not very clear.

Participants were generally of the view that there is a very lenient or light touch approach taken to breaches of the *in camera* rule. The distinction was also made between intentional breaches of the *in camera* rule and unintentional breaches. While some participants provided examples of incidences where Judges took action against parties for breach of the rule, this seemed to be the exception (see, also, data above in the national survey chapter). One participant gave an example of a case they were involved in where everybody in the court was directed to hand their phone to the Judge after it became known that proceedings were being recorded on a mobile phone. Another example given related to a foster mother who posted a communion picture of the child on Facebook and where the Judge deemed it to be in breach of the *in camera* rule when it was brought to their attention by the child's birth parent (Participant 3, social workers, Tusla focus group B).

Most participants were of the view that Judges have a lot of empathy for families who themselves breach the rule and rather than impose any formal sanction, they are inclined

to give admonishments or require that the party gives an undertaking to the court not to do it again. One participant said the reason “*Judges don’t pull people over the coals*” is because a breach is “*not a criminal offence*” (Participant 1, Courts Service focus group). Another participant noted that the courts are so reluctant to impose a penalty on a parent who has lost a child. However, those that did give examples of formal or more serious sanctions being imposed, indicated that the breaches were not once-off breaches and were on the more serious end of the scale. Participant 4 of the Office for Legal Services, Tusla focus group recalled a case where a parent was remanded in custody for contempt of court. They noted, however, that they were “...*very, very habitual, serious repeated offenders who did awful things, used to follow social workers to their cars, post their wedding photographs of the social workers and posting the identity of the child...*” (Participant 1, Office for Legal Services, Tusla focus group).³⁸⁵ Another participant cited a case they were involved in where parents breached the *in camera* rule over and over and over again, “*which resulted in two parents getting jailed on a different number of different occasions for it*” where there were a series of serious breaches and “*an entire campaign of saying my child has been kidnapped by these social workers*” (Participant 6, Social workers, Tusla focus group A).

One legal professional was of the view that is very difficult to deal with breaches and that “*consequences are impacted by the fact that the law relating to consequences is totally out of date, not fit for purpose*” (Participant 5, Legal professionals focus group). They went on to provide an example of how a breach was dealt with by a Judge in court:

...you have Judges saying you’re in contempt of court. I was in a case where the Judge said you’re in contempt of court and go down to the cells. And I kind of had a step in and say, well, they’re not because you haven’t made a finding. You have to go through a process and, you know, representing the Guardian, there was.... But I see it as your duty as an officer of the Court. But most Judges don’t even understand that there’s a process to be gone through before they can, you know, officially utter those words (Participant 5, Legal professionals focus group).

A participant from the Child Law Project focus group provided an example of where they saw a prosecution of a mother for breaching *in camera* rule and that she was sent to prison for contempt of court. Similarly, another focus group participant recalled a mother being “*taken away in a paddy waggon to Mountjoy*” for having repeatedly breached the *in camera* rule having received an earlier warning (Participant 5, Barnardos GALs focus group).

Fear of breach as a barrier to accessing support

The issue of accessing support and the fear of being in breach of the *in camera* rule was also something that emerged across the focus groups discussions. One participant suggested that the *in camera* rule needs to be “*reframed, or recalibrated around*

³⁸⁵ For more information on this issue, see recent publications by the *Social Media Abuse, Online, & Digital Abuse of Social Workers and Probation Officers* research study at University College Cork - <https://www.ucc.ie/en/appsoc/research/projects/smoa/> (Date accessed: 16/05/2025) and Kenneth Burns, Olwen Halvey, Fiachra Ó Súilleabháin, Elaine O’Callaghan and Gabriel Coelho (2024) ‘The social media, online and digital abuse and harassment of social workers, probational officers, and social work students in Ireland: A national survey’, *British Journal of Social Work*, 54: 3274-3294 [open access], available from: <https://academic.oup.com/bjsw/article/54/7/3274/7690180>

ensuring...the privacy of the child it's been taken into care that their privacy is protected as opposed to creating a block for parents to seek support" (Participant 1, Child Law Project focus group), a view that was reflective of many others.

Some participants contended that *"it's the fear of breach, which is probably curtailed an awful lot of behaviour"* (Participant 1, Policy makers focus group). Members of the Legal Aid Board focus group noted that is their practice to warn clients that if the *in camera* rule is breached, it is punished by a term of imprisonment.

One of the legal professionals in the focus groups said they sometimes re-enter proceedings, where they are saying that there's been a breach of the *in camera* rule but *"really it's just to send a warning shot really to get the person into court and have the Judge have a chat with them to get them to stop doing what it is that they're doing"* (Participant 3, Solicitors representing Tusla focus group).

Mainstream media and breaches

"... the constant balancing exercise you have to do all the time". (Participant 2, Media focus group)

Some of the journalists who took part in the focus groups spoke about the fine line between reporting cases of public interest and breaching the *in camera* rule. One journalist spoke about the very good guidelines that were set down by the Judge while they were covering a high-profile family law case. However, despite this, they said that:

... it's quite difficult to...balance not identifying the child or getting across the issues because sometimes the age is very relevant, like in custody battles or whatever the location of a school or school or this kind of thing. And sometimes you can find yourself having to leave out important detail to ensure that the child isn't identified. That's just part of the constant balancing exercise you have to do all the time. (Participant 1, Media focus group)

Another journalist spoke about an action taken against them [newspaper] in this regard. They recalled having reported on a written judgment but said *"the Judge probably put in a bit too much detail"* and that you *"can't even rely on the judgments. Now you have to be extra careful not to include, sanitise it even more like from what's in the written judgment to make sure you don't break the in camera rule"* (Participant 2, Media focus group). This was also brought up by another participant who cautioned against reporters including too many details, and while some reporters don't go into the *"gory details"* they can inadvertently identify the child (Participant 5, Child Law Project focus group).

The next section explores focus group members' views in relation to how the *in camera* rule is communicated to those who come before the courts.

6.7 Communicating about the *in camera* rule

Focus group participants were asked a question in relation to how the *in camera* rule is communicated to people using the services of the Irish family law courts. The researchers wanted to gain an insight into where people are getting information on the *in camera* rule

from. A number of professional participants were of the view that communication in relation to the *in camera* rule is both insufficient and inconsistent. One participant noted that, in their view, it is not fully communicated from the start (Participant 4, Policy makers focus group), while another participant contended that *“it’s only explained when it’s breached, but generally it would not be explained”* (Participant 4, Social workers, Tusla focus group B). Confirming this view, Participant 2 of the Barnardos GALs focus group said, *“nobody bothers too much with it until suddenly it’s breached and then everybody’s in big trouble”*. Another professional indicated that some Judges make an automatic assumption that parties know what the *in camera* rule is (Participant 5, Child Law Project focus group). As we learned from the national survey reported in Chapter Four (see figure 4.4), 55% of participants reported that the rule was not explained to them.

What emerged from the findings in relation to communicating the *in camera* rule, is that there is a level of inconsistency in practice. Participants’ views differed in relation to whose responsibility it is to communicate the rule. Some were of the firm belief that it rests with one person or professional, while others were of the view that it doesn’t fall to any one particular person or professional. Participants also provided an insight into the varied ways in which the *in camera* rule is explained highlighting different practices adopted by different Judges. For example, one participant said that they are aware of *“one registrar [who is] is fantastic and spends about 90 seconds before ... with the Judge sitting there explaining what you can and can’t do in court”*, but went on to say that *“other registrars say nothing and Judges say nothing”* (Participant 4, Office for Legal Services, Tusla focus group).

There was a view amongst many professionals that there is a collective responsibility for those working with families and young children to explain the *in camera* rule and that it is *“definitely a message that needs to be communicated...consistently across of lots of different professionals”* (Participant 4, EPIC focus group). It was noted by one participant that *“there’s a few people along the road”* that need to explain the *in camera* rule, *“but somebody should have the ultimate responsibility to make sure people understand it”* (Participant 5, EPIC focus group). Many participants believed that Courts Service, legal practitioners, advocacy and support professionals, Tusla as well as registrars and Judges all have a role to play in communicating the *in camera* rule.

Amongst the legal professionals focus group, it was the general view that if parties had legal representation that it would be up to their legal teams to inform their clients about the *in camera* rule. There was the view that lay litigants require even more communication about the rule from the Courts Services through to the Judge. However, this group also held the view that the Judge has an important role to play in setting the tone for the importance of the *in camera* rule. Put by one participant:

the role of the Judge is super important in how the practitioners and the clients and the respondents and applicants all interpret the in camera rule...it’s very much a trickle-down system. (Participant 3, Legal professionals focus group)

Others questioned how practical it is for Judges to explain the *in camera* rule to everyone who comes before them. One participant posed the following question:

Is it the role of the Judge in court? Because if you know if you take a busy family law list for every case, if the Judge has to explain the in camera rule, you know you're eating into valuable time, you know, five or six cases, maybe at the end of the day, we'll get won't get heard because they're, you know, they're going into that explaining. (Participant 4, Courts Service focus group)

Another participant was of the view that even solicitors might not have the time to explain the *in camera* rule to clients and made the following comment:

...you can only make a living as a solicitor in those courts with volume. So, you turn up and you have 10 clients a day. You simply don't have time to spend 20 minutes or even 5 minutes explaining the in camera rule. (Participant 4, Office of Legal Services, Tusla focus group)

Focus group participants also spoke about the differences between Judges and courts in the operation of the *in camera* rule. This will be discussed below.

6.8 Differences between Judges and courts in the operation of the *in camera* rule

There is a wild difference (Participant 3, Social workers, Tusla focus group B).

Many of the participants in the focus groups identified differences between Judges and jurisdictions in relation to the operation of the *in camera* rule. Participants shared practices that they experienced where Judges took different approaches to *in camera* rule and oftentimes contrary to what they understood the *in camera* rule to be. Others were of the view that each and every Judge sets the tone in relation to how the *in camera* rule is applied and it was apparent that many of the professionals encountered situations where “*every different Judge might have a different way of approaching it*” (Participant 1, Office of Legal Services, Tusla focus group). One participant referred to the standard that is set by the presiding Judge to which everyone then follows. They described it in the following way:

...the role of the Judge is super important in how the practitioners and the clients, and the respondents and applicants all interpret the in camera rule. So, it's very much like it's very much a trickle-down system... If the Judge who is presiding over the District Court... has strict rules in relation to a certain topic. Then everybody falls in line. (Participant 3, Legal professionals focus group)

Numerous focus group participants pointed out the stark differences that exist between courts in and outside of Dublin.

Differences between judicial practices in Dublin and outside of Dublin

“...the discrepancies between the judicial practices in Dublin and outside Dublin are huge issue”. (Participant 3, Social workers, Tusla focus group B).

One participant recalled an example of having attended court to apply for the lifting of the *in camera* rule to share a court order with the Gardai and school only to have been berated by the Judge for wasting time and resources saying that it should just have been given to them. Other anomalies and inconsistent practices were pointed out. For example, another participant claimed that a solicitor can go into court outside of Dublin to get the *in camera*

rule lifted without giving notice to the relevant parties, but for a Dublin-based case *“there’s notice given to the parents if we’re making an application to lift the ‘in camera’ rule, they’re brought in. They give their view on it”* (Participant 2, Office for Legal Services focus Group 16). Further highlighting these differences, a support professional talked about the difficulty this inconsistency poses for their organisation:

So, if I’m talking to somebody down the country or I’m talking to someone in Dublin, the inconsistency is just so obvious and you know, even for us, giving out kind of any kind of guidance or advice that makes it a very it’s a very challenging space to be in (Participant 1, Community organisations focus group).

One focus group participant indicated the arbitrary nature of how courts are run and said that *“...in some parts of the country, it will operate totally differently, partly based on personal relations between the various professionals. So...like any element of the law, it shouldn’t be potluck around the country”* (Participant 1, Child Law Project focus group). In another focus group, a participant pointed out the differences between courts referring to the *“different procedures, they use different forms”* (Participant 4, Community organisations focus group). They went on to claim that *“Judges have different ways of doing things”* and *“it’s not one-size-fits-all, and even though the Courts Service has a procedure, it’s not always followed and it’s hard to pick up on that”* (Participant 4, Community organisations focus group). They posed the following question:

Why certain outcomes are happening in certain jurisdictions? Why certain outcomes are happening with certain Judges? Because of that lack of transparency in and around the cases (Participant 4, Community organisations focus group).

Many of the discrepancies referred to above were put down to differences in interpretation of the *in camera* rule by one focus group member who said: *“I think this is where this particular rule is falling extremely foul of the original intention is that there’s far too many interpretations”* (Participant 5, Community organisations focus group). Another difference in practice approaches across the jurisdictions was identified in the mediators focus group where some members spoke about court stamps that allow for the automatic lifting of the *in camera* rule in Dublin (Dolphin House) for information to be shared with mediators but that this practice does not operate outside of Dublin.

Clearing the courtroom and media

“Each Judge is an island”. (Focus group 7, participant 3)

Another issue that was mentioned in the different professional focus groups was the approach taken to clearing the courtroom and how some Judges apply a strict clearing of the courtroom to only include parties to the proceedings and their legal team, while others apply it so as just to empty the room of members of the public. In fact, one professional said that from their experience *“there is no distinguishment made between who’s a party to the proceedings and who should be there”* (Participant 5, Child Law Project focus group). A member of the Child Law Project indicated that it is very court specific and said that the practice of clearing the courtroom *“does vary around the country that in some courts you will be. It’ll be very strictly adhered to, and everybody will be asked to leave*

and they'll be the Judge will be questioning who are the other randomers sitting in the back of the courtroom" (Participant 1, Child Law Project focus group). This issue was also identified and addressed in the section relating to breaches of the *in camera* rule (see section 6.6).

In the media focus group, there was also the view that *"there's inconsistency in terms of the application and there's not a lot of knowledge among some Judges in relation to the rule. Some are very flexible"* (Participant 1, Media focus group). The same participant said that while some Judges won't inform parties that media are sitting in on a case, others will put it to parties in such a way that it almost encourages parties to object. They said while most Judges do their best to facilitate media presence, others don't really have a grasp of how the rule operates. Journalists also spoke about the arbitrary nature of having documents released to them and that *"it's completely arbitrary at the moment whether you'll get access to court papers...even among the family law barristers and solicitors and definitely the Judges, yet completely, it's arbitrary, like, depending on which Judge and lawyer you're dealing with"* (Participant 2, Media focus group).

