Family Law Matters

Volume 3 No 1 Spring 2009

COURTS SERVICE
An tSeirbhís Chúirteanna

Contents

Editorial Team: Helen Priestley, David Crinion, Fiona Farrell; Sub-editor:Therese Caherty; Artwork by Ashville Media; Printed by Brunswick Press

Reporters: Marie Ahearne BL, Jackie Byrne BL, Laura Cahill, BL, Susan Casey BL, Cliona Cassidy BL, Oisin Crotty BL, Caragh Cunniffe BL, Sarah Dever BL, Sonya Dixon BL, Lynn Fenelon BL, Mark Declan Finnan BL, Niamh Ginnell BL, Marie Gordon BL, Kevin Healy BL, Lisa Lingwood BL, Barbara McEvoy BL, Ailionora McMahon BL, Antonia Melvin BL, Richael O'Driscoll BL, Clare O'Driscoll BL, Lisa Sheahan BL, Caroline Timmons BL, Sandra Walsh BL.

Welcome to Family Law Matters

This issue concludes the Courts Service Family Law Pilot Reporting Project. The relaxation of the in camera rule following the enactment of the Civil Liability and Courts Act, 2004 afforded an opportunity to make information available for legal practitioners, the media, researchers and the public on the workings of our family law courts. The Courts Service Board adopted a proposal to establish the pilot project which included the attendance of barristers, engaged for the purpose, in family courts all around the country. For the first time, reports of the many issues of concern to litigants and the attempts by judges to resolve them were published. This exercise was conducted without identifying the parties in the cases thus protecting the privacy of the families involved.

In his introduction to the first issue of *Family Law Matters* the Chief Justice, Mr. Justice John L. Murray, noted that 'the engagement of Dr. Coulter to produce reports on family law cases is a positive development that will not only provide useful information to those who seek it, but should also assist in dispelling some of the misapprehensions surrounding the application of family law". He noted that the reports demonstrated that "it is possible to increase the level of information available on family law proceedings while protecting the privacy of the parties."

Since that first issue, over 150 reports have been published in *Family Law Matters* from all three court jurisdictions: High, Circuit and District. They have covered matters across the family law spectrum including divorce, judicial separation, nullity, guardianship, custody, access, maintenance and partition. In this issue we publish a particularly extensive selection including cases on child care and domestic violence.

It is clear from the reports that social and economic factors including the down turn in the economy and falling property prices are increasingly a major consideration for the courts when making 'proper provision' in maintenance, separation and divorce cases.

We accompany the reports with a selection of interviews with professionals working in the family law area: Eimear Fisher of COSC – the National Office for the Prevention of Domestic, Sexual and Gender-based Violence who refers to a recent campaign to raise awareness of domestic violence in the community, Frank Brady of the Legal Aid Board who outlines the role of the Board and Aidan Browne of the Children Acts Advisory Board who focuses on the matter of arrangements for children with special care needs.

Editorial Team: Helen Priestley, David Crinion & Fiona Farrell

We also publish statistics on domestic violence applications in 2007 together with the trends in barring, interim barring, safety and protection orders in recent years. We include details of the applicants for these various orders. Following on from our feature on the Hague Convention in our Winter 2008 issue, we report on a recent case where the court considered the matter of hearing the views of young children.

We are grateful to all who have assisted us in the course of this pilot project. Our publications have been enhanced by the contribution of many support agencies who spoke to us including those featured in this issue and others such as the Money Advice and Budgeting Service (MABS), the Family Mediation Service, the Pensions Ombudsman, and the Mediators Institute of Ireland.

We extend our thanks to the reporters who attended in courts all around the country and to the judiciary, staff, litigants and members of the legal profession who accommodated them. We acknowledge the contribution of Carol Coulter, Terry Agnew and John Quirke and the support of our sub-editor, Therese Caherty.

We are updating the index of matters featured in all seven issues of *Family Law Matters* to provide a comprehensive guide for future reference; this index will be available on our website, *www.courts.ie,* shortly.

All issues of *Family Law Matters* can be accessed on our website in the 'publications' section.

There are a limited number of hard copies of *Family Law Matters* available on request. Please email PublicationsUnit@courts.ie

Abuse allegation comes as a shock

'I've had 65 days [without access] to think and I can't think what this has got to do with'

A father who had been in a seven-year relationship came before Judge Mary O'Halloran in the District Court to apply for access to his child. There had been no court order on access but an agreed arrangement had worked well until a few months previously when the mother refused it because the daughter alleged he had abused her.

The father said he was unaware of the content of the allegation. He added: "I've had 65 days [without access] to think and I can't think what this has got to do with. It's beyond me. I can't understand it." His solicitor asked: "Do you deny it?" He replied: "Yes."

In cross-examination it was put to the father that the child had told her mother "you put your private parts on top of her". The father appeared shocked. The solicitor for the mother and child said a Garda specialist was about to take a statement from the child.

The mother said her daughter said she had "something disgusting to say. My daddy puts his willy on me". On hearing this she contacted a social worker and gave a statement to the Garda. The mother said she was shocked. In cross examination it was put to the mother that this allegation had come as a huge surprise and that his client was in shock.

Judge O'Halloran said: "[It] appears that the matter is under investigation and it wouldn't be appropriate to make orders at this stage." She did not want to add "another layer of investigation". The judge therefore made no order for access and adjourned the matter.

'You love your children, but are damaging them'

Separated parents in dispute over access to their two children are told to set aside their differences

A separated couple in serious difficulties over access came before Judge Alice Doyle on the South Eastern Circuit. Both parties acknowledged that access was not working out so they had agreed to play therapy for the children. They eventually agreed on a particular psychologist but at this stage relations had broken down and they were no longer communicating.

The wife's barrister said that Thursday evenings were a problem. One child had a dancing class and the husband was unhappy with this as it reduced his access time. The wife claimed that her husband was very inflexible, the child loved dancing and had competitions some weekends but the father would not forgo access if these occurred on his weekend. The wife's barrister said the parties should agree to implement the recommendations in the psychologist's report. She believed it was not in either of their interests to go tit-for-tat in court. The husband's barrister agreed but said she would call her client as he was keen to give evidence.

The man said he had never broken the access agreement but the situation was impossible because his wife would not communicate with him. He had been told nothing about the play

therapy until three sessions into it. He agreed, he said, with the report's recommendations.

The wife then claimed that her husband said she was not to arrange any activities during his access. Their other child missed out as well because riding competitions took place at weekends. These activities were very important for her children, the mother said, because they had found the separation very tough and their hobbies were helping them through. She fully agreed that the children needed plentiful access to their father and would welcome him coming to watch them during their activities if he wished.

"What about your husband's claim that you do not communicate with him?" asked the judge.

The woman replied that when she texted her husband his girlfriend responded. When her husband's girlfriend had a baby the children had been badly affected, she said, but their father simply told them to deal with it. Her younger child asked the psychologist to make the parents get back together, the mother said. The child had always idolised the father and wanted individual attention from him which was not forthcoming.

The judge told the pair that the psychologist's report said that if the situation continued the children would have emotional and behavioural difficulties as well as feelings of shame and guilt. The report also said that the children could end up with problems sustaining adult relationships. Judge Alice Doyle continued:

"You should both be ashamed. You're ruining the lives of these young children. You have the privilege of having two children and you are damaging them because you cannot put your differences aside."

The judge then recalled the man and relayed that the report stated the children felt alienated, as if they were not part of their father's new family.

"I'll do what I can to bring them into the family fold," he said.

The children had told the psychologist that their father was often not around when they were at his house for access. He maintained he was around but he had things to do in the house such as cutting the lawn, things that normal fathers did. He added that the children were different ages and they both wanted him to do different things.

Judge Doyle informed the parties that they both needed to be flexible. She said it was obvious that the children did not feel part of their father's new family but their mother had a role to play in this. She told the mother to encourage the children to be part of the other family and made an order directing the parties to comply with the report's recommendations.

"The one ray of light here is that you both love your children dearly but you are damaging them. You have been blessed with two children but you have both neglected your responsibility to them. I'm hopeful that you'll leave aside your disagreements," concluded the judge.

'You should both be ashamed. You're ruining the lives of these young children'

Mother ordered to complete parenting course

A mother came before Judge Alice Doyle at a Midland Circuit sitting, seeking to re-arrange an access schedule and reduce the father's time with their two children, aged five and three. In a previous interim application for access a Section 47 report was ordered and the woman wished to alter the schedule it set out.

