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Minister Helen McEntee TD
Minister for Justice
Department of Justice
51 St Stephen's Green
Dublin 2

13th March 2024

RE: FAMILY COURTS BILL 2022

Dear Minister McEntee

We are writing to you in relation to the Family Courts Bill 2022 that is currently before the Oireachtas.

The Bar of Ireland and the Family Lawyers Association welcomes the Bill and acknowledges that this legislation will form an intrinsic part of the reform of the family justice system.

There is, however, one issue in the Bill that we would like to bring to your attention, and that is the reassignment of most divorce, judicial separation and co-habitation proceedings to the District Court.

A solution in search of a problem

The reasons for this reassignment are not clear. As you know, the District Court is a court of 'summary' jurisdiction, meaning a judge dealing with proceedings in an expedient manner.

Until the Bill was published, we were not aware of any concerns expressed by those involved in the family justice system about the allocation of jurisdiction between Courts. Concerns, however, were expressed about the volume of cases in the District Court and the manner, places and times in and at which sittings in the District Court take place.

This reassignment of jurisdiction from the Circuit Court to the District Court proposed in the Family Courts Bill, seems to all intents and purposes to be a solution, in search of a problem.

Adding burden to already over-worked and under-resourced District Courts – the 'A&E of the legal system'

The District Family Court is already overcrowded, and an influx of divorce and other substantive cases will increase its workload by 11%, adding thousands of cases annually. This will displace existing family law cases, thereby causing further delays for all family litigants and impacting on all those who have cause to go before the District Court.

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Complex and contested family matters deserve time

Divorce, judicial separations and co-habitation proceedings often give rise to challenging and complex legal and factual scenarios. As well as addressing the breakdown in relations, the Courts have to disentangle economic and welfare interests and adjudicate on what is in the best interests of dependent children. The decisions made will have a lifelong effect on the parties and their children.

All parties emerging from marital and relationship breakdown deserve to be heard carefully, to have their issues analysed forensically and this is a process that takes court time. Conversely, this is not a process that is suited to the summary nature of proceedings in the District Court.

Adding costs instead of saving them

The proposal to add divorces, judicial separations, and co-habitation applications to the workload of these busy District Judges will lead to greater delays and more interim hearings, which will add to the eventual legal cost.

If a case commenced in the District Court is to be transferred to the Circuit Court by reason of complexity or otherwise, this will just lead to delay (and thereby increased costs), when it would have been preferable to have such case commenced in the Circuit Court to begin with.

Legal fees are normally calculated as against the time involved and the complexity of the issues and thus, the cost to litigants will not be reduced by simply reassigning cases to the District Court. Therefore, the stated aim of achieving a reduction in legal costs is unlikely to be realised – the Bill as drafted could actually result in having the opposite effect.

Two-tier family justice system

A further consequence of the Bill as drafted is the potential to create a two-tier family justice system. Under the Bill as it is currently constituted, those with land (which might normally include a family home) of less than €1million in value will be automatically assigned to the District Court with attendant summary jurisdiction regardless of the complexity of their issues, while those with a value above €1million will be assigned to the Circuit Court, where more time will be available to the parties to have their case resolved.

In other words, the less well-off will be dealt with in a brisk, 'summary' system, operated by the overworked and under-resourced District Court. In comparison to a plenary system in the Circuit Court, in which there is a more considered and less hasty process for very similar cases, where the only real difference is a land value in excess of the District Court threshold.

We would appreciate the opportunity to meet with you to discuss the concern outlined above and further detailed in the enclosed submission. It is our desire to work with you in a constructive manner to ensure that the reform of the family justice system can deliver access and fairness for all families.

Yours sincerely

Sara Phelan SC
CHAIR, COUNCIL OF THE BAR OF IRELAND

Paul McCarthy SC
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