6.9 Summary and analysis

While there was little consensus amongst professionals concerning the scope of the *in camera* rule in terms of its operation, one area where there was agreement was with respect to the need to clarify the rule in terms of nature and scope for both public and private family law proceedings. Professionals spoke about a collective lack of clarity and understanding of the *in camera* rule that resulted in misinterpretations and misapplications of the rule in some instances in practice. Participants believed that due to the lack of clarity on the operation of the rule, clear guidance and communication that is consistent in nature is needed for everyone, from those implementing the rule to all those that it directly affects.

While it was acknowledged that a key strength of the rule is to protect children and parties to the proceedings, many examples were provided by professionals in the course of their work which demonstrates that this goal of privacy at all costs is not successfully achieved in all instances. Indeed, an example from the Courts Service focus group was that official legal judgments are as a matter of course placed online which may inadvertently contain identifying information thus breaching parties privacy rights; practitioners spoke to the varied and individual approaches taken by Judges to clearing the courtroom oftentimes compromising parties privacy; and finally the poor infrastructure of some of the courthouses in Ireland, particularly those outside of Dublin in more rural areas, are not conducive to maintaining the privacy aspirations of the rule. In the context of child care cases, privacy rights of children and families may be breached where the gardai have to enforce an emergency care order at a parties home in front of neighbours and onlookers. The reporting of criminal cases can inadvertently identify children in care where the defendant states this in mitigation.

On the other hand, professionals gave examples of where strict applications of the rule can impact the human rights of children and families. For example, a strict interpretation

of the rule can result in individuals not being able to freely access necessary therapeutic supports; parties can be denied the support of a court accompaniment or an interpreter due to potential for the third party to breach the rule which can impact effective access to justice; and the withholding copies of court reports (allowing a person to have time to digest its contents in a non-pressurised environment or a child to have access to a report written about them) which can also significantly impact children's rights to information and access to justice rights. Taken in isolation, these are all examples of potentially serious infringements of the human rights of parties.

For children and young people impacted by proceedings, examples were provided by focus group participants which pointed to the potential negative impacts on their enjoyment of fundamental rights and freedoms. In the context of child care proceedings, similar to the experiences of some of the Judges, a lack of clarity regarding when the rule ends was of particular concern, with some professional participants believing that the protection ends at the age of 18 years, while others understood that it has to be maintained for a lifetime. There was a similar lack of clarity with respect to private family law cases. This was highlighted as particularly problematic when a strict reading/interpretation of the rule is applied, children in care cannot self-identify as being in care which directly impacts their rights to freedom of expression.³⁸⁶ The requirement not to speak to children about the conduct of family law or child care proceedings in a matter which impacts them is also a direct infringement of their right to information³⁸⁷ and their right to have an input into such matters.³⁸⁸ Similarly, an example was given by professionals where children and young people in care experience discrimination³⁸⁹ since because of their care status, they are not treated in the same way as their peers in school with regard to celebrating achievement for fear of them being identifiable in a published format.

The lack of clarity concerning sanctions was also highlighted by professionals and community groups as particularly problematic, with a largely inconsistent approach adopted by the courts in such cases. The lack of clarity creates unnecessary worry, stress, and uncertainty for the professionals working within the system, often resulting in particularly narrow interpretations of the rule for fear of breaching the rule.

³⁸⁶ As protected under Article 13 of the UN Convention on the Rights of the Child 1989.

³⁸⁷ Article 17 of the UN Convention on the Rights of the Child 1989.

³⁸⁸ Article 12 of the UN Convention on the Rights of the Child 1989.

³⁸⁹ Article 2 of the UN Convention on the Rights of the Child 1989.

Chapter 7: Discussion & recommendations for reform

7.1 Introduction

Reform of the family justice system in Ireland has been the source of much discussion and debate for decades now. While the observations of Flockton date back over 20 years, the current research confirms that the frustrations felt by many due to the operation of the *in camera* rule still ring true today:

There is a high level of frustration in all quarters about family law issues. On the one hand, most people who are seeking some kind of remedy in the family court are relieved to know that when their case is going on in court, no one except the parties and their representatives will be permitted to be present during the proceedings. On the other hand, many people who want to talk about their experience in the family courts, because they feel aggrieved about some issue arising from their court case in a family law matter, are prevented from doing so by the “*in camera*” rule. They are forbidden from referring to the circumstances of their case or issues that arise from their experience in a family law case even after the case is completed.³⁹⁰

While reform of the *in camera* rule in family law matters has been in the spotlight many times, never before have the collective experiences of those who directly experience or administer family justice been considered in this context. Given the current climate of ambitious family law reform, which is presently underway, and based on a comprehensive exploration of how the *in camera* rule operates in practice, it is now an opportune time to seriously reconsider the *in camera* rule with a view to reform. Drawing on the experiences of other jurisdictions, it is possible to design a model for Ireland which successfully promotes transparency and accountability while also protecting the rights of children and parties to proceedings.

The research data and analysis presented in the preceding chapters mirrors and confirms the key weaknesses of the *in camera* rule which have been identified over the last 30 years.³⁹¹ It is fortunate that the current research was able to examine and learn from initiatives from other jurisdictions, some of which have recently introduced significant and important changes which are specifically designed to enhance transparency and promote public confidence in how family justice is delivered.

Whilst the issues concerning the operation of the *in camera* rule are well documented, this is the first report that presents comprehensive empirical research and an evidence base to underpin any changes which may be made to the rule. This research identified that while the *in camera* rule was problematic on several fronts, it cannot be viewed in isolation to the more substantive issues within the broader family law system. This study is set within a wider reform context of family law proceedings in Ireland and should be read in

³⁹⁰ Siobhan Flockton, *The Family Law Reporting Project*, *The Bar Review* 2003, 8(4), 174-176 at p. 174.

³⁹¹ See Chapter One above.

conjunction with the *Family Justice Strategy 2022-2025*³⁹² and associated initiatives, including the process of review of the Child Care Act 1991,³⁹³ the establishment of a Guardian *ad litem* service,³⁹⁴ *Review of the Role of Expert Reports in the Family Law Process*,³⁹⁵ the *National Strategy on Children and Young People's Participation in Decision-Making*,³⁹⁶ and the *Parental Alienation Policy*³⁹⁷ paper from the Department of Justice.

7.2 Renaming the *in camera* rule

While the phrase under the Constitution and legislation “otherwise than in public” is technically the correct term,³⁹⁸ this does not provide sufficient clarity concerning what the *in camera* rule encompasses. It was clear from the survey data, in particular (mostly parents (see Chapter Four), that use of an archaic term like “*in camera*” contributed to the confusion of parents and families and their lack of understanding of the rule. The fact that a Latin term is used in place of ‘otherwise than in public’, naturally leads to a misinterpretation; for example, some survey participants believed that it refers to the use of a camera in court. Each of the jurisdictions explored in Chapter Three used clear language to explain how family law matters are heard.

Recommendation 1: Rename the *in camera* rule

- It is recommended that a new title be given to this rule which is accessible for all family law court service users. This should be given priority so that there is a clear, concise explanation which is reflective of the actual meaning of the rule. It is recommended that a renaming of the rule to the ‘privacy and transparency rule’ would maintain a proportionate balance.

³⁹² *Family Justice Strategy 2022-2025*, available from: <https://assets.gov.ie/239772/7a41d453-19b8-403d-8022-296322e796f8.pdf> (Date accessed: 31st August 2024).

³⁹³ *Landmark review of the Child Care Act 1991 receives approval to be drafted*, available from: <https://www.gov.ie/en/press-release/d9872-landmark-review-of-the-child-care-act-1991-receives-approval-to-be-drafted/> (Date accessed: 31st August 2024).

³⁹⁴ Child Care (Amendment) Act 2022 and recruitment of the Director of the Guardian *ad litem* national service: <https://assets.gov.ie/297867/3e7a7cc5-f3fe-48b1-954f-be5af7677587.pdf> (Date accessed: 16/04/25).

³⁹⁵ Department of Justice, *Review of the Role of Expert Reports in the Family Law Process* <https://www.gov.ie/pdf/?file=https://assets.gov.ie/295856/f52bb897-bb6f-4fbc-b4de-5aa7fab484f5.pdf#page=null> (June, 2024). A Judicial Committee has recently been established to develop guidelines on the commissioning, content and use of welfare reports chaired by the Honourable Ms Justice Nuala Jackson of the High Court, who is also a member of the Family Justice Implementation Group. A ‘Voice of the Child’ working group has also been established by the Department of Justice which will examine the effectiveness of the current arrangements for hearing the voice of the child in private family law cases and alternative dispute resolution (ADR) processes, if appropriate. The group will also develop aspects of the Children’s Court Advocate pilot project.

³⁹⁶ Department of Children, Equality, Disability, Integration and Youth (2019) *National Strategy on Children and Young People’s Participation in Decision-Making*, available from: <https://www.gov.ie/en/publication/9128db-national-strategy-on-children-and-young-peoples-participation-in-dec/> (Date accessed: 14/04/2025).

³⁹⁷ Department of Justice, *Parental Alienation Policy Paper*. <https://www.gov.ie/pdf/?file=https://assets.gov.ie/258416/4d8970d1-3714-49ca-b35f-f4b39f0152ba.pdf#page=null>. (Date accessed: 15/11/24) *Parental Alienation: A Review of Understandings, Assessment and Interventions* (May 2023); <https://www.gov.ie/pdf/?file=https://assets.gov.ie/258414/f72c1cbe-06bc-4595-8021-f6c64126c0bf.pdf#page=null> (Date accessed: 15/11/2024).

³⁹⁸ The term ‘*in camera*’ does not appear in most of the pieces of legislation but has come to be used as the term of choice in this context. It does appear in Court rules, however.

7.3 Parameters of the rule

A conclusive finding of this study is that there is a wide variety of definitions of the *in camera* rule between family service users, professional participants and Judges as to what the rule means, and what it permits. This included all those professionals who implement the rule, right through to those who it directly affected to be provided with clear, accessible guidance concerning what the law is, what it means for them, and what may happen if the law is broken. Indeed, Judges themselves also acknowledged a degree of difference in approach between them and their colleagues in relation to the operation of the rule. The current absence of a clear definition of the *in camera* rule inevitably lends itself to differing interpretations, confusion and uncertainty. Thus, it is not surprising how many legal practitioners said that: they were not clear (or clear enough) about the rule; that the interpretation of the rule differed between courts and Judges; and it was striking how many parents (both legally represented and lay litigants) claimed they were not informed about the rule in the normal course of their court proceedings.

There was overwhelming support amongst all participant cohorts for clear guidance concerning the parameters of the rule's application as well as consistent and transparent communication as to what the rule encompasses. Under the current legal framework, there is no one source of information which sets out the parameters of the rule. Indeed, as seen in Chapter Two above, interpretations concerning the application and operation of the rule are scattered throughout various cases and pieces of legislation.

Recommendation 2: Establish a clear definition of the rule

- It is recommended that the 'transparency and privacy' rule be clearly and consistently defined in law, policy and practice. The same definition should apply across all relevant legal proceedings.
- It is recommended that when defining the rule that it does not extend further than is necessary to the extent that its operation impacts constitutional or legal rights, but also constitutional principles of justice, which are foundational to a democratic system.
- It is recommended that family law proceedings (private and public) should continue to be held 'otherwise than in public' as set out in Article 34.1 of the Irish Constitution, family law legislation, and Child Care Acts (as amended).

The lack of clarity surrounding the *in camera* rule has, in practice, resulted in a number of "just in case" applications to the court to lift the rule. Indeed, Judges interviewed were clear that if, for any reason, a decision made by the court via court order had to be given to any third party, whether that be a school for the purposes of who can collect a child, or

to a mediator, or for communications between the Health Service Executive (HSE) and Tusla for example, then an application should be made for the *in camera* rule to be lifted.

Many parents in the survey were simply unaware of their obligations to seek a lifting of the *in camera* rule for these purposes. While it was clear from Chapters Five and Six that, in practice, most Judges will consent to lifting the rule when appropriate, there still remains an issue concerning access to justice. An application to lift the rule can involve further costs, delays and stress to litigants, and in some cases, such delays can detrimentally impact the rights of children. There is also an argument to be made that the need to apply for permission to transmit necessary court information concerning children infringes on parents' and guardians' ability to exercise their rights as parents.

Rather than having a requirement to lift the *in camera* rule in all cases where access is required to information relating to proceedings, other jurisdictions clearly set out in legislation what information can be shared with professionals engaged in the proceedings, with State agencies and other relevant bodies. In addition, provision is made in other jurisdictions such as Australia and the UK (England and Wales) for parties to apply for a copy of their family law transcript at a fee.

Finally, family service users made reference to the fact that there was a scarcity of statistical data available giving sufficient detail concerning the administration of various aspects of private family justice in Ireland. While it is acknowledged that the Courts Service publishes some statistical data concerning applications made, orders given, etc, further breakdowns of these statistics would be instructive in terms of identifying trends in family law.

Recommendation 3: Facilitate timely and efficient information sharing

- It is recommended that certain individuals, professions and services (which may include foster parents, those in *loco parentis*, schools, HSE CAMHS services) should have automatic access to redacted versions of the court order akin to the approach of Australia under section 114S(2) which provides that “is not a communication to the public ... (f) a communication of material intended primarily for use by the members of any profession (being part of a series of law reports or any other publication of a technical character); (g) a communication of an account of proceedings to a member of a profession in connection with: (i) the person’s practice of that profession; or (ii) any form of professional training in which that person is involved”. Eligibility for this purpose should be dependent on membership of a regulated profession (for example, CORU, The Teaching Council, etc.).
- It is recommended that similar to the positions in the UK (England and Wales)³⁹⁹ and Australia,⁴⁰⁰ parties to proceedings be permitted to request a copy of the transcript, of the Digital Audio Recording (DAR) pertaining to their family law proceedings (or part of those proceedings) without having to get permission from the presiding Judge. This should be subject to strict privacy rules to ensure that the contents of the DAR recording are not made public.
- It is recommended, in the interests of transparency and fairness, that an efficient mechanism be introduced so that all cases connected to the parties can be systematically tracked between courts and Judges across the country. For example, a unique reference number, similar to what is used in the Irish Health Service Executive, could be allocated to each party once they first engage with the court system and this number would attach to them for future reference. This would facilitate a stronger and more robust system of data collection for family law.

In a variety of ways, family members felt that the *in camera* rule had a prohibitive effect and operated as a type of ‘gagging order’ which stopped them accessing necessary formal and informal supports. For example, parents and families were of the view that the *in camera* rule can act as a barrier to having support both inside and outside of the courtroom.

Add to this a prohibition on parties accessing therapeutic supports, whether formal or informal, and rights of access to justice being detrimentally impacted, and an extremely

³⁹⁹ HM Courts and Tribunals Service, Guidance for requesting a transcript <https://www.gov.uk/government/publications/order-a-transcript-of-court-or-tribunal-proceedings-form-ex107/guidance-for-requesting-a-transcript#private-hearing-transcripts> (Date accessed: 09/05/25).