The schedule gave the mother 60 per cent and the father 40 per cent of the time with their children. The mother, who had recently moved, had placed them in a crèche two days a week due to her work commitments. The father argued that this was bad for the children and that he or a close family member of his could care for them on the

days in question. The wife contended that the children were very happy in the new crèche and that it was good for them to be making new friends and socialising. She also maintained that she could discuss nothing with her husband. Whenever she tried it turned into an argument and the rows frequently occurred in front of the children. In addition, she did not feel comfortable with the husband driving with the children after he had been working a night shift.

Judge Doyle was visibly angry with both parties for not being able to put their children's best interests first. She said neither of them was to make any negative comment about the other in front of the children nor were they to argue in front of them. She directed that the wife was to do a parenting course and once this was completed both parties were to engage in mediation to establish a co-parenting relationship. She then revised the access schedule in a manner that was a compromise between both parties' wishes. The parents were also unable to decide which primary school their eldest child should attend but Judge Doyle would not deal with this until the full hearing of the case.

Father acted appallingly, says judge

A man who brings his children to a garda station because he says he has no room in his car is taken to task by the judge.

Judge Rory MacCabe at a sitting of the Western Circuit Court heard a case about a family with custody and access difficulties. In a family of five, the two older children lived with their father and the younger three with their mother. There had been several court applications and the HSE had prepared a number of Section 20 reports. Furthermore social workers were involved with the family.

There had been a breakdown of access between the father and the two youngest boys and a serious incident had occurred on the last visit when the father had gone to meet the children in the church car park meeting place at 7pm. A garda gave evidence that he had been called to a police station at 10pm on Friday and had found the father there with his partner and the three youngest children. The father said there had been a provisional arrangement for him to meet his daughter and bring her home with him. But as he was talking to his daughter, his wife, who had also brought their two sons, had driven off leaving all three children in the car park. He told the garda he could not take the boys, as his car would be overloaded.

He had rung the garda station and travelled there for advice. After discussing matters for over an hour and a half including the option of the children going to a house in the city and seeing a social worker, the garda left a message on the mother's phone, and at 11.45pm called to her home and found her there. She was taken aback by the situation and arranged to come and take the children.

The garda said the father had told him that the mother had been in hospital for psychiatric treatment and so he had formed an impression of her. "He didn't ridicule her or knock her to the ground but had nothing good to say." When she came to the station, however, his impression was different. "She co-operated immediately and was very level headed."

The father lived 15 or 16 miles away and the wife's counsel suggested that, if the issue really was overloading, the father could have easily made two trips, dropping people off

and coming back again. Instead, she said, he had embarked on this course "out of pure badness".

The mother said he was supposed to have access to all three of the children, from Friday to Sunday, three weekends a month and that while she would always bring them to the meeting point he would nearly always bring the daughter and tell the boys he would take them the next week when the same would happen again. She had not realised there was a problem when she left the car park otherwise she would not have left. She said the boys felt neglected and did not understand why he would take the daughter and not them. "The kids are devastated. They say 'Daddy doesn't love us'," she said.

The father said there had been confusion over access as that month had had a fifth weekend. The judge asked: "Why didn't you get your partner to bring some home and come back? Why did you take 'til midnight?" He replied that it was ill advised and it had been dragged out. The boys often did not want to go with him as he lived in the country and they preferred the town. He did not want to force them.

Judge MacCabe told the father that he had acted appallingly. He directed that the children in future should be collected from their paternal grandparents' home to make sure that no one would be left on the street again. "You were told in court last time if you didn't adhere you were at risk of losing custody. It is open to me to remove access and custody completely for the three kids but that is not good for them." He went on to say that it was not up to the children to decide if they would go or not as they were too young. "It is not an a la carte situation, you take them all."

He added: "When they don't want to go, it is really down to the primary carers of the children, that is parents. If the atmosphere is going to be poisoned you will be in here forever until the kids are independent and can get away from the situation as that is how they will look at it. Do you want them to look at it like that?"

'Why didn't you get your partner to bring some [of the children] home and come back? Why did you take 'til midnight?'

In Brief

No prospect of reconciliation

A couple who had been separated for 10 years came before Judge Martin Nolan at the Dublin Circuit Family Court to apply for divorce. A consent agreement was handed in and the applicant husband said they had married in May 1990 and had three children. He said he was now renting a property and was unemployed. There was no prospect of reconciliation. The wife was to have sole custody and he would have some access if the children agreed. He promised not to contact them until they had completed their Leaving Cert exam. He had relinquished the joint tenancy in their council house and it was now in the wife's sole name. The judge granted the divorce and noted the terms of settlement and made orders and rules accordingly.

Man tries to end spousal maintenance

A judge asks why he is needed in court when a man decides off his own bat what he will pay his wife and when.

'You sought to vary maintenance in the District Court and failed and you still varied it anyway?'

A maintenance application came before Judge Seán Ó Donnabháin in the Cork Circuit Family Court where the parties had separated in 2004. There were two children, and the family home had been transferred to the wife for €10,000; the husband continued to pay €300 mortgage per month. He paid weekly maintenance of €600; €250 per child and €100 spousal maintenance. He wanted to stop the latter.

The wife was not working when the house was transferred although she was self-employed and could work from home, something she had done during the marriage. After the separation, she worked part-time outside the family home.

The husband now lived with a new partner with whom he had recently bought a home. The wife suffered from anxiety and depression, was working part-time and maintenance had not increased since the separation in 2004. The court was told that maintenance arrears exceeded €6,000. The husband paid €2,000 into his wife's bank account and it was her responsibility to ensure mortgage payments. But she had had difficulties since his payments were often late. This meant she was overdrawn and incurred bank charges or penalties.

The parties married in 1992 and separated in 2004 and throughout that time the wife helped the husband to get his business up and running. She had been very emotionally damaged by the separation. The husband said he paid his wife €600 a week but that he also paid for clothes and shoes and other items that the children required. In 2007 one of his children came to live with him for a period of time and he deducted €250 a week from the maintenance during that time. The judge said: "You decided to vary maintenance as the circumstances changed. Is that the situation? You deducted your child's maintenance and continued to pay the rest?"

The husband said yes. Judge Ó Donnabháin said: "An order of the court cannot be varied on a whim. You must come back to court if you want it varied." The husband expressed regret at any problems he had caused. The judge then asked: "Is the mortgage up to date?" He answered: "I don't know. I just give the money to my wife to pay it. I have no problem paying for the house. Of course I want to make sure that my wife and children have a roof over their heads."

The judge asked about the wife's circumstances and heard that she had operated a business from the family home during the marriage. This was no longer the case and she now worked part-time. The applicant husband believed his wife continued to operate her business from the family home as well as working part-time.

It was then revealed to the court that the husband had unsuccessfully sought to vary maintenance in the District Court. The judge said: "You sought to vary maintenance in the District Court and failed and you still varied it anyway?" "Yes," said the husband, adding that he had also sent a cheque for the arrears but had deducted a certain amount due to things he had bought the children. The judge asked why he was needed in court at all when it was clear that the husband unilaterally decided when and how much maintenance he would pay. He could not condone such

behaviour and he ordered that he continue weekly maintenance of €600 plus €1,037 per month for the mortgage and €400 per month for the younger child and €250 per month for the elder child.

The judge said: "If he [the husband] breaches the order or decides to vary the maintenance, you must bring a motion before me for attachment and committal and I will attach and commit him." He said that if outstanding arrears remained unpaid, she should again bring a motion for attachment and committal.

The wife's counsel asked for maintenance to be paid through the District Court. The judge agreed and granted an order for divorce, an order for maintenance, one for joint custody and the usual order on succession and blocking orders. There was no order on costs.

'Dead-beat dad does nothing to assist his family'

A wife applied to Cork Circuit Court for a divorce from her husband who was a foreign national. He was not present and was not contesting the divorce. The pair had been married for 12 years and had two children, aged nine and eleven, who lived with their mother. The wife's solicitor said his client did not want a maintenance order as it might affect her social welfare benefits. The court was told there was difficulty in finding the husband and it was thought he intended to return to his country of origin.

Judge Donagh Mc Donagh asked when the husband had last seen his children. The wife said it was about seven years ago. The judge asked if the husband was working; she said he had been when they had met but she was now unaware of his circumstances. The judge asked: "How are you managing?" The wife replied: "On disability and carer's allowance for one of my children."

The judge indicated that he had no difficulty in granting the divorce and the Section 18 (10) blocking orders but he was concerned about proper provision. He added: "It's bothering. He hasn't made provision, proper or otherwise, since he left when the child was two years old."

The wife's solicitor said there had been a previous maintenance order but the wife had had to return to court every fortnight to enforce it. Making such an order would be pointless, the court was told. The judge said: "I don't think that should prevent me from making the order." He made the order "in case he wins the Lotto, you can execute the order and get your arrears." The judge stated that he was dealing with a "dead-beat dad who was doing nothing to assist his family". The judge said: "I understand you want a divorce and to put this behind you," but indicated that "there should be a maintenance order". He granted the divorce and made an order for maintenance for the two children, but none for the wife lest it interfere with her social welfare benefits. He granted the wife an order blocking the husband from claiming from her estate upon her death but made no order blocking the wife from claiming from her husband's estate upon death.

