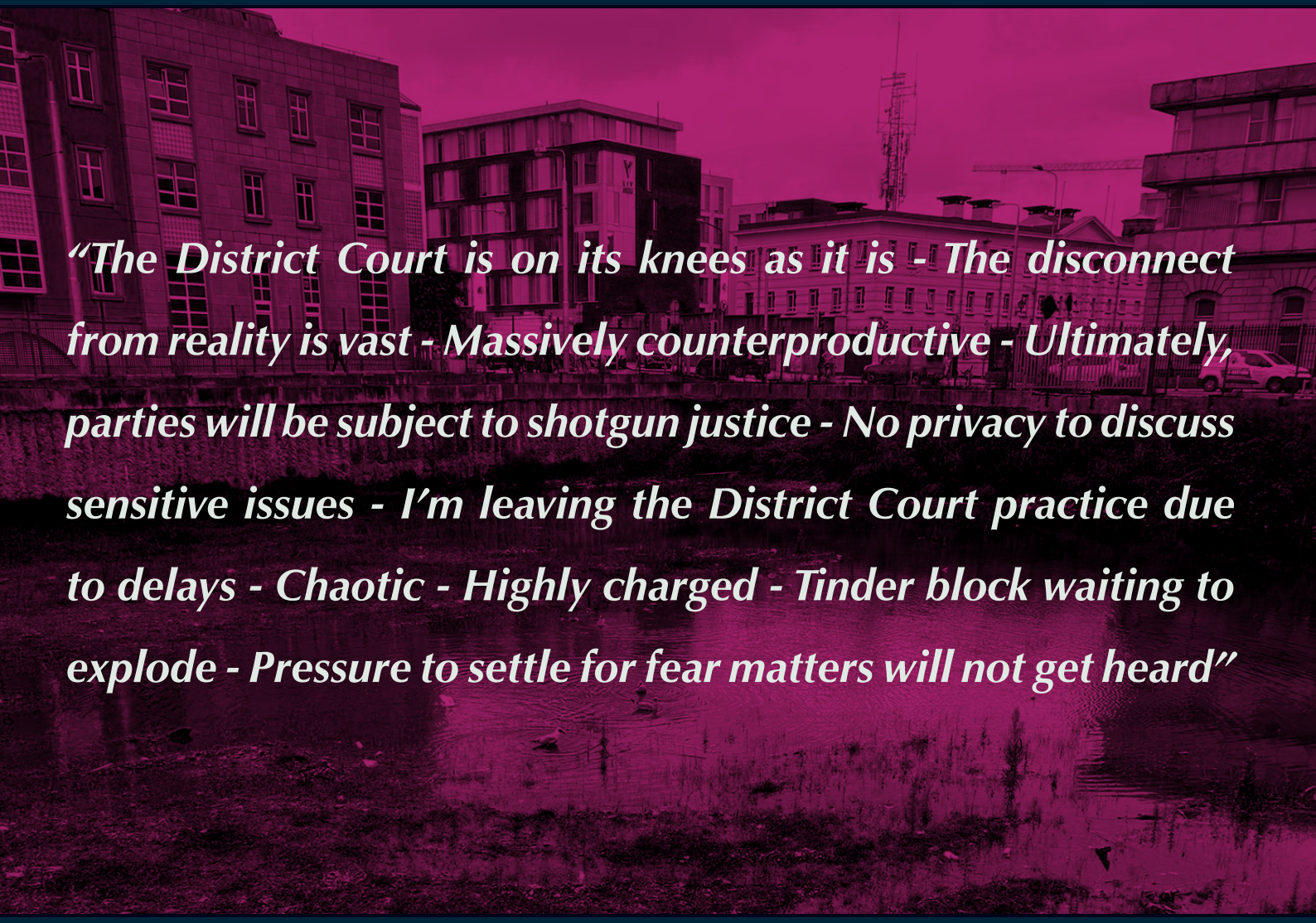
The Family Courts Bill Survey | Perspectives from the coalface

Positive Reform or a Retrograde Step?



"The District Court is on its knees as it is - The disconnect from reality is vast - Massively counterproductive - Ultimately, parties will be subject to shotgun justice - No privacy to discuss sensitive issues - I'm leaving the District Court practice due to delays - Chaotic - Highly charged - Tinder block waiting to explode - Pressure to settle for fear matters will not get heard"

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Positive Reform or a Retrograde Step?