⁴⁰⁰ Commonwealth Courts Portal, Court recording and transcription services <https://www.fcfsa.gov.au/recording-transcripts> (Date accessed: 09/05/2025).

negative picture of family justice starts to emerge. For children and young people in private family law cases, the *in camera* rule has effectively operated to render the true implementation of their right to be heard unworkable in practice. If children cannot be informed about the decision-making process in a child-appropriate manner, they cannot be expected to be in a position to provide input which is in any way meaningful.

Professionals also acknowledged that strict applications of the *in camera* rule can result in individuals not being able to freely access necessary therapeutic supports; parties can be denied the support of a court accompaniment or an interpreter due to the potential for the third party to breach the rule; and withholding copies of court reports (allowing a person to have time to digest its contents in a non-pressurised environment). There was a clear view amongst professionals that parties are not at liberty to speak to the content of proceedings themselves. However, what was less clear was the limits to what could be spoken about outside of that. Some Judges and solicitors expressed a humane and realistic view that they understood that the experience of family law proceedings is challenging for participants and that it is not practical, nor good for the welfare of those party to the proceedings, to not be allowed to talk to a supportive person about it. Some Judges in this study were of the view that people were at liberty to talk about their experiences of going through the judicial process as long as they did not discuss the confidential details relating to the proceedings or share court documents. On the other hand, some of the Judges interviewed took a strict approach indicating that where litigants wished to discuss the content of proceedings in a therapeutic setting, they technically would be required to seek leave from the court. In practice, however, it can be challenging for individuals to draw the line between one's experience of the family court and what is discussed in family court, and so, in the absence of clarity in such cases, some survey participants said that they avoided accessing support when needed.

International experiences have demonstrated that clarity in the form of law or rules has proved effective in delivering a pragmatic response for these situations. For example, the *Family Law Act 1975*, ss. 114N, 114S (1) in Australia provides that public communication does not include private communications between a party to proceedings and members of their family or their friends. Similarly, in England and Wales, rule 12.75 of the Family Procedure Rules 2010 provides "...that a party to proceedings may communicate information relating to family law and child care proceedings to any person where necessary to enable that party: (a) by confidential discussion, to obtain support, advice or assistance in the conduct of the proceedings".

Recommendation 4: Permit private communications

- It is recommended that a pragmatic approach be adopted in Ireland which would allow private communications between parties to public or private family law proceedings and their family members and friends as to what is happening in Court to seek support and/or access to services. These should be defined in the rule as not being public communications. This would be akin to the models in the United Kingdom and Australia.

Special consideration should be given to the issue of whether litigants in domestic abuse and coercive control cases can seek the permission of the court to lift the rule to waive their anonymity in order to identify their abuser, similar to sexual abuse and sexual assault cases. Concerns have been raised about how this would impact the children in the family; however, in the context of criminal proceedings, the law was recently changed to allow survivors to waive their anonymity with a view to their abuser in sexual assault cases being publicly identified. The aforementioned concern regarding children has not proved to be an insurmountable barrier in these criminal cases. It is unclear why it would be any different for children in a family law context, provided reporting restrictions are adhered to. However, it is worth noting that the burden of proof is different where applications are made for domestic violence orders, as opposed to criminal proceedings for the breach of a domestic abuse order, or sexual abuse and sexual assault.⁴⁰¹

Recommendation 5: Permission to waive anonymity (lift the *in camera* rule) in cases of domestic violence

- It is recommended that the Courts retain discretion to lift the *in camera* rule in cases where it is deemed in the interests of justice to do so.
- It is recommended that litigants in domestic abuse and coercive control cases should be able to seek the permission of the court to lift the rule to waive their anonymity in order to identify their abuser, similar to sexual abuse and sexual assault cases.

⁴⁰¹ In this context, it is worth noting here that recently the Minister for Justice Jim O'Callaghan has indicated that Ireland may adopt a register of domestic violence offenders, in line with the UK's Clare's Law. Register of domestic violence offenders will not be a 'vigilante's charter' insists Justice Minister
<https://www.independent.ie/regionalstipperary/news/register-of-domestic-violence-offenders-will-not-be-a-vigilantes-charter-insists-justice-minister/a1038720246.html> (Date accessed: 15/04/2025)

7.4 Balancing privacy and transparency

The cultural, social and legal context of Ireland today is a world apart from when the *in camera* rule was first introduced. The internet and social media have magnified concerns around misinformation and disinformation⁴⁰² circulating in society, making the need for transparency in the administration of family justice all the more critical. Added to this, over the past couple of decades, Ireland has witnessed significant social and legal change to family structures including a recognition of children's rights in family and child law cases. However, despite all of these positive changes in Irish society, what is strikingly absent is public knowledge and understanding of what goes on behind the closed doors of the family law courts, and based on the evidence produced in this report, this is due to the operation of the *in camera* rule. This is a significant concern since a democratic society depends on transparency in order to ensure faith and confidence in the administration of family justice. Any changes made to the *in camera* rule need to reflect wider changes in Irish society relating to norms regarding privacy, protection, paternalism, and political and social changes relating to family life. Ireland has become a more open and progressive society; however, there is still a residue of paternalism in both private and public family law (child care) proceedings.

Any departure from the general rule that justice be administered in public, must be no more than necessary to protect a countervailing right or interest. This approach is also reflected in the jurisprudence of the ECHR which recognises that cases can be heard in the absence of the public where necessary to protect the privacy of the child and the parties, to avoid prejudicing the interests of justice and to facilitate parties expressing themselves in an honest manner. The provisions of the Irish Constitution 1937 also dictate that the values of privacy, authority of the family and the constitutional rights of children must be protected.

The empirical findings of the current study found that the majority of participants (survey, interview and focus group participants) were of a similar view that, in theory, a key strength of the *in camera* rule should be that it protects children and family members involved in private and public family law proceedings.⁴⁰³ However, while participants noted this was a theoretical strength of the rule, this was, in some cases juxtaposed by identifying many negatives which accompany the rule's application including the potential infringement of other rights and the administration of justice more generally. In the current context, while maintaining privacy for children and parties is important, so is the preservation of the integrity of the proceedings, this should not come at a cost to individuals.

New Zealand and the UK (England and Wales), two common law systems, continue to administer family justice in private. However, in the context of both jurisdictions having undergone periods of review and reform, while privacy of parties and children is

⁴⁰² National Counter Disinformation Strategy Working Group, <https://www.gov.ie/en/publication/04f9e-national-counter-disinformation-strategy-working-group/> (Date accessed: 11/4/2025).

⁴⁰³ From a breakdown of the public survey results concerning the strengths of the rule for example, 150 participants were agreed that a strength of the rule is that it protects either children or parties or both to the proceedings. 34 participants were of the view that the rule facilitates privacy but at a price and finally, 85 participants felt the rule resulted in no positives.

maintained, there are sufficient legal measures in place to ensure that transparency is successfully achieved through other means so that the public can continue to have confidence in the operation of the system.

Recommendation 6: Protect the privacy rights of children and parties in family law proceedings

- It is recommended that the privacy rights of children and parties to all types of family law proceedings be maintained with the adoption of other legal measures to ensure transparency.

It is well established under international and European law that a *de minimus* approach should apply when restricting access to the public administration of justice. Given the ever-increasing number of individuals seeking justice before the family law courts, it is imperative that family justice is seen to be done. However, a key finding of this research study is that there is a complete lack of transparency in the administration of private family justice in the District and Circuit family law courts in particular. In public family law proceedings, while transparency is promoted through the Child Law Project, there is potential to further enhance visibility of court decisions through anonymised reporting.

A strongly held view amongst the survey participants is that the *in camera* rule can facilitate a lack of accountability of those who work within the system which effectively undermines public faith and confidence in the system. It was the contention of some survey participants that the *in camera* rule can operate to protect professionals engaging in problematic behaviours rather than those it was designed to protect. Some participants were of the view that the *in camera* rule shields professionals from the consequences of their mistakes. Judges were generally of the view that the public needs to know what goes on in family law cases and child care proceedings, with one Judge in agreement with the publicly held view that the public cannot report on a situation where a Judge engages in misconduct due to the *in camera* rule.

Due to the unique and complex nature of family law matters, judicial discretion has always been a fundamental feature underpinning family law decision-making. However, while this is important, what is equally important is that people understand the reasons behind the decisions being delivered. In the context of private family law judgments in the District and Circuit Courts,⁴⁰⁴ absent a reporting mechanism, there is no insight into how and why decisions are made concerning private family law matters. Indeed, this was reflected in the strong words of family court users with words such as ‘concealment’, ‘secrecy’ and ‘silence culture’ being used to describe their perceptions of the family law courts. This view was echoed by professionals who also reported that for members of the public, not only was there insufficient information available concerning how the courts work but for

⁴⁰⁴ From a search of <https://www.courts.ie/judgments> (Date accessed: 16/04/2025) over a ten year period (01 January 2015 – 14 April 2025), it appears that just four private family law judgments have been published from the District Court.

professionals, it also limited their ability to advise and inform. Since the majority of guardianship, custody and access cases and all child care proceedings take place in the lower courts, the current lack of access to judgments for family law practitioners, makes it challenging to advise clients on what to expect in terms of decisions.⁴⁰⁵

Access to a limited amount of case law also ties the hands of academics and students of family and child law, resulting in a legal education which is largely based on theory and anecdotes. In the context of child care proceedings, where there is State intervention in the privacy of the family, there is a stronger responsibility to ensure transparency in line with ECtHR case law as discussed in Chapter Three. While there are reported judgments from the Higher Courts in private family law cases, these are not necessarily reflective of the issues that would arise in the lower courts on a daily basis. Furthermore, the frequency and rationale for reporting judgments are not clear. This together with the limited statistical data available, the absence of a mechanism for tracking cases and the overall absence of media attention to private family law cases more generally, serves to compound the problem.

In child care proceedings, there was a consensus amongst professional participants and judges that transparency in terms of the administration of justice is promoted through the reporting of the Child Law Project. Thus, there is a need for the current reporting mechanism for child care proceedings to be placed on a statutory footing so that it is continually resourced and maintained, with the need for something similar in the private family law context.

For example, as is the established practice across many jurisdictions, Australia and the UK (England and Wales) have committed to publishing a portion of anonymised family law judgments on an annual basis. Indeed, the recent reforms in the UK (England and Wales) initially saw a commitment to publish a minimum number of judgments. While committing to publishing a certain percentage of family law judgments may prove unworkable due to resources, in order to be ECHR compliant, Ireland must aim to publish more anonymised judgments at all levels of the Courts where final orders are made. In order to achieve this aim, a similar model to that recently adopted in the UK (England and Wales) may be appropriate, where a dedicated anonymisation team is established to support members of the judiciary in publishing anonymised judgments.

While it is recognised that resourcing is a relevant consideration when determining the quantity of judgments to be published, it is also important to remember that the administration of family justice and compliance with our international human rights obligations, require that the number of published judgments from the lower family law courts increases to a significant degree. The Government, together with the courts, are encouraged to provide sufficient resources in place to enable efficient anonymisation and publication of family law judgments of as many family law judgments as possible. There

⁴⁰⁵ Upon a search of <https://www.courts.ie/judgments> ((Date accessed: 16/05/2025) between 01 January 2015 and 14 April 2025, using the search terms 'CFA' or 'Child and Family Agency' or 'TUSLA' in the District Court, there were 66 reported judgments. However, there were just seven reported judgments in the District Court between 01 January 2019 and 14 April 2025.

should also be a comprehensive collection of statistical data that is routinely recorded and accessible, something which is already envisaged under Goal 6 of the *Family Justice Strategy 2022-2025*.

Recommendation 7: Increase publication of anonymised family law (private and public) judgments

- It is recommended that a well-resourced, systematic and firmly embedded system of reporting of anonymised family law judgments at all levels of court be established. While it is acknowledged that this is well established in the Higher Courts, there is a need to ensure that a number of judgments are also published from the lower courts in both family and child care proceedings.
- It is recommended that a minimum percentage (10-15%) of judgments from public and private family law cases be published on the Irish Courts Service website from all levels of courts, with priority given to those where there is a final judgment or where a case is of major legal significance.
- It is recommended that an anonymisation team, similar to that established in the UK (England and Wales) is created to support the work of the judiciary to facilitate the publication of these judgments.

Researchers contribute to transparency and public knowledge of the operation of family law proceedings. While there is an exemption to the rule to allow for researchers working with *bona fide* educational institutions to undertake research, this study found that many experienced researchers were of the view that the existing exemption is too limited. Their interpretation of the rule is that certain types of research approaches are not possible at present, or at least, that they would be exposed to an unacceptable level of risk of inadvertently breaching the rule. In addition, the current requirement to seek ministerial permission is seen as an additional barrier to engaging in academic research in this area and can potentially add to delays in conducting research. Clarity on what is permitted has been sought by research ethics committees in universities on the boundaries of the *in camera* rule when applying to undertake research on family law proceedings. The Joint Oireachtas Committee on Justice and Equality recommended that the rule should be reformed “...to expand the scope of researchers and others to investigate and report on the family law process, whilst maintaining the anonymity of individuals.”⁴⁰⁶

⁴⁰⁶ Joint Committee on Justice and Equality, Report on Reform of the Family Law System Dublin: Government publications, October 2019) p. 46.

Recommendation 8: Promote academic research in Irish family law

- It is recommended that legislative provision be made for *bona fide* academic researchers from third level institutions, to undertake research in the family law courts (public and private). This provision should make clear that academic researchers who have successfully applied for research ethics approval from their academic institutions and have applied for express permission from the Legal Research and Library Services Subcommittee on Judicial Participation in Research Projects where necessary, are permitted to conduct research in the context of public and private family law proceedings. The same reporting restrictions should apply, as well as sanctions for non-compliance. The types of research in this regard may include but are not limited to: qualitative research with all parties to the proceedings; surveys and qualitative research with parents, children and young people; and access to documents and files relating to proceedings, an approach that is currently adopted in the UK (England and Wales).
- It is recommended that the current legislative provision to seek Ministerial permission is removed for *bona fide* academic researchers who have secured institutional ethical approval to conduct research in Irish family law. Reporting restrictions relating to privacy would apply.