'In case [your husband] wins the Lotto, you can execute the order and get your arrears'

Application to vary maintenance as business 'slows down'

'You won't be making any phone calls. This is court'

A husband who was paying his wife weekly maintenance of €50 applied to Judge Mary O'Halloran in the District Court to have it varied. The couple, who had six children, were separated for three years. The wife lived in the former family home and the husband in private rented accommodation. Three children lived with the husband two of whom are still dependent as they attend college.

The income and expenses of both parties were discussed. The self-employed husband earned €600 a week out of which, his solicitor said, he paid €150 in weekly rent and €160 a week for groceries. He gave his son €80 a week and his daughter €100 until her grant came through. He could not pay off his overdraft of €17,000 and there was a court order against him for the outstanding amount.

He said his business had "slowed down", especially in the previous three to four months. He accepted that his son's grant yielded €100 a week and that the additional €80 could be considered excessive. In cross examination he was asked if he knew his daughter got €300 a week from her grant and he replied: "No. I spoke to her last Saturday evening and she said she did not have the grant yet. I'll give her a ring now."

Judge O'Halloran interjected: "You won't be making any phone calls. This is court."

He accepted that his wife had looked after the six children while he had built up his business and that she had no qualifications. She lived alone in the former family home and had an income of €254 to €327 a week depending on the hours available. The last time she had earned €324 was July 2008. She earned an average €250 a week and out of that paid €60 to the council and spent €80 on groceries. In cross examination it was put to her that she was a healthy woman, who had a house to herself and no commitments and should be able to maintain herself rather than rely on her husband's money. She had found it difficult to get work because she was not qualified. She had tried some computer courses but could not keep up. She applied for many posts but got no positive response. She had asked at work for an increase in hours and hoped this would happen "when things picked up". Social welfare was out because of her income.

She was asked if she considered €60 a week to the council was too much. She replied: "I suppose." She had not spoken to the council to try to reduce the sum, adding: "[I] want to pay it, I want to get it off my back, I want to get rid of it."

Judge O'Halloran, taking the "overall situation" into account, varied the husband's maintenance payment. It was reduced to €38 from €50 which was to be paid into court each Friday.

Quarrelling parents advised to consider mediation

A court hears that the children of a couple in dispute over maintenance have two separate sets of clothes at the home of each parent.

A husband applied to have his weekly maintenance payment of €170 for his two children, aged seven and four, reduced to nil. Both parties were represented. The husband told Judge William Early in the District Court that since they both worked and he cared for the children half of the time he should no longer have to pay maintenance. He took the children Wednesday, Thursday and Friday of one week and then Saturday, Sunday and Monday of the following. The children had two sets of clothes – one for staying with him and another for staying with their mother. He paid half the crèche fees along with uniforms, soccer gear and any outlay needed during their time with him. He argued that everything should be split 50:50, along with the children's allowance.

He accepted that the maintenance order made in June 2006 had been appealed to the Circuit Court at which time he consented to pay €175 a week. In addition, he had tried unsuccessfully to vary maintenance in June 2008 and was asked how his circumstances had changed. He said this application had been made before his former wife had moved into a new house with her partner. He had no house; he had no children's allowance while she now had two properties.

It was put to him that he did not have the children 50 per cent of the time as he collected them at 5pm on Wednesday, returned them on Friday and collected them the next week at 5pm on Thursday and returned them at 8pm on Sunday. This meant he had his children five nights out of a 14-day period while their mother had them nine out those nights. The husband contended that he was accurate as the rest of the time they were in school. He would prefer to have kept them on the Sunday nights. He added that his former wife was a named person on the deeds of one house and had another house in her sole name and that he couldn't get on the property ladder. He earned €3,800 net a month but was continuously in debt and had had to borrow from his parents to take the children on holidays.

The wife said she and her partner decided to buy another house and put up the former family home for sale. The house had not sold and was being rented but the income did not cover the mortgage. She took out a bridging loan.

Their father did not have the children half the time, she argued. In reality she had them for 10 days out of a two-week cycle and he had them for four days. On four days, she was responsible for lunch-time pick-up and for eight days for dropping them to school. She paid for all schoolbooks and any ad hoc payments. Had she ever asked him to pay for schoolbooks? She answered: "Your client knows when the kids return to school."

It was put to her that she had decided to sell her own house and buy another one. She answered that she could not have predicted the economic downturn. She did not respond when asked if her former husband was responsible for her poor financial judgments.

She told court that she lodged the maintenance into a separate bank account for the children and it currently held €4,500. The husband's solicitor said: "So you have not been using it then?" It was used on an ad hoc basis, she replied, not a day-to-day basis. She did not want a 50:50 split in lieu of a maintenance order because she did not trust her former husband to pay 50 per cent. The husband contributed 50 per cent to art classes and soccer but she said: "It's what any parent would do."

Judge Early said he would speak frankly to the parties. "You are not disadvantaged, you are the privileged. You have chosen to go

'You are not disadvantaged, you are the privileged and have chosen to go down the adversarial route'

down the court route, the adversarial route, and that may not always be for the best. There are alternative means of dealing with these problems. You should seriously consider the mediation route. You have two young children and this sort of petty nonsense about two sets of clothing – is this the attitude they will grow up with?

"You are both two plainly intelligent people and they deserve better of you. Usually the difficulty is that there is not enough money but you have more than enough at least from Mrs … [the wife's] annual income €85,000 net which is almost double that of the husband. I accept that Mr … does not have the children 50 per cent of the time, maybe 40 per cent of the time."

Judge Early believed the husband could not afford €170 per week and he varied maintenance to €80 per week, saying he considered it a fair figure given the wife's financial position. The payments were to be made by direct debit and not through the District Court office as it had enough work and these were "not two individuals scrimping to get by". In addition, Judge Early strongly recommended that the parties should avail of the mediation services.

No salary for six months, claims business man

A judge adjourns for 12 months to see how the company of a man seeking to limit his maintenance payments fares during the downturn.

'There has to be a recognition by both parties where reality lies in their lives'

A man who wanted to vary the maintenance set out in a 2006 judicial separation came before Judge Rory McCabe at a sitting of the Western Circuit Court. He was required to pay €700 a month for his children along with a further €2,000 a year in two instalments of €1,000. Of their three children, one was attending college and another was still in school. The man said his arrears were €1,000 and although he was a company director he had not drawn a salary for six months as there was no money there. He also had tax arrears and could not pay. His wife had been a director of the company and, he claimed, had appropriated €5,000 from a company savings investment policy. He had taken out two savings policies, one was in his name and had gone back into company, the other was in his wife's name but the company had paid for it.

The wife's counsel said his client had not known about this policy at the time of the judicial separation. She had learned of it when she received a letter from the policy provider on its maturity in April 2008. Had she known of it at the time of the separation she would have looked for it as she believed it came out of family funds.

Judge McCabe noted that the policy was not mentioned on the company balance sheet and if it had been he might have been disposed to see it as a company asset. When the judge asked the man how he was surviving without a salary, he replied that he had received money for damage to his building, which he had repaired for less than the insurance pay-out. The company was trading but operating at a loss and so he proposed paying €200 to the wife for the 14-year-old and €200 directly to the child in college who no longer lived at home. This would cut maintenance by €300. But he could not pay the additional €2,000 a year.

The wife's counsel argued that the company turnover had increased annually since 2003 and

that the 2007 accounts showed this from the time of the judicial separation. The separation had been hotly contested and while both parties had wanted to stay in the family home the husband had argued that it was the only place he could operate his business and the court had gone with this. He was feeling the pinch now but the circumstances had not changed.

The man denied this. He had no business at the moment, nothing on the books and no inquiries. He had not been happy with the order at the time but had accepted it. The wife's counsel said that apart from the maintenance there had also been provision for "other expenses to be agreed between the parties", but that the wife had paid all of these including educational, gaeltacht and orthodontic treatment fees. This was because the husband would never agree to them.

Judge McCabe said: "I can't direct people to agree. The last clause is unenforceable if there is no agreement so there is no liability enforceable beyond €700 a month and €2,000 annually." Counsel said the provision should have had a default clause and that it was hoped by the judge making the original order that such things could be agreed.

The wife then said she had a gross income of €70,000. She had bought a property after the separation and gave details of the extensive expenses she had paid out for the children: "Whatever they need I have to afford it in some form." Her husband had other qualifications which, over the years, had provided other income sources which were always possibilities.