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Positive Reform or a Retrograde Step?

Background & Intention of the Bill

The Family Courts Bill 2022 provides for the establishment of a Family High Court, Family Circuit Court, and Family District Court as divisions within the existing court structures. The stated aim of the Bill is that it will form an intrinsic part of the reform of the family justice system, providing many of the building blocks essential to the development of a more efficient and user-friendly family court system; a system that puts families at the centre of its activities, facilitates access to specialist supports and encourages the use of appropriate dispute resolution in family law proceedings.

The legislation, as currently drafted, proposes to reassign jurisdiction in cases including divorce, judicial separation, applications pursuant to the provisions of the Cohabitants Act[1], and disputes between co-owners under section 31 of the Land and Conveyancing Law Reform Act 2009. In other words, the Bill envisages a significantly expanded role for the District Court in family law matters. Further, the Bill anticipates that cases involving land (including the family home) with a market value of less than €1,000,000 will in the main be heard and disposed of in the Family District Court.

A Key Concern: Shifting Jurisdiction & Displacing Urgent Matters

The Bar of Ireland and The Family Lawyers Association are primarily concerned with one aspect of the Bill; namely the proposed reorganisation of jurisdiction for the hearing of family law proceedings, so that most of the divorce and judicial separation cases will be heard and disposed of in the Family District Court. This is not in the best interest of families who find themselves interacting with the family justice system and will create a two-tier family justice system.

In addition to the shift of divorce, judicial separation, and cohabitation cases to the District Court, Section 68 of the Bill restricts an applicant from commencing family law proceedings in the High Court unless there is a "special reason" to do so. The High Court's constitutional status as a court with full original jurisdiction is central to the development of caselaw. If it is no longer a court of first instance in certain proceedings, such as judicial separation and divorce, there will be fewer written judgments, which in turn will hinder the ongoing development of child and family law.

1996 Law Reform Commission Report: Divorce does not belong in the District Court

The distribution of family law cases between the different courts has been clear and has not given rise to any calls for change. In its report on Reform of the Family Law System, the Oireachtas Joint Committee on Justice and Equality in 2019 endorsed the continuing relevance of the recommendations for structural and legal reform made by the Law Reform Commission in its 1996 report.[2] This concluded that that a unified family courts system drawing on the resources of both the District Court and Circuit Court would work well but noted that:

'On balance, we believe that our provisional recommendation in favour of a Circuit level Family Court is correct. We do not believe that remedies such as divorce, annulment or judicial separation should be made available at the level of a court of summary jurisdiction. Therefore, if there is to be a unified family law jurisdiction, as we strongly believe there should be, it must at this time be established at Circuit level.'

[1] Civil Partnership And Certain Rights And Obligations Of Cohabitants Act 2010

[2] Houses of the Oireachtas, Joint Committee on Justice and Equality, Report of the Family Law System (October 2019) 8

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Our Survey: Perspectives from the Coalface

In March 2024, a survey was conducted by the Family Lawyers Association in conjunction with The Bar of Ireland to gather perspectives from practitioners specialising in the area of family law, and specifically, to garner views regarding the proposed jurisdictional change under the Family Courts Bill.

In addition to gathering research on the impact of the proposals under the current scheme of the Bill, the survey was developed to assist in our engagement with the Bill and communicating with key stakeholders.

About our survey respondents: The Family Lawyers Association

Survey respondents consisted of members of the Family Lawyers Association, an organisation consisting of 286 solicitors and barristers practicing in the area of family law. In addition to this it was also distributed to other family law practitioners across Ireland. The Family Lawyers Association has been in existence for almost forty years and has served the dual function of promoting contact between family lawyers and fostering a greater level of knowledge and information in regard to family law.