While the media can report anonymously in family law cases, this practice is not common, and therefore possibly has resulted in the public feeling that such proceedings cannot be reported on. What is perceived by the media as very tight restrictions has resulted in a prohibitive impact to the extent that there is limited reporting of such cases. This has sometimes resulted in public perceptions of misconduct going unchecked, perceptions of unjust and unfair outcomes and beliefs that the system can serve to facilitate the ongoing abuse of the rights of parties. Indeed, these were some of the reasons why the family justice systems in countries such as Australia and the United Kingdom (England and Wales) underwent significant reform with a view to increasing transparency and public confidence in the system. An approach like that of England and Wales that has actively sought to promote more reporting of family law cases, with the use of a transparency order⁴⁰⁷ is instructive here. Furthermore, the ability of reporters to join proceedings remotely as observers to proceedings, which has recently been the subject of practice

⁴⁰⁷ A Transparency Order contains the rules of what can and cannot be reported in family law proceedings. The Transparency Order allows reporters to report the case, but provides that other people must not publish information about the case.

guidance in the UK family courts, would be particularly helpful in terms of encouraging more reporting on private family law cases.⁴⁰⁸

Recommendation 9: Promote a system of open media reporting in private and public child care proceedings

- It is recommended that there is a presumptive right for all journalists and other authorised members of the media who are members of the Irish Press Council and subscribe to its ethics and standards and/or those of Commission Na Meán, (similar to how this operates in the UK (England and Wales)⁴⁰⁹ to attend all private and public family law hearings at all court levels. However, Judges should still retain discretion to refuse access in specific circumstances, but the intention is that members of the media should be able to attend most hearings.
- It is recommended that media are provided with clear and comprehensive reporting guidelines and training that support the reporting of family law cases in a proportionate manner. The *UK Jurisdictional guidance to support media access to courts and tribunals: Family courts guide (accessible version)* (Updated 11 March 2025) is instructive in this regard.⁴¹⁰
- It is recommended that *bona fide* media, who are members of the Irish Press Council and subscribe to its ethics and standards and/or those of Commission Na Meán, should be permitted to speak to parties to the proceedings in a similar vein to that in the United Kingdom context where they must ensure that anything they publish, or report protects the anonymity of the parties and children concerned.

⁴⁰⁸ Courts and Tribunals Judiciary, Practice Guidance on Remote Observation of Hearings – New Powers <https://www.judiciary.uk/guidance-and-resources/practice-guidance-on-remote-observation-of-hearings-new-powers/> (Date accessed: 02/06/ 2024).

⁴⁰⁹ Lawyers attending as “legal bloggers” must provide a form of identification which will enable courts staff to verify they are ‘authorised’. The following forms of identification are sufficient:

- a current practising certificate accompanied by picture identification of the lawyer and a signed written statement by the lawyer (see below for the content of that statement);
- confirmation on headed notepaper from the relevant Higher Education Institution (or Law School, Faculty or Department of that Institution) of the lawyer’s position and qualification, accompanied by picture identification of the lawyer and a signed written statement by the lawyer (see below);
- confirmation on headed notepaper from the relevant registered educational charity (specifying the registered charity number) of the lawyer’s position and qualification, accompanied by picture identification of the lawyer and a signed written statement by the lawyer (see below).

<https://www.gov.uk/government/publications/guidance-to-staff-on-supporting-media-access-to-courts-and-tribunals/jurisdictional-guidance-to-support-media-access-to-courts-and-tribunals-family-courts-guide-accessible-version> (Date accessed: 15/04/25).

⁴¹⁰ *Jurisdictional guidance to support media access to courts and tribunals: Family courts guide (accessible version)* Updated 11 March 2025 <https://www.gov.uk/government/publications/guidance-to-staff-on-supporting-media-access-to-courts-and-tribunals/jurisdictional-guidance-to-support-media-access-to-courts-and-tribunals-family-courts-guide-accessible-version> (Date accessed: 15/04/2025).

7.5 Communication about the rule

It is significantly clear that there needs to be a systematic means of communication of the *in camera* rule to all relevant parties to the proceedings, whether legally represented or lay litigants, as well as professionals. In practice, Judges in their interviews believed that professionals and support services, in the main, had a good working knowledge of the operation of the rule in their courts, but there are areas where clarity is warranted. Given the large number of people who completed the survey (see Chapter Four) who were not informed about the rule and/or had an incomplete understanding of the rule, greater clarity is required on roles and responsibilities of the Courts Service, legal professionals, and Judges to ensure that litigants have sufficient awareness and knowledge of the rule. Once the rule is clearly defined, there is clarity on the boundaries of the rule, and information on sanctions for breaches, there should be a clear and accessible communication strategy. See [Appendix A](#) for exemplar items to address in a communication strategy.

Recommendation 10: Provide clear communication to litigants about the rule

- It is recommended that a communication strategy is developed to improve awareness and understanding of the *in camera* rule for all parties involved in family law proceedings.

Any changes to the rule which governs transparency and privacy in family law proceedings would need to be supported by targeted training which focuses on how any changes to the rule should be applied in practice. The current research identified the need for training on the part of all professionals to ensure consistency in application of the privacy rule in family law proceedings. In the UK (England and Wales), the rollout of the Transparency reporting pilot was supported by training videos, manuals and materials for the Judiciary, professionals, as well as members of the public. In the context of the wider family law reform process currently underway and in the context of the establishment of a specialised system of family law courts, training on the operation of the rule should be mandatory for all involved. It should also form part of the tertiary education of new professionals working in the system as well as continuing professional development. Indeed, previous Irish research has also indicated the importance of training for members of the judiciary. In the context of the latter research, members of the judiciary highlighted that demands on their time often take precedence over training opportunities.

Recommendation 11: Provide training to professionals and Judges

- It is recommended that all legal practitioners, Judges and professionals that have engagement with family law (public and private) complete mandatory training on the operation of the rule. Where training is being provided in the context of the rollout of specialised family law courts, training on the changes to

the operation of the rule should form part of this with sufficient time and resources allocated for this purpose.

7.6 Courtroom support for parties to the proceedings

Currently, only parties to the proceedings, in addition to legal counsel and the Judge, are permitted to be present in the courtroom while an *in camera* hearing is taking place. Survey participants were very clear that being able to bring in a support person during a hearing would be hugely beneficial.⁴¹¹ While there is provision in law for circumstances where a lay litigant can make a request for a McKenzie friend to be present, this is at the discretion of the Judge. There is also a legal provision under the Domestic Violence Act 2018 for a court accompaniment, but a Judge has the ability to refuse this in cases where the interests of justice so require.

⁴¹¹ The pilot Barnardos *Parent Advocacy & Information Service* is an example of such a valuable court accompaniment service: <https://www.barnardos.ie/parental-advocacy-information-service/> (Date accessed: 16/05/2025).

Recommendation 12: Remove barriers to accessing support

- It is recommended that an approach consistent with that of Irish domestic violence or criminal law proceedings be adopted so that parties have the ability to bring in a court accompaniment in the form of an independent support person or service where required.⁴¹²
- It is recommended that an approach similar to New Zealand⁴¹³ be adopted, where the consent of the judge is required for a party to have a support person present with them in family law or child care proceedings. A Judge should only exercise discretion not to allow this person to attend where there are very good reasons for doing so.
- It is recommended that where a support person attends a family law or child care proceeding, the rule should be explained to them at the start of the proceeding.

7.7 Children's rights and the *in camera* rule

There was a divergence of views amongst professional participants as well as Judges concerning the potential impact of the rule on the rights of the child. However, the one common thread uniting all perspectives (survey participants, professionals and Judges) was that the child's right to privacy should be protected in both public and private family law proceedings. In the context of the other relevant rights of the child, the recognition of how the rights of children are potentially impacted by the operation of the rule in the context of child care proceedings appeared easier for Judges and professionals to envisage. Strict applications of the rule have potential implications for ensuring the child's best interests in all family law matters through facilitating the timely exchange of information between courts and State bodies.

In the context of child care proceedings, children who are in the care of the State have the same rights as other children not in care, including freedom of expression as well as the right to privacy. However, in practice according to some of the professional participants, where a child is in care, strict interpretations of the rule can operate to limit a child's rights to freedom of expression, identity, and family life. Some children who are in State care are effectively silenced when they wish to speak about their experiences if they are identifiable as a child in care (by way of court order). The rule should not operate to have

⁴¹² For example, [Victim Support at Court \(VSAC\)](#) and [Accompaniment Support Services for Children \(ASSC\)](#) provides court accompaniment (Date accessed: 16/05/2025). In the family law context, this support could be provided by existing child and family support services.

⁴¹³ *Family Courts Act 1980*, s. 11A(1)(f).

such a prohibitive impact on children exercising their human rights, except where there are concerns for their safety. In practical terms, where children are in State care, any definition given to the rule should not impact on how they are treated for the purpose of being involved in everyday activities and accomplishments such as winning awards, school, cultural and sporting activities, etc., except where there are concerns for their safety.

In accordance with the requirements of Article 42 A of the Irish Constitution 1937, children have a legal right to have input into private and public family law cases concerning them which is supported by the provisions of the Children and Family Relationships Act 2015. In practice, this requires that children be kept informed of the decision-making process impacting them and the circumstances surrounding their involvement. This right to be kept informed also extends to knowing how their views are reflected in the section 32 reports, where appropriate. Parents should be supported in explaining the implications of family law decisions made which directly/indirectly concern children. In order for children to have an authentic voice in proceedings which impact them, they must be kept informed of the process, something which is not possible under current interpretations of the rule.

Recommendation 13: Protect the right to privacy for children and young people

- It is recommended that the child's right to privacy should continue to be protected both in the conduct and reporting of public and private family law cases.

Recommendation 14: Ensure the best interests of children is central to proceedings affecting them

- It is recommended that the timely exchange of information pertaining to the best interests of the child is facilitated.

Recommendation 15: Ensure children in State care are not discriminated against

- It is recommended that children in the care of the State should not be discriminated against in terms of the exercise of their fundamental rights to freedom of expression and association due to the operation of the *in camera* rule.

Recommendation 16: Ensure children are informed and have an input into matters affecting them

- It is recommended that in accordance with the constitutional and legislative requirements to involve children in decision-making processes in both private and public family law cases, the operation of the *in camera* rule should not prevent children from being kept informed and authentically having a voice in matters affecting them throughout the family law process. As noted above, any communication between children and young people with parents or professionals or relevant services about family law or child care proceedings affecting them, should not be considered a public communication and should be permitted.
- It is recommended that children and young people impacted by child care or family law proceedings should have an authentic input into any proposed reform process concerning the *in camera* rule. Such a consultation was beyond the scope of the current report.

7.8 Breaches of the *in camera* rule and sanctions

In respect of breaches of the *in camera* rule, the more recent pieces of legislation which apply to media and academic reporting have very clear sanctions.⁴¹⁴ However, the potential sanctions that can apply to the parties for breaching the *in camera* rule in family law proceedings are less clear. There was a collective agreement amongst participants that the area of sanctions for breach of the *in camera* rule is a grey one. The consequences for a breach of the rule were described as vague and weak. Judges and professionals noted that breaches tend to range from unintentional breaches at one end of the scale to malicious breaches at the other. Malicious breaches tend to be treated as more serious due to their oftentimes repetitive and intentional nature.

Parents who experienced breaches of the rule often failed to report these due to legal advice or for fear of making a bad situation worse (see Chapter Four). Focus group participants also raised a number of queries in relation to sanctions for breach of the *in camera* rule. Many of the professionals (see Chapter Six) who took part in the focus groups identified breaches which were, in their view, facilitated by the judiciary and engaged in by the professionals. For example, some judges allowed professionals to sit in on family law cases that they were not part of. They also identified breaches outside the control of families relating to the infrastructure of the court buildings, where there is no or limited provision for privacy.

From the Judges' perspective, they appeared to suggest that they had limited options in terms of how they could respond to a breach in private family law cases. Judges did

⁴¹⁴ Where identifying information is published by media or researchers or in the case of child care proceedings.

highlight the absence of a framework of sanctions for this purpose. While some referred to the use of the general contempt jurisdiction of the court, which was recognised in and of itself as problematic, this process isn't necessarily very straightforward. Where breaches are admitted within the body of the court, they are easier to deal with and admonishments by the Judge appear to be the norm, with a requirement to give an undertaking not to do it again. Judges approach cases differently with each case having 'to be dealt on their own merits'. In cases where there were perceived serious, wilful and repeated breaches, sanctions such as an award of costs against the perpetrator were given, a fine, or in more serious cases, imprisonment until contempt is purged. The growth of social media was also identified as a significant challenge as the damage has already been done with the publication.

From an international perspective, all four jurisdictions examined for the purpose of this report, had sanctions statutorily enshrined for breaches of the requirement to protect the anonymity of parties and children to family law proceedings. Across jurisdictions, penalties ranged from three months imprisonment or a fine (\$2000) in New Zealand; to up to two years for contempt of court in the UK (England and Wales); up to one year imprisonment in Australia; and finally, in Sweden where a graded approach is taken to the sentences applied depending on the seriousness of a breach with a fine or up to two years imprisonment where secret information is disclosed and up to four years for more serious breaches.

Recommendation 17: Define breaches and sanctions

- It is recommended that there are clear provisions as to what constitutes a breach and that these are set down in legislation, which should include breaches as a result of social media posts.
- It is recommended that distinctions should be drawn between inadvertent breaches and those of a more deliberate or malicious nature. This should include reference to sanctions for breaches of the rule that are consistent with existing legislation in this area (for example, journalists).

7.9 Remote hearings and the *in camera* rule

Professionals and Judges were the two cohorts of participants asked for their views on remote hearings and the *in camera* rule.⁴¹⁵ Professionals were in agreement that while remote hearings can facilitate improved access to justice, cost and time efficiencies as well as alleviating the pressure on the courts system, there were also some risks posed to the operation of the *in camera* rule. However, for most Judges, there was a preference to hear family law matters in person with an acknowledgement that there may be some circumstances – such as the hearing of professional evidence - where a remote hearing

⁴¹⁵ There was no question asked in the national survey about remote hearings and the *in camera* rule.

may be a better option. Judges, in general, were not in favour of holding full hearings remotely. Both groups acknowledged the benefits of the remote option, but the professionals were of the view that the benefits outweigh the risks, with far more potential for protecting people's privacy when compared to the current poor infrastructure of the courts. Remote hearings as a more efficient measure for case progression were also suggested.

Some of the Judges and professional participants were of the view that a hybrid approach could be suitable in some situations where, for example, a professional was giving evidence. Other situations were identified that would lend themselves to having some form of remote input such as facilitating those living abroad, facilitating those with physical or capacity issues and for those who might be in fear of being physically present in court due to a history of serious domestic violence. It was also suggested that for the purpose of case progression, this could be an appropriate alternative.