Judge McCabe said there was an income imbalance between the parties but that for justice to be done he needed to see how the husband's business fared until the next accounting year. He acknowledged the different financial climate and that the wife had received a windfall of €5,000 from the savings policy. He adjourned the matter for 12 months during which time the €2,000 annual payment was covered by the windfall.

If possible, the parties should agree additional expenses on the basis that it was for the children and not for the wife and refused a request by the wife's counsel to put a default clause on such expenses saying: "There has to be a recognition by both parties where reality lies in their lives."

In Brief

Woman (72) seeks divorce

In a consent divorce application before Judge Martin Nolan at the Dublin Circuit Family Court, both parties were represented but only the applicant wife was in court. She gave evidence that the parties had married in July 1960 outside Ireland. They had moved back to Ireland and had three children, all of whom were independent now. They had been separated since September 1974 and reconciliation was not possible. She wished to buy her husband out of the family home and her children were helping her to raise €125,000 to do that.

The judge asked the woman, who was 72 years old, what she was living on herself. She replied that she had a deserted wife's allowance and an annuity from abroad. The husband was now retired. The judge granted her a divorce.

Defaulting husband narrowly avoids jail term

A woman whose former husband has owed her a substantial sum since 1998 asks the judge to send him to prison.

'You see how the lists are in family law. I can't have you coming back again and again'

On the South Eastern Circuit before Judge Olive Buttimer a woman applied to have her former husband sent to prison for non-payment of money that was due after they had separated. The husband represented himself.

The money was outstanding since the judicial separation and at a recent court appearance the man had been given more time to pay it. On that occasion, the judge had said he would be sent to prison should the matter come before the court again. The wife's solicitor said his client now wanted an order for the husband's committal to prison with an added penalty of €5,000. The arrears due were €98,000 which the previous judge had increased to €100,000 because of the delay.

The solicitor said the husband had retained land in the judicial separation which was worth €3.2 million and he was just dragging his feet and giving the court the "same old story".

The husband responded that his accountant had secured a loan of €100,000 since the last court appearance and it was now only a matter of getting a land valuation and clarification of his former spouse's claim on the property for the bank. The judge asked to see letters from the accountant verifying this. The husband said he was putting life insurance in place and the valuation would be done the next day. He had only secured loan approval in the past three days.

Judge Buttimer said she hadn't the time to be dealing with him: "You see how the lists are in family law. I can't have you coming back in here again and again." This had been going on since 1998, she said, and the number of times he had been to court was marked on the file in front of her. The only thing stopping her from sending him to prison was that it would delay the loan further. She asked when it would be paid and the husband said within two weeks.

The wife's solicitor said the husband had not even gone to see his own solicitor yet and that he had previously said he would have the loan within two or three days. The husband said he had been to his solicitor a fortnight ago.

The wife's solicitor replied: "This is crazy. He should be well able to get the loan. Those lands are unencumbered." He added that this was the first time he had ever asked for a committal but it was warranted in this case.

The judge said the husband would have to get letters for the court, one from his solicitor confirming the date he attended that solicitor and the same from his accountant. He would also have to get letters from the life insurance company and valuation auctioneers. These letters were to be faxed to him that morning and he was to return to the court at 2pm. Members of the Garda Síochána would be present in the afternoon.

After lunch, the husband handed in the requested letters. Judge Buttimer noted that the letter from his solicitor was silent about when he had attended him. The husband said the loan would be through in two to three weeks. The judge said if he had not produced the letters she would have sent him to prison. The parties were to return in a month to verify that the money had been paid over.

The wife's solicitor again asked that a monetary penalty be applied because of the delay but the judge refused, leaving it as interest payable. The husband was warned that this was his last break.

Judge disposed to 'take conduct into account'

Conduct is considered in a case where a wife settles for €450,000 out of an estate worth €1.5 million.

A wife's conduct was of such a gross and obvious character that it should be taken into consideration, a husband's barrister told Judge James O'Donohoe on the Western Circuit. He added that the woman had decided to end her marriage by having a deceitful adulterous affair. She left behind her four children under 11 years of age who the husband cared for with the help of the wife's parents, in the family home. Neither parent was speaking to their daughter. After she moved in with her boyfriend she went to the District Court to obtain maintenance.

The couple had four investment properties – three houses and an apartment. Three properties had joint mortgages and the other was in the husband's sole name. There was a business valued at €725,000 with a loan of €110,000. The family home had an agreed valuation of €485,000. Total valuations were agreed. The gross valuation was €1.95 million and the net valuation after capital gains tax and mortgages was €1.5 million.

The wife's barrister said her client considered the marriage had been over for some time. She would state that her husband had emerged naked from his mother-in-law's bedroom and said he was sleepwalking but she thought something was going on. The husband's barrister interjected that this allegation had never been mentioned previously and there was no account of it on the court file. The judge asked the wife's barrister for an explanation.

The wife said she had been unhappy since 1997. Her husband had worked too hard and they had had separate bedrooms since 2001. The wife's mother had often stayed in their family home helping with the children. The wife said the marriage got into difficulties after their second child. She was ill in hospital and her husband went back to work instead of staying with her. She had been a director of her husband's business.

After she left the family home she had been summoned to an annual meeting and dismissed. The marriage was over before she moved out, she argued, and her departure came as no shock to her husband. She believed there was something between him and her mother since she had seen him leaving her mother's room when she stayed in the family home. This had happened in 1996 and she had had nothing more to do with her mother since.

The husband's barrister asked: "Are you saying that there is something of a sexual nature going on between your mother and your husband"? "Yes, they have a close relationship," she replied.

"Having a close relationship is one thing and sleeping with your mother in law is another thing," the judge said. "What age is the mother in law?" "In her 70s," replied the wife.

"You left your children with your mother notwithstanding your objection. It was only in 2002 that your relationship ended with your mother, and it was just about housekeeping. Isn't that the case?" asked the husband's barrister. "Do you accept that there is a conduct issue?" She disagreed and said she expected a 50/50 split of the assets.

She was asked why she could not get better accommodation when she and her new partner had work. Because she could not afford it, she said. She was asked if she was expecting her husband to finance her new accommodation. She replied yes, that she had been married for 12 years. When asked why she had not taken the children with her, she

'If you were financially strapped how could you afford a loan for a €38,000 car?'

contended that the rented house was too small and she could not afford something larger. The husband's barrister replied: "If you were financially strapped how could you afford a loan for a €38,000 car?" It was put to her that if she could afford the new car she could afford a bigger house.

She was asked why the children never stayed with her. She was asked if her current partner was the first man with whom she had an affair. "Were you engaged in some sort of physical engagement with your husband's employee, when your husband discovered you fleeing to one part of the couch and the young man to another part?" She denied this. She was asked whether she had a nominal 1 per cent share of the business and if her husband had owned that business before they had married. This was correct, she admitted. She denied that the incident she related between her husband and mother was a figment of her imagination.

The husband said his wife liked a good time and that she had had a relationship with an employee. He had come downstairs one night and heard sexual noises in the living room. When he entered, there was a flurry of activity and both parties were at different ends of the room looking suspicious. He denied he had a sexual relationship with his mother in law and said that his wife was telling lies. He had a good relationship with his wife's parents. He denied that the marriage was over and said he and his wife had slept in the same room before she left. When she said she was leaving it was a shock and he had asked her to reconsider.

Judge O'Donohoe indicated that he was going to take conduct into account and gave the parties time to talk. They settled and the wife got €450,000.

'Moment of clarity' leads to reckless acts

Judge Gerard Griffin hears an application for judicial separation that involves a tangled property portfolio and some problematic renovations

'I have a commitment to God and to the court and I choose God'

A couple who had been married for over 30 years and who had acquired many properties during that time came before Judge Gerard Griffin on the Dublin Circuit. The couple's son was a notice party as he had a share in one of his father's properties.

On day three the father's barrister told court that he and his solicitor believed they could no longer represent the husband as he repeatedly contradicted himself and gave them instructions they knew to be untrue. Since a barrister's "overriding duty is to the court", Judge Gerard Griffin allowed them both to withdraw from the case. The respondent continued as a lay litigant.

Some of the property owned by the couple was held in both their names, some was in the sole name of the husband, one was in the wife's sole name and one belonged to the son and his father. Most had been bought to provide a family business or rental income. The mortgages, which exceeded €2 million, had not been paid for a full year and the bank was calling in the loans. The loan was the husband's but the wife and son had guaranteed it, putting them all at risk.

The son had successfully taken over the running of the two rental properties when his father was ill. As a result, they had decided to invest in a third property which the son renovated. The father got better

and had a "moment of clarity". He wanted to re-enter the business. He said his son could not account for large sums of money. He renovated the new property further to provide more accommodation which required planning permission. When he could not get this, he proceeded without it and was then unable to obtain a fire certificate. The property remained vacant. He also took over the other two properties.