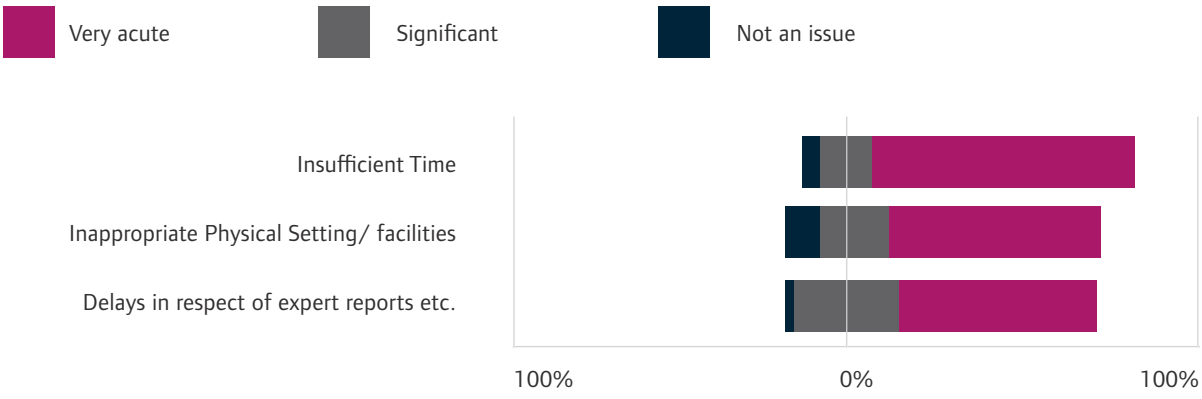
Results

The Family Courts Bill Survey garnered 241 responses over a three-week period (23 March – 10 April 2024).

Results[3] of the survey are as follows:

Question: Based on your current experience of the District Court, including existing family and child-related proceedings, (e.g. domestic violence, guardianship, custody/ access, maintenance), what are the current challenges being experienced?

79% of respondents indicated that insufficient time was the primary existing challenge applying to family and child-related proceedings currently before the District Court. Inappropriate physical settings/facilities (67%) and delays in expert reports (65%) were also labelled by a large majority as "very acute" challenges.



Challenge	Very Acute (%)	Significant (%)	Not and issue (%)
Insufficient Time	79	18	3
Inappropriate physical setting/ facilities	67	24	9
Delays (ie. expert reports)	65	31	4

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Respondents were asked to provide additional comments and views based on question 1 and open-ended responses spoke specifically on all three variables (time, delays in reports and inappropriate physical facilities).

A: Insufficient Time: Overburdened with already complex matters

Many respondents spoke to the challenge of insufficient time they experience in the District Court, indicating that this creates stress and additional unnecessary and avoidable costs to litigants due to the fact that scheduled matters do not get reached with the current workload.

A significant number of respondents indicated that while additional judicial resources and appointments are welcome, such investment will only be keeping pace with existing high demand; and not sufficient to accommodate approximately 6,000 additional family law matters.

FROM THE COALFACE

- *"There are too many cases per day in the District Court so either the cases don't get heard or don't get enough time."*
- *"I am regularly in the District Court until after six. The lists particularly regarding childcare cases are unmanageable."*
- *"[The Court] has insufficient time to deal with cases, resulting in further adjournments."*
- *"Average waiting time for reports or any adjournment is 3 months; lists are very long and there is no time to properly hear a case."*
- *"Long waiting periods for Section 32 Reports. Not enough time for Judges to hear cases."*

B: Inappropriate facilities: Roadside consultations; lack of dignity for applicants

67% of respondents identified inappropriate facilities and physical settings as a very acute challenge currently experienced at the District Court. Limited consultation rooms and inappropriate settings pose significant risk to the safety of litigants and court users, especially in domestic violence and criminal matters, which are convened alongside family court business.

FROM THE COALFACE

- *"Most of my domestic violence cases get worse because of District Court delays."*
- *"There are so few consultation rooms, this results in an almost total lack of privacy for litigants - so the in camera rule is ineffective."*
- *"Congested, lack of consultation rooms especially in rural courts, not appropriate for DV, coercive control, leads to high tensions. Forcing client consultations out in the rain, corridors and hallways."*
- *"There are a very limited number of private consultation rooms. Consequently, applicants for relief under the Domestic Violence Act are in close proximity to the respondent for hours as they wait for their cases to be called on. They find this unsettling; if we move to another area, the respondent often moves as well."*
- *"Changing nature of users' behaviour due to complex mix – Dolphin House firebombed, excrement thrown, punched."*

Positive Reform or a Retrograde Step?

C: Delays: Already under-resourcing child-related matters, especially of S. 32 reports

65% of respondents identified delays in respect of expert reports as a very acute challenge they face when working in the District Court, thus compounding the inability of District Court judges to clear lists creating an onward impact on other areas of court business.