From an international perspective, it appears that the use of remote hearings has been embraced in New Zealand, Australia and the UK (England and Wales) as a viable option in the Family law courts in a variety of situations. The recent changes in New Zealand in this respect are particularly interesting – with a protocol dedicated to listing the types of proceedings which will be held remotely as the default option. Such an approach could prove to be of benefit in the Irish context and may serve to relieve pressure on the courts and reduce costs in the long run. Similarly, the approach of the UK (England and Wales) is instructive. In particular, the introduction of a Practice Direction with respect to how reporters as well as members of the public can participate in or observe hearings on a remote basis which again serves to facilitating more transparency for media, while also facilitate access to justice for members of the public.

Recommendation 18: Guidance on remote hearings and the *in camera* rule

- It is recommended that remote options, where practicable, should be considered for professionals to assist with progressing cases in a more resource and time efficient manner.
- It is recommended that a remote hearing option akin to Australia and New Zealand Family Law Courts, where all the standard court rules, etiquette etc. would apply. This option should be available to facilitate access to justice for certain categories of individuals, including, but not limited to, persons with disabilities, full-time carers, and domestic violence applicants, where the privacy and integrity of the proceedings can be maintained.
- It is recommended that Ireland consider the introduction of similar guidance to New Zealand and the UK (England and Wales) which would identify typical court procedural applications and practices that could be conducted using a remote option and would further support the courts in developing practices in this regard. The new Irish guidance should address how the *in camera* rule would operate with remote hearings.

7.10 Access to justice and court reports

In relation to section 32 reports which are court ordered reports under the Guardianship of Infants Act 1964, the law provides that a copy of this report “...shall be given to—(a) the parties to the proceedings concerned”. However, despite this, it was clear from the findings that for the most part, parties (whether represented or not) are only given access to the report under supervision and for a restricted period of time due to concerns that providing a copy of same will result in a breach the *in camera* rule.⁴¹⁶ Arguably, a very narrow interpretation of the *in camera* rule is being applied here in a way that negatively impacts the rights of parties to access to justice,⁴¹⁷ and it is also potentially contrary to the intention behind the legislative provision. In addition, many of these parties have paid for this report to be conducted and so, it is important that they are provided with a copy of the same. Indeed, Judges themselves acknowledged a degree of difference in approach between them and their colleagues in relation to the practice of releasing section 32 reports. Some of the Judges adopted a very strict approach, resolute in their view that parties cannot be given a copy of these reports. Others were of the view that a more proportionate approach should be applied whereby the parties are permitted to retain a copy of the report for consideration in their own time and space.

⁴¹⁶ McCaughren, S., Parkes, A. and Holt, S. (2023) ‘Rethinking court appointed experts as a medium through which to hear the voice of the child in family law cases’, *Irish Journal of Family Law*, 26 (2), pp. pp. 77-83.

⁴¹⁷ It is really important that litigants whether represented or not, have the ability to digest the information contained in the report that relates to them and their family. Oftentimes, these parties will be in significant distress and requiring them to read a report of this nature in such a pressurised environment is not conducive to promoting access to justice.

Recommendation 19: Facilitate access to justice and court reports

- It is recommended that parties should be permitted to retain a copy of any court-ordered report (including s.32 and s.47 reports) that contains information relating to them and/or their family's circumstances provided it is made clear that the contents of that report should not be made public. Appropriate sanctions for a breach should be clearly outlined in legislation.⁴¹⁸

While beyond the scope of the current report, it was clear from the focus groups with professionals (see Chapter Six) that clarity is needed concerning how the rule interacts with data protection and GDPR legislation.

Recommendation 20: Conduct further research into the *in camera* rule and GDPR

- It is recommended that research is commissioned to examine how GDPR legislation intersects with the *in camera* rule.

7.11 Primary legislation

Primary legislation would provide an opportunity to strike the right balance between the privacy of the parties involved and the promotion of transparency in family law proceedings which is currently absent.

Currently, in the Irish context, the law concerning maintaining the privacy of children and parties to proceedings is scattered throughout various pieces of legislation as examined in Chapter two. While a similar approach appears to be adopted across the jurisdictions examined, the difference lies in the clarity concerning the ability to share information outside of the family law courts for various purposes. So, for example, in Australia, the Family Law Amendment (Information) Sharing Act 2023 introduced important changes which facilitated improved access to information generated in family law cases for courts, state agencies and family members. As outlined in Recommendation 3 above, where there is a need for information to be shared between professionals and/ or state services for a legitimate purpose as a result of the proceedings, there should be a presumption enshrined in legislation that they have permission to do so unless the Court deems that it is contrary to the interests of any children, parties, or in the interests of justice. Similar to other jurisdictions, clarity around what does and does not constitute a public

⁴¹⁸ Department of Justice, *Review of the Role of Expert Review of the Role of Expert Reports in the Family Law Process* <https://www.gov.ie/pdf/?file=https://assets.gov.ie/295856/f52bb897-bb6f-4fbc-b4de-5aa7fab484f5.pdf#page=null> (06th June, 2024).

communication of material from family law proceedings should also be clarified in legislation with consequences for breach outlined.

Recommendation 21: Introduce primary legislation

- This report recommends that the most comprehensive way of addressing many of the existing shortcomings surrounding the operation of the rule, including a redefinition of what it covers, information sharing, breaches and sanctions for breach, is the creation of primary legislation that would apply across all relevant proceedings which takes account of all the recommendations listed above.
- It is recommended that any legislation drafted for this purpose would define what constitutes a breach and what sanctions apply in minor, and more serious cases of breach.

References

IRISH LAW

Adoption Act 2010
Children Act 2001
Child Care Act 1991
Children and Family Relationship Act 2015
Civil Law (Miscellaneous Provisions) Act 2008
Civil Liability and Courts Act 2004
Courts and Civil Law (Miscellaneous Provisions) Act 2013
Criminal Justice Act 2006
Criminal Law (Rape) Act 1981
Criminal Law (Sexual Offences) Act 2006
Criminal Law (Sexual Offences) Act 2017
Criminal Law (Sexual Offences) (Amendment) Act 2007
Criminal Law (Sexual Offences and Human Trafficking) Act 2024
Domestic Violence Act 2018
Family Courts Act 2024
Family Law (Divorce) Act 1996
Family Law (Maintenance of Spouses and Children) Act 1976
Family Law Act 1995
Guardianship of Infants Act 1964
Irish Constitution 1937
Judicial Separation and Family Law Reform Act 1989
Succession Act 1965

INTERNATIONAL AND REGIONAL LAWS

European Convention on Human Rights 1950
International Covenant on Civil and Political Rights 1966
United Nations Convention on the Rights of the Child 1989

Australia

Commonwealth of Australia Constitution Act 1900
Children and Young Persons (Care and Protection) Act 1998
Family Law Act 1975
Family Law Amendment Act 2023
Family Law Amendment (Information Sharing) Act 2023.
Farnell & Anor and Chanbua [2016] FCWA 17

Sweden

Constitutional Documents of Sweden: Instrument of Government 1974, Freedom of the Press Act 1949, Fundamental Law on Freedom of Expression 1991
Code of Judicial Procedure 1942

Public Access to Information and Secrecy Act 2009
Criminal Code 1962

New Zealand

Care of Children Act 2004
Children Act 1989
Family Courts Act 1980
Family Court Rules 2002
Family Proceedings Act 1980
Oranga Tamariki Act 1989

United Kingdom (England & Wales)

Administration of Justice Act 1960
Children Act 1989
Family Procedure Rules 2010

CASES

European Court on Human Rights

B and P v United Kingdom, Application nos. 36337/97 and 35974/97 ECHR, 2001
Moser v Austria (2006), Application no. 12643/02, ECHR, 2006

Australia

Donelly v Edelsten [1988] 12 Fam LR 294

Irish

AX v BX (Unapproved) [2023] IECA 109 (05 May 2023)
D v B [2021] IEHC 407
DOR v BOR [2017] IEHC 429
DX v Judge Buttimer [2012] IEHC 175.
Eastern Health Board v Fitness to Practice Committee [1998] 3 IR 399
Gilchrest and Rogers v Sunday Newspapers Ltd [2017] 2 IR 284
HSE v McAnaspie [2011] IEHC 477
HSE v LN [2012] IEHC 611
In re R. Ltd. [1989] I.R. 126.
Irish Times v Ireland [1998] 1 IR 359
J.K. v. L.E. 2022 IEHC 733.
K v. E [2024] IEHC 43.
K v K [2004] IESC 21.
M.P. v A.P. [1996] 1 I.R. 144
R.C. v K.E. [2018] IEHC 548
RD v District Judge McGuinness [1999] 2 IR 411
RM v DM [2000] 3 IR 373
S (M) v. Judge Gibbons Judicial Review M.S. V. Judge Conal Gibbons & A. C. & The Health Service Executive [2007] IEHC 218
SM v SL [2022] IEHC 44

The Child and Family Agency v KB [2018] 513

The Child and Family Agency v T.N. & Anor [2018] IEHC 568

Irish Law

European Convention on Human Rights Act 2003

District No. 20 Mallow, Fermoy & Midleton: In The Matter Of Section 32.1 (A /B) Of The Guardianship Of Infants Act 1964 & In The Matter Of S.I. 587 Of 2018; Practice Direction DC25 For District No. 20 Mallow, Fermoy & Midleton District Courts, In The Matter of Section 32.1 (A /B) of The Guardianship of Infants Act 1964, In the Matter of S.I. 587 Of 2018, <https://www.courts.ie/content/district-no-20-mallow-fermoy-midleton-matter-section-321-b-guardianship-infants-act-1964> (Date accessed:13/11/24)

Civil Liability and Courts Act 2004

Literature

Atkin, Bill, "Controversial Changes to the Family Justice System in New Zealand: Is it the Private Law/Public Law Division Still Useful?" (August 2025) 29(2) 183 at 204, available <https://academic.oup.com/lawfam/article-abstract/29/2/183/943750?redirectedFrom=fulltext> (date accessed: 14 August 2024).

Australia Government. Attorney-General's Department, *National Strategic Framework for Information Sharing between the Family Law and Family Violence and Child Protection systems* (July 2022) available from: <https://www.ag.gov.au/families-and-marriage/publications/national-strategic-framework-information-sharing-between-family-law-and-family-violence-and-child-protection-systems> (date accessed: 7 February 2025).

Australia Government. Australian Institute of Family Studies, *Exposure Draft – Family Law Amendment Bill 2023. Submission in response to the Consultation Paper* (February 2023) available <https://aifs.gov.au/sites/default/files/2023-08/exposure-draft-fl-amendment-bill-23.PDF> (date accessed: 10 August 2024).

Australia Government. Australian Law Reform Commission, *Family Law for the Future – An Inquiry into the Family Law System. Final Report* (March 2019) (NSW: Commonwealth of Australia 2019) available https://www.alrc.gov.au/wp-content/uploads/2019/08/alrc_report_135_final_report_web-min_12_optimized_1-1.pdf (date accessed: 10 August 2024).

Bell, Felicity, "'Part of the Future': Family Law, Children's Interests and Remote Proceedings in Australia during Covid-19" (2021) 40(1) UQLawJl at 1-26, available <http://classic.austlii.edu.au/au/journals/UQLawJl/2021/1.html> (date accessed: 13 September 2024).

Bennett Moses, Lyria *et al.*, "Technology-Facilitated Domestic and Family Violence: Protest the Privacy and Safety of Victim-Survivors" (2022) 4(1) LTHJ, available <https://lthj.qut.edu.au/article/view/2160/1215> (date accessed: 13 September 2024).

Bessant, Claire, "Privacy, Openness and Transparency in Proceedings Under the Children Act 1989: Letting Children and Young People Have Their Say" (2012) 11(3) CIL at 159-186, available <https://plus.lexis.com/uk/analytical-materials-uk/privacy-openness-and-transparency-in-proceedi/?crd=e334ca3e-d500-498e-8ccd-2fdf1b70c110&pddocumentnumber=1> (date accessed: 13 September 2024).

Bosland, Jason & Gill, Jonathan, "The principle of open justice and the judicial duty to give public reasons" [2014] *Melbourne University Law Review*, 482 at 524 available <https://www.proquest.com/docview/1661349518?sourcetype=Scholarly%20Journals> (date accessed: 10 August 2024).

Bosland, Jason & Townend, Judith, "Open justice, transparency and the media: representing the public interest in the physical and virtual courtroom" (2018) 23(4) *Communications Law*, 183 at 202, available <https://plus.lexis.com/uk/search/?pdmfid=1001073&crd=58875d37-ffe4-4338-af95-c36a211d4251&pdsearchterms=Open%20justice,%20transparency%20and%20the%20media:%20representing%20the%20public%20interest%20in%20the%20physical%20and%20virtual%20courtroom&pdtypeofsearch=searchboxclick&pdsearchtype=SearchBox&pdstartin=hlct:1:0&pdpsf=&pdqtype=and&pdquerytemplateid=&ecomp=z2Jhk&earg=pdfsf&prid=5f1f9a70-7fc8-4896-9e89-de2cf7292ced> (date accessed: 10 August 2024).

Braun, V. & Clarke, V. (2022) *Thematic Analysis: a Practical Guide*, SAGE Publications.

Burns, K., Halvey, O., Ó Súilleabháin, F., O'Callaghan, E. and Coelho, G. (2024) The social media, online and digital abuse and harassment of social workers, probational officers, and social work students in Ireland: A national survey, *British Journal of Social Work*, 54, pp. 3274-3294.

Burns, K. (2019) *Opening Statement*, Joint Oireachtas Committee on Equality and Justice, available https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_justice_and_equality/submissions/2019/2019-03-13_opening-Statement-dr-kenneth-burns-senior-lecturer-in-social-work-university-college-cork-ucc_en.pdf (date accessed: 14 November 2024).

Burns, K., O'Mahony, C., Shore, C. and Parkes, A. (2018) "What social workers talk about when they talk about child care proceedings in the District Court in Ireland". *Child and Family Social Work*, 23 (1):113-121.

Byrne, D. (2021) 'A worked example of Braun and Clarke's approach to reflexive thematic analysis', *Quality & Quantity*, 56, pp. 1391-1412.

Campbell, J. "Evolving 'Best Interests' Factors for Post-Separation Parenting – What You Need to Know About Family Law Reforms in 2023" (*Forte Family Lawyers*, 14 November 2023) available from: <https://fortefamilylawyers.com.au/family-law-reforms-in-2023/> (date accessed: 12 November 2024).

Castro, B., "New family court reporting week launches to boost transparency, Law Society Gazette" (16 September 2024) available <https://www.lawgazette.co.uk/news/family-court-reporting-week-aims-to-boost-transparency/5120853.article> (date accessed: 14 November 2024).