He then renovated the property in his wife's sole name and built a large dwelling in the garden without planning permission. In August 2008 Judge Petria McDonnell in the Circuit Court barred him from this property but he went there the following day. He told the court he had not understood the order.

He also added a large extension to what had been the family home which was held by his wife and son. Again, he did this without planning permission. The wife said she had never agreed to the refurbishment and had made many attempts to get workmen off the property.

She called an architect to give evidence who said the development of the three properties needed planning permission and, besides, it was not up to scratch. He added that it would be "unlikely and difficult" to obtain retention permission for the development and that to rectify what had been done would cost about €450,000.

The wife then called a valuations expert who said the refurbishment had devalued the properties and since the relevant planning consent and fire certificates were unavailable, they could not be sold. He stated: "If I were valuing on behalf of a bank I wouldn't recommend them to provide a mortgage."

The husband cross-examined the wife on issues such as her relationship with her children, access to family cars, holidays she had been on, money she was obtaining from their son (the notice party) and also asking her how the son had got the name Champagne Charlie, which she had not heard. Judge Griffin reminded him continually to stick to the case.

The son described how he ran the rental properties, the purchase of the third property bought with his father, the breakdown of their working relationship and the situation with the banks.

The father then said that the problems with planning were really due to problems within the county council. Under cross-examination, he was evasive about his bank accounts, his borrowings and his outlay on renovation. He said he had broken no planning laws: "I knew if I went through planning it would take ages." When told that he had no regard for planning codes he replied: "I certainly don't have respect for [the] county council because there is corruption." When asked why he breached Judge McDonnell's court order he replied: "I have a commitment to God and to the court and I choose God."

He then called his accountant who had prepared a report. The accountant had seen only bank account statements and not receipts so he could confirm what had been spent but could not clarify what had been bought. The accountant did confirm that the loan had not been repaid for a year.

Judge Gerard Griffin began by stating that the family had had successful businesses throughout the marriage. Problems arose in the mid 2000s when the husband had his moment of clarity. He ignored the architect's advice and behaved "recklessly bordering on insanity" with a "blatant disregard for any planning codes" in the building work at the three properties. The judge accepted that the properties had been devalued as a result of the husband's acts. He rejected the husband's claim that he had not heard or understood Judge Petria McDonnell's order and said: "The respondent clearly does not take or accept any professional advice and I now find he has a fool for a client." He accepted that the banks were calling in the loans and that the wife and son were guarantors.

Judge Griffin then considered how this situation could be rectified and after much consideration decided that the only chance the family had depended on the father having no further involvement with the properties or finances. He directed:

- That the applicant has the entire legal and beneficial interest in the property in her sole name;
- The respondent to transfer two of the rental properties (in his sole name) to the applicant;

'I certainly don't have respect for [the] county council because there is corruption'

'The respondent clearly does not take or accept any professional advice'

- The respondent to transfer his 50 per cent share of the rental property owned with the notice party to the applicant;
- The respondent to transfer the current family home to the applicant;
- The respondent to transfer the former family home (and now a rental property) to the applicant
- The respondent to transfer the rental incomes to the applicant.

The judge granted the parties a decree of judicial separation, ordered no maintenance payments, and restrained the husband from visiting any of the mentioned properties. He awarded the wife 50 per cent of her costs and awarded the son 100 per cent of his costs.

An application for a stay was refused and the husband was told that the bank situation was too urgent to grant a stay.

Judge Griffin then took the time to clearly explain these orders to the husband as he was a lay litigant. He saw his orders as a "rescue package" and that there would be another day, possibly in the context of divorce, when the court might have to look at the division of the assets again but that would only happen if the package worked. If the respondent breached any of these orders he would be in contempt of court and the judge "would have no other choice than to send you to Mountjoy". Judge Griffin finished by telling the husband that he had the right to appeal but he would not grant a stay.

'You never know how a judge will react'

At the start of a judicial separation hearing on the Western Circuit, Judge Rory MacCabe strongly encouraged a husband and wife to settle their differences between themselves, saying: "You never know how a judge will react: one party might be happy and one unhappy or both unhappy. There may then be an appeal and it could end up in another court. There is a huge premium to sort it out as adults yourselves."

He continued: "I am prepared to [resolve it] but you should understand that it's not too late to take a final stand. There are many advantages. There is no appeal. It is over and you can tell your family you sorted it out yourselves. Before you go through the process of going into evidence and being cross-examined do you want more time? I'm prepared to give it." As the husband shook his head Judge MacCabe responded: "Don't say you weren't warned."

The case involved the division of a family home in which a couple, who had been married for 29 years, were still living. They had two independent children. They disputed the property's value – the wife put it at €280,000 and the husband at €335,000.

In her evidence the wife said she had worked throughout the marriage and her wages had paid the mortgage. Initially her husband had worked and contributed Ir£100 a week of the Ir£200 he earned. But then he had developed drinking and gambling problems and had lost his job 14 years ago. At his suggestion, the family home, which had been in joint names, was transferred into her sole name because they were worried about his debtors. This threat hung over them for many years.

The court heard that the unemployed husband contributed Ir£80 of his benefit towards the family finances. After completing a course that his wife paid for he got a job. For the next four years his wages went into her account and she gave him Ir£100 a week expenses. She said: "This went on for four years and then, when he

was more confident, he opened an account and it went into that and I got Ir£80."

The house had needed renovating and over the years she had spent about €50,000 of her own wages on this. Both children had studied for Master's degrees and she had paid their way and also supported them when they were not working. The youngest had studied away from home and her mother had paid for accommodation, food, travel and so on. That year had cost her about €21,000 and she had got a credit union loan to fund it. She had also got a credit union loan to help one child with a house deposit.

Her counsel put it to the court that on the basis she had paid the mortgage, the lion's share of home expenses and most of the children's expenses she was prepared to offer the husband €110,000 to buy out his interest in the family home.

When questioned by the husband's counsel she accepted that her husband had not drunk or gambled since 1996. She also accepted that he had continued to give her €80 a week even though the mortgage was paid and the children grown up but stated this was for oil, electricity and household bills. As for the wages given to her before then she stated: "I was rearing two children and at the end of the month most of the time I was overdrawn."

The husband told court that in the early years he had given 70 per cent of his wages to his wife and a large part of his unemployment benefit after he lost his job. In the past 10 years he had handed €100 of his weekly €240 to her in cash. He now earned €390 a week and continued to pay her €80. On contributions to the home and children he said: "I still contributed part of it, put food on the table. If she didn't get my contribution she couldn't have put them through college."

He was anxious about his future and wanted provision made for him so that he could buy a property of his own. He wanted 50 per cent share of the family home.

Judge MacCabe granted the judicial separation. He valued the property at €300,000 and said: "I have listened with regard to the contributions made into the family. Like 99 per cent of family budgets it all went into one pot and everything was paid." But "while it was never suggested to the applicant that she retained money for her own purposes, the respondent admitted that he retained 30 per cent for himself. It seems to me it was his view that some of his earnings were his and some were for the household."

He was satisfied that the wife made most of the payments for the upkeep, maintenance, mortgage and renovation of the family home. He valued this at two-thirds of the property's value. That left the husband with a third, which amounted to €100,000.

'It was [the husband's] view that some of his earnings were his and some were for the household'

In Brief

Couple settle divorce before hearing

A divorce application listed for the day was settled before Judge Martin Nolan dealt with it at the Dublin Circuit Family Court. Both parties were represented and a settlement agreement was handed in to court. The husband gave evidence that the parties had married in 1982 and had two children who were no longer dependent. They had obtained a judicial separation in 1993 when the family home had been transferred to the wife. After the separation he had paid maintenance. There was no prospect of reconciliation, he said, and he was satisfied that proper provision had been made for both parties.

The judge said he was satisfied that the agreement constituted proper provision and the time periods necessary had been met. He granted a decree of divorce with mutual blocking orders. He received the terms of settlement into court and then adjourned the matter to a later date so the pension adjustment orders could be handed in to court.

Children's version of events may help, says judge

A separated couple with adult children, who lived with their mother, came before Judge Olive Buttimer seeking divorce. The wife's barrister told a sitting of the South Eastern Circuit Court that both parties were on a low income and the main issue was the family home, a small property where the husband had grown up and which he had inherited from his father some years previously. When the pair separated, he remained in the home and the wife and children moved to rented accommodation. The home's valuation was disputed. The wife said it was worth €250,000 and the husband put it at €230,000 to €240,000.