Such delays increase adjournments to a later date, incurring additional legal fees for clients. Further, the over-burdened system does not allow the proper time needed for judges to review and process Section 47 and 32 reports, known as 'voice of the child' and 'welfare reports'.

The Government has stated that the proposed Bill, "recognises that children and families should be at the centre of the system", however the current and future reality will bear little relationship to that intention.

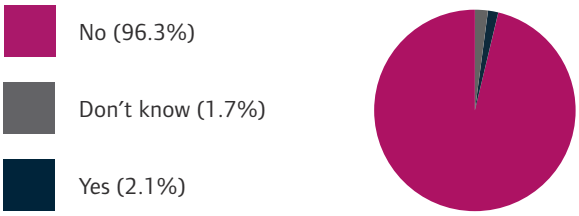
When examining the open-ended answers from respondents, a significant theme focused on delays of Section 32 reports:

FROM THE COALFACE

- *"Lists are too long, inadequate facilities for clients, waiting 24-28 months for section 32 reports."*
- *"At present section 32 reports are taking in some instances 6 months to complete."*
- *"Expert reports, particularly Section 32 reports take too long in compiling."*
- *"Huge delays in Tusla/expert reports. Often, the Court has not even received the report and/or respectfully, if the report is on the file, the Court has not read the report in advance of the case, or has insufficient time to deal with the case, resulting in further adjournments and lack of appropriate justice for clients and all concerned."*

Question: Based on your experience, is the District Court an appropriate venue for judicial separation and divorce proceedings, in addition to cohabitation disputes?

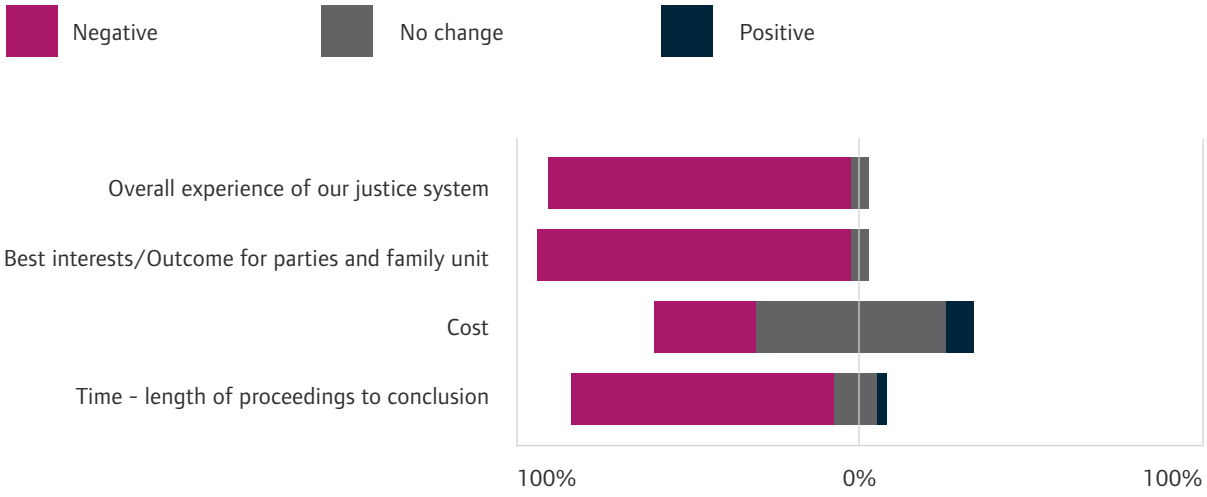
96% indicated they do NOT believe the District Court is an appropriate venue for judicial separation, divorce, and cohabitation proceedings.



Positive Reform or a Retrograde Step?

Question: Keeping your client's welfare in mind, what will the impact of the proposed reassignment of jurisdiction be?

The most significant aspects of family law cases that are likely to be directly impacted revolve around access to justice, costs to individuals and the courts system, length of proceedings and best interests of the family unit interacting with the family justice system.



Challenge	Negative (%)	No Change (%)	Positive (%)
Overall experience of family justice system	94	6	0.4
Best interests of family unit	95	5	0.4
Cost	44	46	10
Time	86	13	1

Positive Reform or a Retrograde Step?

A: Overall experience of our justice system

94% of respondents determined the impact of the proposed reassignment of jurisdiction will have an overall negative experience on our justice system. When drafting policy reform for the family justice system, access to justice for individuals, co-habitants and families is paramount. In cases of relationship breakdown, people are often at their most vulnerable and face significant financial decisions that will go on to impact their lives long-term, and often, the lives of children and wider family.