Child Law Project, *Protocol for Reporting Child Care Law Proceedings*, available <https://www.childlawproject.ie/protocol/> (date accessed: 11 November 2024).

Child Law Project, *Presentation to the Department of Children, Equality, Disability, Integration and Youth* (13 February 2024), available <https://www.childlawproject.ie/wp-content/uploads/2024/07/Child-Law-Project-Presentation-to-DCEDIY-13-February-2024.pdf> (date accessed: 11 November 2024).

Cockayne, Kerry & Robertson, Lorna, “Transparency: a clearer view” [2024] *St. Mary’s Family Law Specialists*, available <https://www.stmarysfamily.co.uk/files/Transparency-a-clearer-view.pdf> (date accessed: 10 July 2024).

Stephanie Coggans, "The *In camera* Rule -Time for Change?" (2001) 4(1) *Irish Journal of Family Law*.

Committee on Marriage Breakdown, *Joint Committee Report on Marriage Breakdown*, 1985, available from: http://archive.oireachtas.ie/1985/REPORT_27031985_1.html (date accessed: 11 November 2024).

Coulter, C. (2024) "Seen to be done", *Law Society Gazette*, December.

Corbett, M. & Coulter, C. (2024) *Falling Through the Cracks: An Analysis of Child Care Proceedings from 2021 to 2024*, Child Law Project, available <https://www.childlawproject.ie/wp-content/uploads/2024/11/Child-Law-Project-Falling-Through-the-Cracks-2024.pdf> (date accessed: 11th November 2024).

Corbett, M. & Coulter, C. *Child Care Proceedings: A Thematic Review of Irish and International Practice* [2019] Child Care Law Reporting Project, available <https://www.gov.ie/pdf/?file=https://assets.gov.ie/27780/a770243297774574af9171c5226fdf74.pdf#page=1> (date accessed: 05 July 2024).

Coulter, C., *An Examination of Lengthy, Contested and Complex Child Protection Cases In the District Court* (March 2018), available <https://www.childlawproject.ie/wp-content/uploads/2018/06/CCLRP-Examination-of-Complex-Child-Protection-Cases-March-2018.pdf> (date accessed: 11 November 2024).

Coulter, C., *District Court Child Care Proceedings: A National Overview* (March 2019) available https://www.childlawproject.ie/wp-content/uploads/2019/03/CCLRP-regional-report-2019_FINAL.pdf (date accessed: 11 November 2024).

Coulter, C., *Opening Statement by Carol Coulter, Director, Child Care Law Reporting Project*. Oireachtas Committee on Justice and Equality (March 2019) available https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_justice_and_equality/2019/03/06/060319001/060319001001.pdf

[d_equality/submissions/2019/2019-03-06_opening-Statement-dr-carol-coulter-director-child-care-law-reporting-project_en.pdf](#) (date accessed: 11 November 2024).

Coulter, C., *Child care law reporting without tears*, available <https://www.childlawproject.ie/events/child-care-law-reporting-without-tears/> (date accessed: 11 November 2024).

Coulter C., *Family Law Reporting Project: Report to the Board of the Service* (Dublin, Courts Service, 2007).

Courts and Tribunal Judiciary, *Disclosure of Information between Family and Criminal agencies and Jurisdictions: 2024 Protocol*, available from: <https://www.judiciary.uk/wp-content/uploads/2024/03/2024-Protocol.pdf> (Date accessed: 10 February 2025).

Courts and Tribunal Judiciary, *Launch of the Disclosure of Information between Family and Criminal Agencies and Jurisdictions: 2024 Protocol* (1 March 2024) available from: https://www.judiciary.uk/guidance-and-resources/launch-of-the-disclosure-of-information-between-family-and-criminal-agencies-and-jurisdictions-2024-protocol/#related_content. (Date accessed: 10 February 2025).

Courts and Tribunals Judiciary, “Practice Guidance on Remote Observation of Hearings – New Powers” (28 June 2022) available <https://www.judiciary.uk/guidance-and-resources/practice-guidance-on-remote-observation-of-hearings-new-powers/> (date accessed: 10 November 2024).

Courts and Tribunals Judiciary, “Family Court Transparency Implementation Group – First Progress Report” (3 October 2022) available <https://www.judiciary.uk/guidance-and-resources/family-court-transparency-implementation-group/> (date accessed: 10 November 2024).

Courts and Tribunals Judiciary, “Groundbreaking Family Court reporting pilot rolled out to 16 more courts across England” (12 January 2024) available <https://www.judiciary.uk/groundbreaking-family-court-reporting-pilot-rolled-out-to-sixteen-more-courts-across-england/> (date accessed: 10 November 2024).

Courts and Tribunals Judiciary, “Extensions to family court transparency pilots” (30 October 2024) available <https://www.judiciary.uk/extensions-to-family-court-transparency-pilots/> (date accessed: 10 November 2024).

Courts Service (n.d.) *Family Law Information Hub* <https://services.courts.ie/> (date accessed: 25 October 2024).

Courts Service, *Family Law Reporting Pilot Project* (Dublin: Courts Service, 2007).

Courts Service of Ireland, *What the courts do*, available from: <https://www.courts.ie/what-courts-do#> (accessed on: 14th October 2024).

Courts Service of Ireland, *Courts Service Annual Report For 2023 published*, available <https://www.courts.ie/content/annual-report-2023-published> (accessed on: 1 October 2024).

Courts Service of Ireland, *Courts Service Strategic Plan*, available <https://www.courts.ie/policy-reports-strategic-plans##Pub12> (accessed 1 October 2024).

Courts Service of Ireland, *Family Law*, available <https://services.courts.ie/Family-Law/> (accessed 14 October 2024).

Craven-Barry, Clare, “Transparency in Family and Child Law proceedings: Disentangling the Statutory Techniques and Terminology” (2019) 3 *Irish Judicial Studies Journal*, 88 at 102.

Cyrus Vatandoust Reza, *Maintaining the Principle of Open Justice: Privacy and the Open Court Rule* (PhD in Law Thesis, University of Technology, Sydney, 2014).

Dáil Debates 09 July 2013, vol 810, no 1, 64-79. Debate related to second stage reading of the Courts and Civil Law (Miscellaneous Provisions) Bill 2013, available from: <https://www.oireachtas.ie/en/debates/debate/dail/2013-07-09/28/> (Date accessed: 24/01/2025).

Department of Children, Equality, Disability, Integration and Youth, *Review of the Child Care Act 1991*, available from: <https://www.gov.ie/en/publication/97d109-review-of-the-child-care-act-1991/> (date accessed: 10 November 2024).

Department of Children, Equality, Disability, Integration and Youth, *Director of the Guardian ad litem national service* (31 July 2024) available <https://assets.gov.ie/297867/3e7a7cc5-f3fe-48b1-954f-be5af7677587.pdf> (date accessed: 10 November 2024).

Department of Children, Equality, Disability, Integration and Youth, *Landmark review of the Child Care Act 1991 receives approval to be drafted* (31 August 2024) available from: <https://www.gov.ie/en/press-release/d9872-landmark-review-of-the-child-care-act-1991-receives-approval-to-be-drafted/> (date accessed: 10 November 2024).

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*, available from: <https://assets.gov.ie/279081/5081c467-a560-43c5-a009-3cbb669df198.pdf>.

Department of Justice, *New legislation on sexual offences and human trafficking passed by Oireachtas* (10 July 2024) available from: <https://www.gov.ie/en/press-release/26383-new-legislation-on-sexual-offences-and-human-trafficking-passed-by-oireachtas/> (date accessed: 27 January 2025).

Department of Justice, *Review of the Role of Expert Review of the Role of Expert Reports in the Family Law Process* (June 2024) available

<https://www.gov.ie/pdf/?file=https://assets.gov.ie/295856/f52bb897-bb6f-4fbc-b4de-5aa7fab484f5.pdf#page=null> (date accessed: 10 November 2024).

Department of Justice, *Family Justice Strategy 2022-2025* (2022) available <https://assets.gov.ie/239772/7a41d453-19b8-403d-8022-296322e796f8.pdf> (date accessed: 25 October 2024).

Department of Justice, *Family Justice Strategy: Progress Report* (August 2024) available <https://www.gov.ie/pdf/?file=https://assets.gov.ie/305603/9cddb7fb-ad80-40e8-ada6-26f0eefa2435.pdf#page=null> (date accessed: 25 October 2024).

Department of Justice, *Parental Alienation Policy Paper* <https://www.gov.ie/pdf/?file=https://assets.gov.ie/258416/4d8970d1-3714-49ca-b35f-f4b39f0152ba.pdf#page=null>. (date accessed: 15 November 2024).

Department of Justice, *Parental Alienation: A Review of Understandings, Assessment and Interventions* (May 2023) available <https://www.gov.ie/pdf/?file=https://assets.gov.ie/258414/f72c1cbe-06bc-4595-8021-f6c64126c0bf.pdf#page=null> (date accessed: 15 November 2024).

District Court of New Zealand, Family Court. *Family Court search tips*, available <https://www.districtcourts.govt.nz/family-court/family-search-tips/#How2find> (date accessed: 14 November 2024).

District Court of New Zealand, Family Court. *Search tips*, available <https://www.districtcourts.govt.nz/search-tips/about-the-Judgements/> (date accessed: 14 November 2024).

District Court of New Zealand, *Guidance for news media covering the District Court*, available from: <https://www.districtcourts.govt.nz/media-information/information-for-news-media-covering-district-court/> (date accessed: 14 November 2024).

District No. 20 Mallow, Fermoy & Midleton: In The Matter Of Section 32.1 (A /B) Of The Guardianship Of Infants Act 1964 & In The Matter Of S.I. 587 Of 2018; *Practice Direction DC25 For District No. 20 Mallow, Fermoy & Midleton District Courts, In The Matter of Section 32.1 (A /B) of The Guardianship of Infants Act 1964, In the Matter of S.I. 587 Of 2018*, available <https://www.courts.ie/content/district-no-20-mallow-fermoy-midleton-matter-section-321-b-guardianship-infants-act-1964> (date accessed: 13 November 2024).

Doughty, Julie, "Opening up the Family Courts – What Happened to Children's Rights?" 2010) 10(1) CIL 50-75 available <https://orca.cardiff.ac.uk/id/eprint/17058/1/doughty10.1.pdf> (date accessed: 13 September 2024).

Egan, Dr Anne, "The *In Camera* Rule: A Barrier to Transparency or a Necessity in Irish Family Law?" (2012) 15(3) *Irish Journal of Family Law*, at 59-70.

Egan, Nuala & O'Malley Dunlop, Ellen, "A Report on the Intersection of the *Criminal Justice, Private Family Law* and *Public Law Child Care Processes* in Relation to Domestic and Sexual Violence" [2023], *Department of Justice and National Women's Council*, available

https://www.nwci.ie/images/uploads/NWC_DoJ_DSV_Justice_Report.pdf (date accessed: 01 June 2024).

Family Justice Strategy 2022-2025, available from:

<https://www.gov.ie/en/collection/4790f-family-justice-strategy/> (accessed on: 1st October 2024).

Flick, U. (2014) *The SAGE Handbook of Qualitative Data Analysis*, SAGE.

Flockton, Siobhan, *The Family Law Reporting Project*, *The Bar Review* 2003, 8(4), 174-176.

Government Offices of Sweden, Ministry of Justice, "Family Law. Information on the rules" (2013) available

<https://www.government.se/contentassets/1e0263a0318e47b4b8515b535925941b/family-law.pdf> (date accessed: 14 August 2024).

Government Offices of Sweden, Ministry of Justice, "Public Access to Information and Secrecy Act. Information concerning public access to information and secrecy legislation, etc" (2009) available

https://www.glyphosate.eu/app/uploads/2020/11/Appendix-2a_SE_public-access-to-information-and-secrecy-act.pdf (date accessed: 14 August 2024).

Government Offices of Sweden, Ministry of Justice, "Public access to information and secrecy. The legislation in brief" (2020) available

<https://www.government.se/contentassets/2ca7601373824c8395fc1f38516e6e03/public-access-to-information-and-secrecy.pdf> (date accessed: 14 August 2024).

Government Offices of Sweden, Ministry of Justice, "The Constitution of Sweden" (2013) available

<https://www.government.se/contentassets/7b69df55e58147638f19bdfb0984f97/the-constitution-of-sweden/> (date accessed: 14 August 2024).

Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), GREVIO's *(Baseline) Evaluation Report on legislative and other measures giving effect to the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)*. Ireland, (November 2023) at para. 292, available from: <https://rm.coe.int/grevio-s-baseline-evaluation-report-on-legislative-and-other-measures-/1680ad3feb> (date accessed: 12 February 2025).

Harman, Judge Joe, "The protection of Confidentiality in Australian Family Law" (January 2020) 58(1) *Family Court Review* 126-141 available

<https://onlinelibrary.wiley.com/doi/10.1111/fcre.12459> (date accessed: 10 August 2024).

Henaghan, Mark & Tapp, Pauline, "Privacy in the Courts" in Chamberlain, N. & Penk, S., eds., *Privacy Law in New Zealand* (Wellington: Thomson Reuters, 2023) at 469-511, available <https://researchspace.auckland.ac.nz/handle/2292/67460> (date accessed: 10 August 2024).

HM Courts & Tribunals Service, *Can the media attend my court case? A guide for family court users* EX711 (2014) available <https://assets.publishing.service.gov.uk/media/5b190ddbed915d2cd7a165d7/ex711-eng.pdf> (date accessed: 10 November 2024).

HM Courts & Tribunals Service, *HMCTS media guidance (accessible version)* (17 October 2024) available <https://www.gov.uk/government/publications/guidance-to-staff-on-supporting-media-access-to-courts-and-tribunals/hmcts-media-guidance-accessible-version> (date accessed: 10 November 2024).

HM Courts & Tribunals Service, *General guidance to staff on supporting media access to courts and tribunals* (17 October 2024) available https://assets.publishing.service.gov.uk/media/66a8d3f0fc8e12ac3edb070c/HMCTS729_HMCTS_media_guidance_JUL_2024_v2.pdf (date accessed: 10 November 2024).

HM Courts & Tribunals Service, *Sharing information outside of court in family proceedings* (July 2013), available from: <https://www.gov.uk/guidance/sharing-information-outside-of-court-in-family-proceedings> (Date accessed: 10 February 2025).

Houses of the Oireachtas, "Joint Committee on Justice and Equality Report on Reform of the Family Law System" [2019].

Hogan, Whyte, Kenny and Walsh, Kelly, *The Irish Constitution* (Dublin: Bloomsbury Professional 2018).