She wanted it to be sold and the proceeds divided equally. After marrying in the early 1980s they had shared his parent's home, she said. They had had two children. He had worked at various jobs and she had worked for a little while before the children were born, returning to the workforce only briefly when they were small.

Her father-in-law had been "an influence for good" and was "the father I never had". But he had been too kind hearted and had let his son, her husband, away with a lot of things. Her husband had been a drinker and when he hit it hard, "[you] wouldn't recognise him as the same man". He usually gave her £60 on a Friday to feed five people for a week but sometimes he gave her nothing and then her father-in-law had paid the bills.

After his mother died, the husband's behaviour deteriorated into physical and verbal abuse. The first serious incident of violence occurred when he had been driving the car too fast. She had asked him to slow down and he had punched her. She told the hospital she had walked into a door but a doctor said he knew a punch when he saw one.

In answer to the judge, the wife's barrister said there would not be any viva voce medical evidence. They had a letter from her doctor but the husband and his legal team had not agreed to have it admitted into evidence. The judge said to the husband's barrister: "Very well so, leave it to my imagination as to what is in that letter – most unwise." Some time later, the letter was handed in.

In the late 1980s, the husband had beaten her while she was heavily pregnant and a fortnight later the baby was born dead. A year after that, he threatened her with a gun and said she was "not worth living". The Garda Síochána came and disarmed him.

Several incidents of this nature were recalled throughout the hearing. It was not just these examples, she said. The abuse had continued over many years. "You blank so much out as well, trying to keep so much in." She had left the family home in 2002, taken out a protection order and rented accommodation. The children remained in the family home to keep an eye on their grandfather. She still took them to school though in case the husband was too drunk to take them.

The father-in-law died. He had asked her to make sure his funeral was paid for so she took €1,750 from his account and arranged and paid for his funeral. The children then moved in with her. They stayed in touch with their father until he had met his present partner. The wife had been on talking terms with him up to that point and had asked him to sign over the house to the children. But contact ceased and he had never done so. Her father-in-law had wanted her to get the house but had never put it in writing.

She then related the husband's cruelty to the children. She had never received maintenance and wanted none, she said. She worked part-time and had a grandchild who also lived with her and her daughter. Judge Buttimer asked her if she had considered

raising a mortgage and if she wanted to buy the husband out. She would love to, she said, but could not afford to.

The husband's barrister put it to her that his client had lived there all his life and was prepared to put the property into the children's names if he had an exclusive right of residence. She replied that he had been asked to do that. Now he had a partner and she asked why he should be allowed to live rent free. If he had sorted it out she would have left it but since then he had his partner there along with her children and it hurt their own children to see that and it hurt her. She said their children were so badly hurt they did not want to talk to him and she did not blame them.

The judge asked her what she wanted. The value of the house to be divided equally – he could buy her out if he wanted to, she answered. The children had worked, she had worked and she did not deserve to be thrown out "like a piece of dirt". Judge Buttimer asked if the husband could actually buy her out and counsel said he was unemployed. The wife remarked that her son had seen him working. The occasional "nixer", said counsel, but that was all. He was an unskilled worker. His client could not raise that money and the house would have to be sold. He had worked throughout the marriage and the property had been his father's. He was entitled to be the registered owner of it. Counsel said he had lost his job in 2003 and had not worked since.

The wife denied she had had an affair during the marriage, saying she had been blamed for having lots of non-existent affairs. The barrister mentioned a particular man. She said he had been a good friend only who had since been killed. She had had only one relationship with someone else after leaving the family home.

The barrister queried her allegations of violence saying the husband still had a gun despite her claim that it had been taken from him for good. He still had his gun licence and it was handed into court. She was saying one thing, said counsel, then changing things to suit herself. The stories about cruelty to the children were untrue. She replied: "If I had a penny for every … beating, I would be a rich woman. As God is my witness, that is the truth. I went through 18 years of hell."

The barrister put it to her that she had left because she was having an affair and that she had left him with the kids while he was working which had been difficult for him. She responded that he had not been working after she left. He had worked hard but he drank the money. When he got paid he would forget to come home. When asked where she expected the husband to live if the house was sold. She said: "He can go and get his own place, same as I did."

Counsel said she used to come in at 4am and 5am. That was only when she had had a particular job, she said, and it was only once or twice. When accused of taking her father-in-law's pension book she insisted he kept it himself. She was also accused of emptying her husband's wallet before leaving. She rejected this, saying she had taken only the children's allowance book.

If her concern for the children was genuine, counsel asked, why had she left without them. It was the hardest decision she had ever made, she replied, but they had wanted to look after their grandfather and at least they would have had a roof over their heads while she had nothing.

She accepted that the family home was her husband's father's house. But the husband was not entitled to it because she had looked after him and his father. She had stood by him as long as she could but in the end she had to go.

Judge Buttimer asked if she could buy the husband out but her barrister explained the difficulties involved and the concern about her capacity to repay any sort of mortgage.

In evidence, the husband said he had lived in the family home since he was eight years old and he was the only child. The wife had left much earlier than she said, about two

'Very well so, leave it to my imagination as to what is in that letter – most unwise'

years before his father died in fact. He had lost his job in 2003 and been unemployed since. He denied he beat his wife and said if he had been drunk all the time, he could not have held down a job for 12 years. His wife had been having an affair and had another relationship with another man after she left. He denied cruelty to the children. After the wife left the children had stayed with him. It was difficult to hold down a job and mind the children. His father had wanted the house to go to him. The wife had said she wanted nothing from him. He was aware that she had taken a protection order but there was no barring order. If the house were sold, he would have nowhere to go and no money to buy anywhere else. He would be happy to put the house in the children's names if he could have a right of residence.

In cross examination, he again denied violence, saying he had only ever pushed her to go away, maybe twice in a year. Nor did he drink heavily. He was registered with FÁS which had sent him out on jobs that he did not like. The wife's barrister said he was young and fit and it was ridiculous that he would try to persuade the court he could not get a job. He would be happy to give the house to the children if he could continue living there with his girlfriend if that relationship lasted. The wife's barrister noted that he proposed living there rent free. The husband agreed that he had never paid maintenance and that the wife said she wanted nothing from him.

Judge Buttimer said she was tempted to talk to the children. This was not something she would normally do but as the children were grown up and there was such a conflict of evidence she would consider it. If the children bore out the account of either the wife or the husband, it would have very serious consequences for the case. She rose to let the parties discuss this with their legal teams.

Fifteen minutes later, the parties said the case had been settled. The husband would sell the house and divide the proceeds equally. The judge granted a divorce.

Wife looks for second bite

A husband does well following a separation but the wife argues she has not and is looking for a second bite

In a "second bite" case before Judge Petria McDonnell at a sitting of the Dublin Circuit Court, a woman sought a contribution of €150,000 for debts accrued after a judicial separation.

The parties had married in 1982 and had four children, three of whom were still dependent. They had obtained a judicial separation in 1999 where the family home had been sold. The wife had received 55 per cent of the proceeds and the husband the remainder. While custody of the children was shared, they lived principally with the wife.

Since then, the husband had done well. He had bought the family home and divided it into three sites, building a new house for himself which was valued at €1.2 million. He had also invested in three apartments abroad. His job gave him an annual income over €70,000. He had a new partner. So did his wife.

In contrast, the wife said she had not done as well. After renting a house for a time, she decided to buy it for IR£300,000 plus £30,000 stamp duty. This she did with proceeds from the family home sale and a mortgage of IR£220,000. The rest of the proceeds went into servicing debts, buying a car and paying her preliminary tax. The house now needed refurbishment.

As a self-employed person her annual income had been just under €100,000 for a few years after the separation. But her main source of business dried up after three years and she had then decided to go back to

university. The course finished shortly and she intended taking up a new job which would yield over €50,000 a year. But going back to college had incurred debt and the children had been very expensive so she wanted the husband to give her €150,000 to ease the burden.

The husband had been paying monthly child maintenance of €900 which he had reduced to €675 as one child was no longer dependent. She wanted €1,000 a month for the two youngest children and none for the other dependent child who had a bad relationship with his father and would not want the money. The husband offered €900 for the three children. This would fall automatically when the eldest child was no longer dependent which was not far off.

The wife argued that the husband's house was worth a lot more than hers and that his foreign properties were worth more than the €170,000 he claimed. As for her debts, she had loans and credit cards as well as a large mortgage and an equity release on the house. These debts had accumulated during her recent college years when she earned little. During cross-examination she accepted that she had rejected the husband's proposals to develop the site of the family home when they separated. She agreed she had argued for and got the sale of the family home but, she said, the husband put in a secret bid and this had only emerged in court. She had had to accept his bid as it was the only one. Yes, she said, she could have bought a cheaper house but it had been their old childminder's house and the children were comfortable there. She did not want them to have to move again. At the time, she might have made a better decision but had not been in any state to look around.