By reassigning complicated family law matters to an already over-burdened court of summary jurisdiction, administering fair and equitable justice becomes untenably strained.

FROM THE COALFACE

- *"The current waiting times in the District Court in Dublin are unacceptable - there will be significant problems in terms of access to justice for clients and serious delay which will impact clients' lives to an inordinate degree."*
- *"Ultimately parties will be subject to shotgun justice. What is proposed is a terrible disservice to people going through a bad time in their lives."*
- *"The €1 million jurisdiction will often be exceeded in Dublin given the cost of property but less so in the country, thereby creating a country/city divide."*
- *"Judges will not be able to give proper time to hearing cases so people will not get a full and fair hearing which will result in appeals."*
- *"The District Court does not have the time that a family law case may require. The client experience will in all probability be negative."*

B: Best interests/outcome for parties and family unit

The stated aim of the Family Courts Bill is to serve as an intrinsic part of the reform of the family justice system, however, **95% of respondents in our survey determined the impact of the proposed reassignment of jurisdiction will have a negative outcome for parties and family unit.**

A number of respondents identified the significance of precedent from the superior courts and other sources of guidance; and that in the context of a 'charged' and 'chaotic' District Court, that due consideration to such authorities is not always possible.

FROM THE COALFACE

- *"Real concern about displacing existing cases, especially urgent domestic violence and access/custody cases."*
- *"As a regular practitioner in the District Court, justice does not prevail... At best, clients already under huge financial strain are forced to refer their case to the Circuit Court incurring more financial hardships."*
- *"The impact of delay for parties and children in medium to high conflict cases would be very detrimental. You have to wonder how the court would cope with emergency applications."*
- *"The financial implications & ramifications of marital breakdown are generally the most significant financial decisions a person /couple will ever have to address. The outcome dictates the quality of their life for the rest of their life."*
- *"Judicial training; vs. swift justice - questionable application of precedent of the Superior Courts/judicial time is scarce, reports are not even being read."*

Positive Reform or a Retrograde Step?

C: Cost

10% of respondents indicated that the proposed change will improve costs in family law. However, **44% of survey respondents believe the proposed reassignment of jurisdiction will have an overall negative impact on costs.** Moving complex separation and divorce cases to an overburdened court will lead to cases being adjourned to a later date or appealed to the Circuit Court, both resulting in additional costs to clients.

It is unclear how contested and uncontested matters will be structured, for example by way of a dedicated list; which ostensibly will require an additional day and resources at the District Court.

The issue of appeals from the District Court is one that arises throughout the comments, some pointing to the already busy District Court Appeals list; and querying how a dedicated Family District Appeals List dealing with sensitive family matters, can be managed alongside other civil business.

We are of the view, based on experience and key issues identified in this survey, that commencing the vast majority of judicial separation, divorce and co-habitation matters at the District Court will result in a significant number of appeals. Already, based on current data, litigants must wait up to 12 weeks to have their appeal listed, but not necessarily heard. These additional delays add cost and further stress to clients' experience of our administration of justice.

FROM THE COALFACE

- *"Costs may increase due to multiple appearances being required whereas 'one and done' in Circuit Court."*
- *"We will still charge the same fee as our time won't change and there will be greater delays in getting cases listed and because the matters will be rushed, the clients will feel like they haven't had a fair hearing."*
- *"Divorce cases etc being heard in the District Court will likely lead to a large volume of appeals resulting in increased costs for the clients as well as lengthy delays."*
- *"The District Court is a completely unsuitable venue for divorce and separation… It would be massively counterproductive and would lead to huge numbers of appeals to the Circuit Court."*
- *"High likelihood of appeals which could increase costs."*

D: Time - length of proceedings to conclusion

86% of respondents indicated the proposed reassignment of jurisdiction will have a negative impact on time, specifically the length of proceedings to conclusion.