Horgan R., Shannon, G. and Gallagher B., *Reform of the In Camera Rule - A Sensitive Balancing Act*, *The Bar Review* 2002, 7(5), 278-281.

Horgan, R., Editorial, *Irish Journal of Family Law* 2010, 13(4), 81-82.

Irwin, K., "Column: Behind the veil – a new era has begun for Family Courts" (2014) *TheJournal.ie.*, available <https://www.thejournal.ie/readme/behind-the-veil-%e2%80%93-a-new-era-has-begun-for-family-courts-1265246-Jan2014> (date accessed: 10 November 2024).

Irish Human Rights and Equality Commission, *Submission on the General Scheme of the Family Court Bill* (2020) (July 2021) available <https://www.ihrec.ie/app/uploads/2021/08/Submission-on-the-General-Scheme-of-the-Family-Court-Bill-2020-Final.pdf> (date accessed: 14 November 2024).

Joe Harman (Judge), "The Protection of Confidentiality in Australian Family Law", *Family Court Review* (2020) 58(1), at 127, available from: <https://onlinelibrary.wiley.com/doi/10.1111/fcre.12459> (date accessed: 10 August 2024).

Joint Committee on Justice and Equality, *Report on Reform of the Family Law System* (Dublin: Government publications, October 2019).

Judicial College, “Good Practice for Remote Hearings”, available from: <https://www.judiciary.uk/wp-content/uploads/2020/03/Good-Practice-for-Remote-Hearings-May-2020-1.pdf> (date accessed: 10 November 2024).

Kumar Jaggi, Navin, “Family Law in Sweden” (*Jaggi Jaggi & Jaggi, International Attorneys at Law*, 12 April 2017) available <https://www.jjandjattorneys.com/post/family-law-in-sweden> (date accessed: 13 November 2024).

Law Council of Australia, “Family Law Amendment Bill 2023. Senate and Constitutional Affairs Legislation Committee” (3 July 2023) available <https://www.lawcouncil.au/publicassets/e0e1e464-8f1c-ee11-9486-005056be13b5/4380%20-%20S%20-%20Family%20Law%20Amendment%20Bill%202023%20final.pdf> (date accessed: 10 August 2024).

Law Society of Ireland, *Family Courts Reform: Building a World Class Family Courts System* (2023) available <https://www.lawsociety.ie/news/news/Stories/family-court-reform> (date accessed: 13 November 2024).

Law Reform Commission, *Report on privacy: Surveillance and the Interception of Communications* (1998), available from: <https://www.lawreform.ie/fileupload/Reports/rPrivacy.htm> (date accessed: 11 November 2024).

Law Reform Commission, *Report on Family Courts* (LRC 52-1996), at para. 2.13, available from: <https://www.lawreform.ie/fileupload/Reports/rFamilyCourts.htm> (Date accessed: 10/02/2025).

Law Reform Commission, *Consultation Paper on Family Courts* (Dublin: Government of Ireland Publications, March 1994) para. 7.09 available from: <https://www.lawreform.ie/fileupload/consultation%20papers/cpFamilyCourts.htm>

Leahy, Susan, “Still a private matter? Evaluating the Irish State’s response to domestic abuse”, *International Journal of Law, Policy and The Family*, Oxford, 2023, Vol 37 (1).

Pernilla Leviner, “Child protection under Swedish law— legal duality and uncertainty”, *European Journal of Social Work* (2014) 17:2, 206-220, at 210. DOI: 10.1080/13691457.2013.791249.

Maguire, N. (2024) *A Study of District Court Judges Views on Sentencing and the Sentencing of Relationship Violence*, Judicial Council / South East Technological University, available <https://judicialcouncil.ie/assets/uploads/documents/SETU%20Report.pdf> (date accessed: 28th January 2025).

McCaughren, S., Parkes, A. and Holt, S. (2023) 'Rethinking court appointed experts as a medium through which to hear the voice of the child in family law cases', *Irish Journal of Family Law*, 26 (2), pp. 77-83.

McCaughren, S., Holt, A., Parkes & S. Gregory (2022) *Research report on guidance on contact time for infants and young children in separated families*, Dublin: One Family, available from <https://onefamily.ie/contact-time-for-infants-and-young-children-in-separated-families-research-report/> (date accessed: 2nd January 2025).

McFarlane, Sir Andrew, President of the Family Division, "Confidence and Confidentiality: Transparency in the Family Courts" (28 October 2021) available <https://www.judiciary.uk/wp-content/uploads/2022/08/Confidence-and-Confidentiality-Transparency-in-the-Family-Courts-final1.pdf> (date accessed: 20 August 2024).

McFarlane, Sir Andrew, President of the Family Division, "Guidance from the President of the Family Division" (29 November 2022).

Merkel-Holguin, Lisa *et al.*, "The New Zealand and Family Group Conference Confidentiality Protections: Lessons Learned and an Application in U.S. Child Welfare Systems" (January 2020), *Family Court Review*, at 109-125.

Ministry of Justice of New Zealand. News & Media, *5.2 Family Court*, available from: <https://www.justice.govt.nz/about/news-and-media/media-centre/media-information/media-guide-for-reporting-the-courts-and-tribunals-edition-4-1/courts-with-special-media-provisions/5-2-family-court/> (date accessed: 14 November 2024).

Ministry of Justice of New Zealand. News & Media, *10.6 Appendix F: Media Guide for reporting in the Family Court (August 2017)* available <https://www.justice.govt.nz/about/news-and-media/media-centre/media-information/media-guide-for-reporting-the-courts-and-tribunals-edition-4-1/appendices/10-6-appendix-f-media-guide-for-reporting-in-the-family-court/> (date accessed: 14 November 2024).

Ministry of Justice of New Zealand, Remote courts information for participants, available from: <https://www.justice.govt.nz/courts/going-to-court/participating-in-a-virtual-meeting-room-court-hearing/remote-courts-information-for-participants/> (date accessed: 10 February 2025).

Ministry of Justice of the UK, *Practice Direction 27B – Attendance of media representatives or duly authorised lawyers at hearings in family proceedings*, available from: [https://www.justice.gov.uk/courts/procedure-rules/family/practice directions/pd part 27b#:~:text=This%20Practice%20Direction%20supplements%20rule,in%20private%20subject%20to%20the](https://www.justice.gov.uk/courts/procedure-rules/family/practice%20directions/pd%20part%2027b#:~:text=This%20Practice%20Direction%20supplements%20rule,in%20private%20subject%20to%20the) (date accessed: 10 November 2024).

Ministry of Justice of the UK, *Practice Direction 12R – The court giving permission to communicate information from proceedings to which Part 12 FPR applies*, available from: <https://www.justice.gov.uk/practice-direction-12r-the-court-giving-permission-to->

[communicate-information-from-proceedings-to-which-part-12-fpr-applies](#) (Date accessed: 10 February 2025).

Ministry of Justice of the UK, *Family Procedure Rules*, available from: https://www.justice.gov.uk/courts/procedure-rules/family/rules_pd_menu (date accessed: 10 November 2024).

National Centre for Social Research, *Family Court Reporting Pilot. Evaluation Report* (July 2024) available <https://www.judiciary.uk/wp-content/uploads/2024/09/Natcen-Report-on-the-Transparency-Implementation-Groups-Family-Court-Reporting-Pilot.pdf> (date accessed: 10 November 2024).

National Centre for Social Research, *Data in the Family justice system: what is available and to whom* (July 2024) available <https://www.judiciary.uk/wp-content/uploads/2024/08/Family-Justice-Data-Mapping-Final-Report-31.07.24.pdf> (date accessed: 10 November 2024).

New Zealand Law Commission, “Delivering Justice for All: A vision for New Zealand Courts and Tribunals” (NZLC R85 2004).

O'Mahony, C *et al.* (2016) *Journal of Social Welfare and Family Law*, 38(3), pp. 302-322.

O'Mahony, C., Parkes, A., Shore, C., Burns, K., “Child Care Proceedings and Family-Friendly Justice: The Problem with Court Facilities”, *Irish Journal of Family Law* (2016), 19(4), 75-81.

O'Malley, Tom *et al*, *Review of Protections for Vulnerable Witnesses in the Investigation and Prosecution of Sexual Offences* (July 2020) available <https://www.gov.ie/pdf/?file=https://assets.gov.ie/204256/960587c2-2168-4a47-aba2-22705bda75c9.pdf#page=null> (date accessed: 23/01/2025).

Ombudsman for Children's Office, *Advice of the Ombudsman for Children on the Courts Bill 2013* (June 2013) available <https://www.oco.ie/app/uploads/2013/06/Advice-OCO-Courts-Bill-2013.pdf> (date accessed: 01 June 2024).

Ontario Courts, *Family Court Overview*, available <https://www.ontariocourts.ca/ocj/family-court/> (date accessed: 14 November 2024).

Parliament of Sweden, “The Constitution of Sweden. The Fundamental Laws and the Riksdag Act” (2023) available <https://www.riksdagen.se/globalassets/03.-dokument-och-lagar/bestall-och-ladda-ner/other-languages/grundlagar-2023-engelsk-web.pdf> (date accessed: 14 August 2024).

Pender, Kieran, “Open Justice, Closed Courts and the *Constitution*: Australian and Comparative Perspectives” (2023) 42(2) *UQLawJl* at 155-189 available from: <https://www.austlii.edu.au/au/journals/UQLawJl/2023/7.pdf> (date accessed: 13 September 2024).

President of the Family Division and the Transparency Implementation Group, *The Reporting Pilot Guidance* (August 2024) available <https://www.judiciary.uk/wp-content/uploads/2024/08/Reporting-Pilot-Guidance-2024.pdf> (date accessed: 10 November 2024).

Ritchie, J. & Lewis, J. (2003) *Qualitative Research Practice: A Guide for Social Science Students and Researchers*, SAGE.

Shannon, Geoffrey and Gibbons, Norah, *Report of the Independent Child Death Review Group 2000-2010* (DCYA, 2012) available from: https://www.dcy.gov.ie/documents/publications/Report_ICDRG.pdf (date accessed: 17 September 2018).

Special Rapporteur on Child Protection, Professor Conor O'Mahony, *Annual Report of the Special Rapporteur on Child Protection 2021* (June 2021) available <https://assets.gov.ie/242675/ae5ade7f-2c30-45b2-942c-1a2fc87847b8.pdf&ved=2ahUKEwih7YnYrdyJAXUJqpUCHcVbMyMQFnoECBoQAQ&usg=AOvVaw3taV7tgC1fBVRuFlyLny2Q> (date accessed: 14 November 2024).

Terre des hommes, "Access to Justice for Children, Country fact sheet: Sweden" (June 2021, Terres des hommes) available <https://justicewithchildren.org/sites/default/files/library/attachments/17%20Sweden%20Access%20to%20Justice%20for%20Children.pdf> (date accessed: 14 August 2024).

Transparency Implementation Group. Anonymization and Publication Subgroup, "Draft Publication Guidance for Judges" (20 July 2022) available <https://www.judiciary.uk/wp-content/uploads/2023/02/Publication-Guidance-Subgroup-Report.pdf> (date accessed: 10 November 2024).

The Transparency Project, "What to do when a reporter attends (or wants to attend your hearing) A guidance note for Judges & professionals" (January 2023) available <https://transparencyproject.org.uk/wp-content/uploads/WHAT-TO-DO-WHEN-A-REPORTER-ATTENDS-FINAL.pdf> (date accessed: 10 November 2024).

Tusla. The Child and Family Agency, *Care Orders Explained*, available from: <https://www.tusla.ie/foster-carers-hub/how-do-children-come-into-care/> (date accessed: 01/11/2024).

Uppsala University, *Swedish Law*, available from: <https://user.it.uu.se/~andersa/law/se/index.eng.html> (Date accessed: 12/02/2025).

Working Group on a Courts Commission, *Sixth Report* (Dublin: Government Publications, November 1998) available from: <https://courts.ie/acc/alfresco/e5c33f6d-5c57-4bf0-b586-92c66746ff29/6th%20Report%20WGCC%20conclusion.pdf/pdf#view=fitH> date accessed: 11 November 2024).

Working Group on a Courts Commission, *Sixth Report Conclusion-Summary*, available from: <https://courts.ie/acc/alfresco/d871dde4-c70f-419d-80b3-2a27289e8fad/6th%20Report%20WGCC%20summary.pdf/pdf#view=fitH> (Date accessed: 11/11/24).

Appendix A: Sample communication strategy checklist

The following items could be considered when developing a sample communication strategy to ensure a consistent understanding of the rule.

- a) Legal practitioners should always explain the rule to their clients,⁴¹⁹ and either provide a written explanation or refer them to a reliable source such as the Courts Service's website.
- b) A procedure for Judges, or a nominee, to explain the rule to all litigants (lay and represented) at the outset of private/public family law proceedings, and a mechanism to record that litigants have read and understand what the rule requires of them.
- c) Verbal reminders from the court (Judge/Registrar/Courts Service) for both lay litigants and represented litigants (legal representatives) about the rule.

This strategy should include the following elements:

- a) Use a clear English term for the rule.
- b) Information on the rule needs to be easily accessible for parties in courts, it should be easy to understand, and provided in a variety of languages, including Irish Sign Language.
- c) The inclusion of a Frequently Asked Questions (FAQs) section about the rule addressing the issues identified in this report would be helpful. The FAQ text should be shared with legal practitioners and Judges to facilitate a consistent approach to the operation of the rule in family law proceedings (public and private). This information could be added as a module as part of ongoing legal and judicial training.
- d) Strategies to improve awareness and understanding of the rule, include:
 - a. Visual information such as posters/infographics, and interactive screens in courthouses.
 - b. The provision of plain-language information leaflets (for example, NALA reviewed)⁴²⁰ for Courts Service users on what the rule covers, with clear information on what is/is not permitted, and the consequences of breaches. This should include clear information and practical examples of what the rule covers, including social media postings.
 - c. Materials should be provided in a variety of languages, including Irish Sign Language with accessible versions for persons with disabilities.
 - d. Age and developmentally appropriate materials for children and young people. There is also potentially a role for the proposed Children's Court

⁴¹⁹ This should be done face to face in the first instance in order to gauge understanding of the rule, followed up by a written explanation in an accessible format.

⁴²⁰ Plain English Service, available from: <https://www.nala.ie/plain-english/> (Date accessed: 14th October 2024).