The husband's barrister put it to her that there was no need for her to incur the level of mortgage and debt which she had. Everything she had wanted under the separation she had got. She alone had decided to stop working and go back to college. She had done so to secure a permanent job, she argued. The barrister countered that she had opted to take an income cut. She said she had traded that off against future security. She was sending the youngest child to an expensive fee paying school, said counsel. That was her decision, she said, agreeing that the husband was at the top of his potential earnings while she was likely to earn more in the future. The barrister put it to her that she had been involved with someone else for some time before the marriage ended and would often take the children away with him. She disputed this, saying they occasionally took the children away for weekends and the partner was at the family home only once.

The husband then stated that his income was likely to drop significantly due to an overtime embargo. During the separation, he had proposed developing the family home and even offered to buy her out but instead the court ordered it to be sold. His bid was secret because he knew if the wife found out she would reject it "out of spite". A Ir£364,000 loan had helped him to finance the purchase but there had been delays due to problems with the title and a wayleave agreement. As a result there had been interest and costs of about Ir£125,000. He had paid some of this off after developing the property and selling the family home.

He had decided to invest in property abroad and consolidated his remaining loans to get €128,000 to invest. He was only repaying the interest on that. The company he had bought some of the property with had "gone belly up" but he had been told if he could wait four or five years he might get his money back. At present, under the agreements made, he could not sell those apartments.

His total liabilities were €580,000 and he was making monthly repayments of €4,300. Any further loans were out. He helped the eldest non-dependent child and gave the other children money when they wanted it. The wife was away a lot and he would prefer if the children stayed with him then.

In 2002, the husband said, she had earned €98,000 while he had earned €55,000. There was no reason she could not have continued earning that sort of money. Under cross-examination he agreed her job had not been secure. He had always complied with court orders, paid his maintenance and sometimes given her extra. He was not looking for a handout from his wife to pay for his debts as he understood they were his responsibility. He was willing to offer her 50 per cent of the

'[I'm] going to pull this case unless the pair of you start behaving yourselves'

'I do not understand how I am responsible for her decisions'

retirement benefit of his pension.

The wife's barrister asked him why he had not moved out of the family home when his wife had wanted to stay there. He replied that he had done nothing wrong while his wife had had the affair. Why should he have left? He had not cheated on her. The barrister said he had got his own way and taken a "cloak and dagger" approach. The husband replied: "She was not conned but she seems to think she was." She would not listen to him, she mistrusted him. He had followed his dream and she would not share it with him.

The barrister noted that he had disagreed with her purchase of her current house. He answered that he had but had not interfered with it, adding: "I do not understand how I am responsible for her decisions." The barrister said he had been freer to invest; she had to look after the children. The husband pointed out that her income had been almost double his so she could have done the same as he had. During questions concerning his new relationship and maintenance, one barrister accused the other of barracking. The judge commented: "[I'm] going to pull this case unless the pair of you start behaving yourselves."

The barrister noted that the husband at one point was only paying €700 per month for the four children, €40 weekly per child. He asked if the husband was surprised that she had run up debts while trying to live on that money. In the overall context, said the husband, her debts were not all that substantial. When asked if he would like to pay them the judge intervened, saying he did not have to answer. But he said he would "swap" debts with her.

The judge decided to reserve judgment saying she would give it within a week. In fact, it was given two months later when the parties were granted an order for divorce with mutual blocking orders. The husband was to pay the wife a lump sum. He could pay her €45,000 or, if he wished, he could defer payment until January 2013 and pay €60,000. He was to pay €400 weekly maintenance for the three dependent children along with VHI for the children and 50 per cent of any medical or orthodontic costs. A pension adjustment order was also made on the terms suggested by the husband.

In Brief

Son consents to full barring order

A woman, with the assistance of the Health Service Executive, had sought an interim barring order against her son the previous week and now asked Judge Gerard Griffin at the Dublin Circuit Family Court to make it a full barring order. The son was present and consented to the order. Judge Griffin asked if he wanted to consult a solicitor but he said he understood what was going on. He accepted there had been difficulties between himself and his mother, that he had assaulted her and that he would not go back to the house. If he did he understood that the Garda Síochána would arrest him. He was getting help from a social worker. The mother's solicitor said the HSE was putting a care package in place for his client and it would also help to find accommodation for the son.

The judge granted a permanent barring order until further order of the court. He told the son he could return to court if things radically changed and ordered him not to use or threaten to use violence against the mother and not to watch or beset the mother. The consequences of such actions would be "a trip to Mountjoy". The judge said the HSE was "pulling out all the stops to help" him and he should not "throw it back in their face, especially when their resources were so limited".

Doctor's report helps judge in nullity application

A woman claims she didn't know her husband wanted to be celibate within marriage – but the judge disagrees

A woman applying for nullity came before Judge Petria Mc Donnell in the Dublin Circuit Family Court. Both parties were represented but the husband, who was not contesting, was absent.

The wife's counsel said nullity was sought on two grounds: the first was whether the husband's consent to the marriage was full, free and informed; the second concerned his inability to enter into and sustain a normal marital relationship. If the first argument was borne out, said counsel, then the judge would have no need to consider the second. Judge Mc Donnell asked to be addressed on law in the area and counsel outlined the major cases and handed them into court. He referred to a doctor's opinion which stated that the husband had a vulnerable personality and suffered from depression, anxiety and neuroses, along with a psychotic personality disorder.

The wife, who was born abroad, had married and had two children with her first husband. In 1974 they moved to Ireland and some time later her husband died. Her current husband, whom she had met in 1998 when she was running a workshop, lived abroad.

She said he had a bad relationship with his family. His mother and sister were alcoholics. He had gone to boarding school and claimed he had been molested there. He also said he was abused by someone in his hometown. He had spent two years in prison in another country. Before she met him, he had become religious and gone into retreat. She had previously been religious so they had a lot in common. He confided in her that about a year into this retreat he had a break down and stopped sleeping. He thought he was going mad and was terrified. A psychiatrist was brought in and he (the husband) later left the retreat and got treatment. He had tried to commit suicide and was hospitalised. Medication was prescribed but he had never taken it. He claimed the doctors had

'You were aware [your husband] had psychological problems'

misdiagnosed him. She only discovered the medication after they got married.

Initially, they were just friends. Later he had taken a holiday in Ireland and she initiated an intimate relationship. He said he was madly in love with her and several times asked her to marry him. Eventually she agreed. They were still living in separate countries and he said he would live with her in Ireland but never did. They spent about one week a month together.

She said the relationship had been idyllic and wonderful at all levels. But when they went to spend time in his family home he had told her he was not interested in a physical relationship, that he had been raped and had problems and was no longer interested. She said she would not marry him without a physical relationship and when the holiday ended everything went back to normal for the next six months.

Before the wedding, the woman had suffered a breakdown and began to feel suicidal for about three or four weeks. This had never happened before and she had no idea of the cause. Medication helped her to feel better and the marriage went ahead. Six months later she had another breakdown and then attended a therapist for about two years.

Just before the wedding, the husband had had pre-nuptial nerves and said he was scared. Normal jitters, she thought. He also said he wanted a relationship like brother and sister. They got married abroad and almost immediately he reiterated that he did not want a physical relationship and that she had no right to make any physical demands on him. She was devastated. The marriage was eventually consummated at her initiation. After the marriage they continued to live separately. He had said being touched by her was "like being touched with hot sandpaper". They were intimate only six times in the two years that followed. Otherwise, the marriage was good for a while, she said.

About a year into it, his old girlfriend contacted him and the wife found emails to her. They had had previous arguments about his insensitivity to her regarding other women. She discovered that he had tried to have a relationship with another woman. He then asked her to go on holiday with him to try to fix things. They attended a family therapist together. He kept telling her he loved her and wanted to learn how to be married. She was confused by this. He had never indicated before the marriage that he was mentally ill or that he wanted to be celibate within the marriage. She tried everything and turned herself inside out trying to make it work but it ended in 2005.

The husband's counsel did not cross examine. Judge Mc Donnell asked if the husband had indicated mental illness before the marriage. He had not, she said, although she agreed she had known about his difficulties while at the retreat and was aware of his suicide attempt. The judge noted the contradiction. The husband had in fact mentioned celibacy to her before the marriage. The wife said this had only happened once. The judge said: "But you were aware he had psychological problems."

The judge asked the barrister if there was anything they needed to mention on collusion. Counsel said there had been none. The judge asked what ground he was relying on. Counsel said he preferred to rely on the first ground as marriage would then be void and she would revert to being a widow. If it was done on the second ground it would be voidable only from the date of the order. The husband's consent was only half-hearted and came with provisos. It was not full and free but a sham. There was no relationship or lifelong partnership as envisaged under the Constitution.