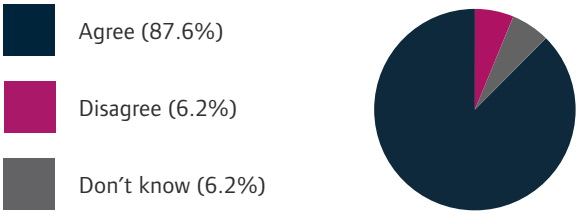
FROM THE COALFACE

- *"I am currently in a case where the court made an order for access based on a Section 32 assessor's recommendations. The mother indicated her intention to appeal the Order and asked for a stay. The stay was refused. The order was made in June 2023. The Appeal is listed for April 2024. There has been no access since September 2023. The breach application brought by my client is listed later than the appeal date."*
- *"The current wait time for a hearing date in the District Court on my circuit for a 1 hour case is 18 months!!!"*
- *"Family law often being left to the end of the day and inevitably adjourned because the Court does not have enough time."*
- *"The District Court does not have the time a family law case may require. The client experience will in all probability be negative, in circumstances, where they will not have the time to hear the volume of cases before it and cases will go back to another day, this will result in further fees."*

Positive Reform or a Retrograde Step?

Question: The Family Lawyers Association & The Bar of Ireland are also concerned that the proposed restriction on an applicant commencing family law proceedings in the High Court "unless there is a special reason to do so" is not necessary and that it will negatively impact on the development of case law.

88% of respondents agreed the proposed restriction on an applicant commencing family law proceedings in the High Court *"unless there is a special reason to do so"* is unnecessary and will negatively impact on the development of case law.



The Bar of Ireland and the Family Lawyers Association strongly believe any proposal to reduce the ability of the High Court to contribute to the development of domestic and international legal principles and remove judicial assistance to the lower courts is not in the public interest. It is vital that a body of caselaw continues to be generated to serve this area of law.

FROM THE COALFACE

- *"The consideration given by the High Court to issues always needs to evolve as cases and issues evolve in family law context."*
- *"What are the purported criteria for a "special reason to do so"? The rationale for this change is not explained."*
- *"To raise the jurisdictional threshold of the High Court from accumulated assets worth over €3 million to "special reason", would be to deprive practitioners, judges, legal academics and most importantly, families of progress and development in the family law arena."*
- *"We need to create good sets of precedence and judgements and written judgements are mostly created from High Court cases. These are essential in guiding all practice at sports circuit and district court level."*

Solutions: Alternatives to Displacement

The final question of the survey asked family law practitioners to think about the way in which judicial separation, divorce and cohabitant disputes are currently dealt with in the Circuit Court, and to identify three changes that could be made at Circuit Court level to positively impact the outcome for, and experience of, litigants.

Themes of proposed changes to the current Circuit Court structure of addressing judicial separation, divorce and cohabitation disputes included enhanced case management, need for additional resources in the judiciary, improvement in court facilities and cost penalties for vexatious behaviour as outlined below.

Positive Reform or a Retrograde Step?

Recurring Themes in Improving Family Law Proceedings in the Circuit Court

1.Enhanced Case Management: There was a consensus among respondents regarding the importance of effective case management to expedite proceedings. Suggestions included the implementation of online application facilities, stricter enforcement of time frames, and the allocation of specific days for different types of hearings, motions, and consent rulings.

2. Need for judicial resources, including support staff, access to administrative offices, and digitalisation of certain process: Many respondents emphasised the necessity of appointing more Circuit Court judges to prevent long delays in family law proceedings. This was highlighted as essential for ensuring cases are heard in a timely manner and to alleviate the burden on existing judges.

3. Improvement of court physical facilities: Several respondents mentioned the need for better court facilities, including the availability of consultation rooms, cleaner and more private spaces for litigants, and improved access to basic amenities such as water and seating.

4. Cost penalties for delay: There were suggestions for imposing cost penalties on parties responsible for delaying proceedings, aimed at incentivising compliance with court orders and timelines.

5. Provide additional resources for S.32 reports: There was a clearly identified need to provide for and employ additional experts for the processing of S.32 reports and to establish a necessary fast track panel at an earlier stage. Delay in child access due to frustrations in S.32 reports is what has been identified by respondents as a significant contributor to the breakdown of broader family relationships.

These recurring themes underscore the urgent need for improvements in staffing, infrastructure, and procedural efficiency within the Circuit Court to address the challenges faced by litigants and legal practitioners in family law matters.

Conclusion

In order to ensure that the reform of the family justice system is both effective and sustainable, it is important the Department of Justice consult and engage with family law practitioners and other professionals working in family law to identify areas in need of change. Doing so will deliver policy based on practice and real-life circumstance.

Front photo Keith Walsh

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