Advocate in private family law cases and the GAL in child care proceedings in ensuring that any children and young people who are impacted by proceedings are supported in their understanding of the rule.⁴²¹

- e. Consideration should be given to regularly sharing these materials on Courts Service social media accounts and website.
- f. The Courts Service website / social media account metrics could be analysed to examine the most effective/popular platforms for sharing information on the *in camera* rule to relevant parties.
- g. QR codes and website links should be used to link to more comprehensive information on the rule. These should be included on signs posted in courts to link to the Courts Service's website.
- h. The Courts Service have spent a great deal of time and resources revamping the Courts Service website to make it more user-friendly. Further information for all litigants, including lay litigants in particular, could be made available in the family law and child care sections. For example, the Family courts website from Ontario Canada is very instructive in this regard where it provides a step-by-step guide for litigants from pre-hearing to the hearing itself.⁴²²

⁴²¹ Department of Justice, Family Justice Strategy Progress Report (August 2024).

⁴²² <https://www.ontariocourts.ca/ocj/family-court/> (Date accessed: 14/11/24).

Appendix B: Data collection instruments

Please email Dr Aisling Parkes, principal investigator if you have any questions about this study - a.parkes@ucc.ie

The interview and focus group guides were designed as semi-structured data collection instruments. This means that additional questions were asked in each data collection point which were specific to key themes of importance to that participant or group.

Interview guide

Introduce researchers, Department of Justice commissioned study, focus of the study, informed consent, recordings, research ethics, production of transcripts, withdrawal process, participants' questions, and what will happen next.

1. Tell me about your work/service.
2. Tell me about your role.
3. How does your work bring you into contact with the *in camera* rule?
4. In your own words, please describe the *in camera* rule.
5. Without breaching confidentiality (e.g. don't use names, locations, excessive case details), describe a few scenarios in which the *in camera* rule has been used in cases you have been involved with.
6. What are the strengths of the *in camera* rule in public / private family law?
7. What are the issues / weaknesses with the *in camera* rule?
8. Cross over cases (sharing of information between cases, AP cases, orders made not being taken into account in other cases, criminal and family issues, public and private law proceedings etc.)
9. What are the issues for you (social media, etc.)
10. Have you any experience of remote hearings and the impact of the *in camera* rule? If so, can you tell us a little more about it?
11. Do you think the *in camera* rule has implications for the rights of children / children involved in cases?
12. If a magic wand could be waved and the in-camera rule could be altered or reformed, what would this look like?
13. Is there anything else that you think is important about the *in camera* rule that you would like to share?

Focus group guide

Introduce researchers, Department of Justice commissioned study, focus of the study, informed consent, recordings, research ethics, production of transcripts, withdrawal process, participants' questions, and what will happen next.

1. Tell me about your work / service / role (organisation, work with parent / young person).
2. What is your understanding of the in-camera rule?
 - a. *Note: what are the similarities and differences in the answers*
3. Do you think there is a consistent understanding/interpretation of the *in camera* rule?
 - a. What are the differences between Judges/courts/regions on the interpretation of the rule?
 - b. The purpose of the in-camera rule is to protect the privacy of the individuals, children and the family. Do you think it serves that purpose? What's working and not working well?
4. Whose role is it to explain the in-camera rule?
5. Has social media impacted the operation of the rule?
6. Have you any experience of remote hearings and the impact of the *in camera* rule? If so, can you tell us a little more about it?
7. Do you think the *in camera* rule has implications for the rights of children / children involved in cases?
8. Have you come across breaches of the in-camera rule?
 - a. Can you give an example(s)?
 - b. How was this dealt with?
 - c. Were any sanctions imposed?
9. Overall, do you think the *in camera* rule needs to be reformed / amended?
10. If a magic wand could be waved and the in-camera rule could be amended, what would this look like?
11. Is there anything else that you think is important that you would like to share?

Online survey questions

See next page.



Survey on privacy in Irish family law courts (also known as the 'in camera' rule)

This is a survey for people who have experienced the Irish family law courts*

* Divorce; separation; domestic abuse; maintenance; custody, access, guardianship, or Tusla cases. This study is being run by University College Cork & Trinity College Dublin on behalf of the Department of Justice. Ethical approval has been granted by University College Cork. Click start now if you want to take part in this survey.



* Required

About this study (information sheet)

What is this survey about?

This survey is for parents, grandparents, relatives, guardians, foster parents, and those age 18+ who have had a direct experience of family law courts in Ireland. In Ireland, all family law cases are held in private (also known as in camera). The Department of Justice is interested in how parents who use the services of the Irish family law courts understand and experience privacy in certain types of family law cases: guardianship, custody and access; separation; divorce; domestic violence and abuse (inc. coercive control); maintenance, and public child care (cases involving Tusla, for example child protection, adoption, etc.).

Do I have to take part and can I withdraw?

Participation in this study is completely **voluntary**. There is no obligation to participate, and should you choose to do so you can refuse to answer specific questions or decide to withdraw from the study prior to completing the survey. All information you provide will be confidential and your anonymity will be protected throughout the study. You will not be asked to disclose any identifying information specific to your court case. The survey should take approximately 15 minutes to complete.

You maintain the right to withdraw from the study at any stage up to the point of completing the survey. At that point, your data will be mixed in with other participants and can no longer be retracted.

The anonymous data will be stored on a University College Cork supported cloud storage platform called Microsoft Teams, One Drive and Microsoft Forms.

What will happen with the information about my case that I share with you?

The data will be stored for a minimum of ten years (this is a university requirement).

The information you provide will be used in the report for the Department of Justice, including the use of "direct quotations". In addition, the information you provide may contribute to research publications and/or conference presentations.

We do not anticipate any negative outcomes from participating in this study. Should you experience distress arising from participating in the research, the contact details for support services are provided at the end of this survey.

This study has obtained ethical approval from the UCC Social Research Ethics Committee.

Who do I contact if I have a question?

If you have any queries about this research, you can email Aisling Parkes who is the leader of the study - a.parkes@ucc.ie

Who can take part?

This survey is for parents, grandparents, relatives, guardians, foster parents, and those age 18+ who have had a direct experience of family law courts in Ireland. In Ireland, all family law cases are held in private (also known as in camera). The Department of Justice is interested in how parents who use the services of the Irish family law courts understand and experience privacy in certain types of **family law cases**: guardianship, custody and access; separation; divorce; domestic violence and abuse (inc. coercive control); maintenance, and public child care (cases involving Tusla, for example child protection, adoption, etc.).

1. To be eligible to participate in this study you must be age 18+ and meet the case criteria in the text above. *

- ☐ I am age 18+ and eligible to participate in this study as I am a parent and have experience of a family law case, child care proceedings (cases involving Tusla) and/or adoption
- ☐ I don't meet the eligibility criteria: **do not complete this survey.** Close this page and do not continue. No data will be saved.
- ☐ I am a professional: **do not complete this survey.** Email Aisling (a.parkes@ucc.ie) who will arrange another way for you to take part. Close this page and do not continue. No data will be saved.

Consent form

2. I understand that the purpose of this study is to explore the operation of the privacy rule (also known as the in camera rule) in Ireland. I understand that the information I provide will be used in a report for the Department of Justice. I understand that the results of this survey (including "direct quotes") may be published and shared (e.g. report, academic journal article, book chapter, conference paper, media briefing, social media, etc.) and that the information and data I provide in this survey may be quoted in presentations and publications. I also understand that the researchers will aim to protect my anonymity in this study (my name will never be used). I understand that the results of this research study may feed into future national and international research. I will not add my name or identifying information anywhere on this survey. *

- ☐ Yes - I agree and I wish to participate
- ☐ No - I do not wish to participate (please close the browser. No data will be saved)

3. I agree **not to disclose** specific, identifying information that relates to me or anyone else involved in my family law court proceedings *

- ☐ I agree

About you and your court case

4. What is your age group? *

- ☐ Under 18 years (not eligible to participate. Close this window)
- ☐ 18-24 years
- ☐ 25-34 years
- ☐ 35-44 years
- ☐ 45-54 years
- ☐ 55-64 years
- ☐ 65 years and older

5. What is your gender? *

- ☐ Male
- ☐ Female
- ☐ Non-binary
- ☐ Prefer not to say

6. Is English your first language? *

- ☐ Yes
- ☐ No

7. How well do you speak English? *

- ☐ Very well
- ☐ Well
- ☐ Not well
- ☐ Prefer not to say

8. Did you require the support of a translator in court? *

- ☐ Yes
- ☐ No
- ☐ Other

9. What is your ethnic group/ background? *

- ☐ White: Irish
- ☐ White: Irish Traveller
- ☐ White: Roma
- ☐ Any white background
- ☐ Black or Black Irish: African
- ☐ Black or Black Irish: Any other Black background
- ☐ Asian or Asian Irish: Chinese
- ☐ Asian or Asian Irish: Indian/Pakistani/Bangladeshi
- ☐ Any other Asian background
- ☐ Prefer not to say
- ☐ Other

10. Number of cases in the family law courts that you were a party to *

A case here means **one matter** to address. For example, if you were in the courts for a divorce case, even if it meant being in court multiple times over multiple years, select **one case**. If two totally different cases, select two different cases, etc. (for example, a divorce case and an adoption case)

- ☐ One case
- ☐ Two different cases
- ☐ Three different cases
- ☐ Four different cases
- ☐ Five or more cases

11. Why were you before the court? (select all that apply) *

- ☐ Guardianship, custody and access
- ☐ Separation
- ☐ Divorce
- ☐ Domestic violence and abuse (inc. coercive control)
- ☐ Maintenance
- ☐ Public child care (cases involving Tusla)
- ☐ Adoption
- ☐ Other

12. What court level were you involved with? (select all that apply) *

- ☐ District court
- ☐ Circuit court
- ☐ High court
- ☐ Supreme court
- ☐ I don't know

13. Did your family law case take place in: *

- ☐ A rural location
- ☐ An urban location
- ☐ Other

14. County in which your case was heard (select all that apply) *

- ☐ Carlow
- ☐ Cavan
- ☐ Clare
- ☐ Cork
- ☐ Donegal
- ☐ Dublin
- ☐ Galway
- ☐ Kerry
- ☐ Kildare
- ☐ Kilkenny
- ☐ Laois
- ☐ Leitrim
- ☐ Limerick
- ☐ Longford
- ☐ Louth
- ☐ Meath
- ☐ Mayo
- ☐ Monaghan
- ☐ Offaly
- ☐ Roscommon
- ☐ Sligo
- ☐ Tipperary
- ☐ Waterford
- ☐ Westmeath
- ☐ Wexford
- ☐ Wicklow

15. Has your case been resolved? *

If you have been party to more than one case please think about your most recent case

- ☐ Yes, resolved
- ☐ Yes, it is resolved but I anticipate being back in front of the family law court soon
- ☐ No, my case is ongoing

16. How many years did it take to resolve your case? *

If you have been party to more than one case please think about your most recent case

- ☐ Less than one year
- ☐ Two years
- ☐ Three years
- ☐ Four years
- ☐ Five years +

Your experience of the in camera (privacy) rule

17. Was the in camera rule explained to you? *

If you have been party to more than one case please think about your most recent case

☐ Yes

☐ No

18. Who explained the in camera rule to you? (select all that apply) *

If you have been party to more than one case please think about your most recent case

☐ Judge

☐ Solicitor

☐ Barrister

☐ Support organisation

☐ Social professional (social worker, guardian ad litem, etc.)

☐ Another parent

☐ Family member

☐ Other

19. Explain what the "in camera" (privacy) rule is in your own words *

Section

20. What are your views on ...? *

The Courts Service explain the in camera rule as follows: "Family Law cases are heard in private ('in camera') to protect the privacy of the family. Only those involved in the case and such other people as the judge allows will be in the courtroom. Sometimes the judge may allow people to attend to report on a case."

	Strongly agree	Agree	Neutral	Disagree	Strongly disagree	Not applicable
The in camera rule is fine, no need to change it	☐	☐	☐	☐	☐	☐
Social media has made keeping privacy in family law cases harder	☐	☐	☐	☐	☐	☐
The in camera rule protected my privacy in this case	☐	☐	☐	☐	☐	☐
The professionals in my case were clear about the limitations of the camera rule	☐	☐	☐	☐	☐	☐
The in camera rule prevented me from accessing supports from services, as I was worried about talking about my case outside of the court	☐	☐	☐	☐	☐	☐
I had a clear understanding of what the in camera rule allowed	☐	☐	☐	☐	☐	☐
I think the in camera rule should be abolished	☐	☐	☐	☐	☐	☐

21. Were you asked by the media / researchers to talk about your case? *

If you have been party to more than one case please think about your most recent case

- ☐ Yes I was, but I didn't speak with them due to the in camera rule
- ☐ Yes I was, and I spoke to them about my case
- ☐ No I wasn't approached and I wouldn't have spoke to them due to the in camera rule
- ☐ No I wasn't approached, but I would have spoken with them about my case
- ☐ Other

22. What are the benefits of the in-camera rule? (provide some examples of the benefits and for whom) *

23. What are the negative effects of the in-camera rule? *

Provide some examples of the negatives and say for whom.

24. Please provide a short summary of your case and how the in camera rule impacted your experience in the family law courts *

Do not include your name or any names or identifying information. It is important **not to disclose** specific, identifying information that relates to you or anyone else involved in my family law court proceedings. If you have been party to more than one case please think about your most recent case

25. Was the in camera rule breached in your case? *

If you have been party to more than one case please think about your most recent case. All details shared associated with this question are anonymous and used for research only.

☐ No

☐ Yes

Breaches of the in camera rule

26. Who breached the camera rule breached in your case? (select all that apply) *

If you have been party to more than one case please think about your most recent case

- ☐ Yes, by me
- ☐ Yes, by my former partner/spouse
- ☐ Yes, by my current partner/spouse
- ☐ Yes, by my child
- ☐ Yes, by an extended family member
- ☐ Yes, by a legal professional
- ☐ Yes, by a social professional
- ☐ Yes, by a researcher
- ☐ Other

27. How was the in camera rule breached in your case? (select all that apply) *

- ☐ Case was discussed in the corridors outside of courtroom and everyone could hear
- ☐ Case was discussed in the courtroom in front of people who were not involved in my case
- ☐ Case details were shared with people not involved with the case
- ☐ Case was reported in the media with identifying information
- ☐ Case was discussed with identifying information on an online blog/podcast
- ☐ Information about my case was posted on social media
- ☐ Case details were shared with researchers without the judge's permission
- ☐ Other

28. Was the breach of the in camera rule brought to the judge's attention? *

- ☐ Yes
- ☐ No
- ☐ I don't know

29. How did the judge deal with the breach and were there any punishment or penalties imposed? *

30. Why was it not brought to the judge's attention? *

Recommendations

31. Should the in camera rule be changed? *

☐ Yes

☐ No

32. If you could wave a magic wand and the in-camera rule could be changed to make it better, what would this look like? *

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