The judge had no difficulty with the second ground as the doctor's report gave an opinion which supported it. Help was needed on the first ground though. Counsel referenced the case of N v K which referred to a reserved consent. Some of the doctor's report might support absence of full consent but they had not gone into evidence on that, the judge said. The entire last section of the doctor's report indicated lack of proper consent, argued counsel. On balance, Judge Mc Donnell was happy to make the order on the first ground based on the doctor's opinion.

Nullity granted but guardianship matter follows

A man claims that he only married his partner because her visa was running out and she said she'd take their son away with her

Judge Michael White heard an application for nullity from a young man who claimed that he had married under duress, as he believed his foreign national partner would take their child out of the jurisdiction and that he would never see him again if he did not marry her. The solicitor for the man's partner said his client believed all along that the marriage was valid but she would not consent to or contest the application.

The sitting of the Western Circuit Court heard that the couple had met in 2004 and shortly after starting a relationship the woman had got pregnant. They decided to keep the baby and try to work things out. They had not discussed marriage, the man said. It had not come into his head. Some years earlier he had a child with a previous partner with whom he had a good relationship and had never felt the need to marry her.

The man was building a house next door to his parents. Before the baby was born his partner moved into his parents' house and after the birth they moved into his house. The first time marriage arose was when his mother found wedding magazines in his house. His partner then told him she would like to get married and that "we had to get married soon as her visa was out in September". He replied it was not necessary: "If two people are happy I don't see how walking up the aisle makes a difference."

Upset and crying, he told the court that she had said he had to do it otherwise she would be deported and: "If she went [our son] would have to go with her. She'd have the rights to him and I wouldn't see him again." The man was so distressed that Judge White rose to allow him time to collect himself. When the judge returned, the man, though still upset, said that despite his objections, his partner had said that the only alternative was for her return home with the child. He had at this stage developed a very strong bond with his son and could not contemplate not seeing him grow up. He did not get involved with the marriage preparations but went along with whatever he was told. He had not thought of taking advice on his rights before getting married. He should have but had not considered it. He just thought he had to marry her and that there was no time to do anything else. The man's father said he had spoken to his son the night before the wedding "I was worried about him getting married and I asked him if he knew what he was doing and if he was happy." His son said he was not but if he did not his partner could be deported and he would never see his child again.

The court also heard evidence from a psychologist who stated that the man was quite immature, avoided confrontation, was not very assertive and let his heart rule his head. He was within the normal range of intelligence. She believed that he saw marriage as an unnecessary step in life and was genuinely distressed at his partner's situation. She believed he was put under very real pressure to get married. As for his immaturity the judge asked: "Are there not a whole lot of people like that?" The psychologist replied that it was a combination of that, the fear of losing his son and the strong pressure he was under that caused him to marry and that she did not believe he would otherwise have done so.

The man's counsel told the court that the test for duress in nullity law in Ireland was subjective. The issue was whether the party's consent was real or apparent. She quoted to the court extracts from a number of cases which set out the subjective test for duress in nullity and which in turn also dealt with circumstances relating to pregnancies and in particular referred to the case of O'B v O'B [1999] 4 IR168.

In the present circumstances, she said, given the man's nature and immaturity as described by the psychologist, the very real pressure put on him by his partner and his fear of losing his son, a subjective test would have to conclude that his will had clearly been overborne and that his consent was not a full and free act of will. He saw the marriage as a solution to the problem of losing his son and his consent was apparent and not real.

Judge White said: "I'm sceptical about nullity suits and some of Mr …'s evidence regarding the matter but the evidence is uncontested and clearly looked at from a subjective view … had the capacity to suppress his will." He quoted from the O'B v O'B case and said that the court was somewhat hampered by the fact that the man's partner had not given evidence but that based on a subjective test he had not given a full free consent.

The man's counsel said that now a nullity had been granted a guardianship issue arose. If the child had been born during the marriage the father would still remain a guardian after the granting of a nullity. But as the child had been born before the marriage this was not necessarily the case. She said an application for the father to be appointed a guardian had been adjourned in the District Court pending the nullity ruling. But there remained two further issues before the court: one, the question of the child's passport as the mother wished to travel home and second, access to the father.

Counsel told the court that as the mother of the child was from a country that was not a signatory to The Hague and Luxembourg conventions dealing with child abduction, she had serious concerns with any application for a passport for the child being heard before the guardianship issue had been dealt with as it left the father in a very vulnerable position.

Judge White adjourned the two further matters until after the guardianship had been dealt with.

In Brief

Wife concerned for her safety

A wife applied to a District Court for a barring order against her husband who was not present to contest it. The wife said they had been together for 16 years but problems had arisen and she had had to seek a barring order. She could no longer live with him because "he's too abusive". The wife's solicitor asked her to explain "abusive." She said: "He beats me. He's stabbed me." She said she had last been assaulted about a month ago and described how she was, "boxed in the face" by her husband and that he "chipped my tooth". When asked whether she was concerned for her safety she replied: "I am, to tell you the truth." Judge Mary O`Halloran granted the barring order for three years.

Property slump affects parting couples, warns judge

Does paying a mortgage and no other maintenance constitute proper provision? Judge John O'Hagan says he has no easy answer

The impact of the collapse in property values on family law proceedings was referred to by Judge John O'Hagan at the outset of a sitting of the Northern Circuit Family Court.

Addressing family law practitioners, he observed that more cases were now being re-entered because there was no longer any equity left in the family home. He stressed the importance of having up to date valuations on property. In one case, he said, he had put a valuation on a property where he ruled that one party should have a one-third share.

Since then the value of the property had decline by a third and now that party was seeking to re-enter the proceedings and wanted to re-negotiate the matter. "Do I have jurisdiction? I'm subject to the High Court but I don't believe I have jurisdiction," he said. "The honey pot in relation to property isn't there anymore and the average semi-detached has taken a huge hit."

Judge O'Hagan said the family law list was down by 50 per cent on the Western Circuit. "The fall in property values is having huge ramifications for people who want to bring a marriage to an end. I have no easy answer." He said the situation might be different in a year or two years from now but "it won't mend itself quickly".

The judge suggested that in some cases the only maintenance a party might be forced to pay could be the mortgage without any obligation to pay maintenance "over and above the mortgage. Is paying the mortgage proper provision?" he asked. In some cases, he suggested, the courts might direct that the mortgage be paid in lieu of maintenance until the last child reaches 18 or ceases full time education, at which stage the question of the family home could be looked at again.

'The [property] honey pot isn't there anymore and the average semi-detached has taken a huge hit'

In Brief

Mother 'never knew' when health worker would come

A review of a three-month old supervision order came before Cork District Court. It seemed the public health worker had difficulty getting access to the children. On the health worker's visits the mother stated: "I never knew they were calling up." Getting in touch with the mother by telephone had also proved difficult, it appeared. Judge Con O'Leary declined to make an order.

Downturn blamed for non-payment of lump sum

A husband who agreed to pay his wife a lump sum of €365,000 as part of a divorce settlement made in May 2007 claimed he was unable to pay it because he was "caught by the downturn in property values". A sentence in the agreement to the effect that the €365,000 was to come from the proceeds of the sale of the family home had been "specifically crossed out" and the agreement also specified that Courts Act interest would apply from October 2007 if the husband was not "making every reasonable effort" to sell property.

The court heard that the wife had left the family home with her children and was now living with her parents. She was hoping to build a house. Judge Raymond Fullam, presiding at the Northern Circuit Family Court, was told by the wife's solicitor, who was seeking to have the husband jailed for failure to comply with the terms of the agreement, that the husband was not making every reasonable effort to sell his property. It was claimed that the husband had put property on the market for a non negotiable sum of €420,000 and when a previous court had permitted the wife to appoint her own auctioneer there had been difficulty in getting keys to the house from the husband.

"There has been a pattern of obstruction," the judge was told. The husband was to pay weekly maintenance of €220 until the lump sum was paid but he was now unemployed and had been before the District Court in relation to arrears.

Judge Fullam asked what properties were involved and was told that, in addition to the family home, the husband stood to inherit a farm and cottage valued at €700,000-800,000. "We're trying to get property sold," said the husband's solicitor. Judge Fullam told her: "This consent goes back to May 2007 and the overall package was designed to meet the husband's circumstances at the time. I have an impression there's been a certain amount of frustration. There might have been a sale."

He told the husband he had to make other arrangements to make inroads into the sum owed. "What are your proposals?" the judge asked, stating he would put the matter back until after lunch to allow the parties to consider the matter further. "Mrs X can't be left swinging in the wind."

When the hearing resumed in the afternoon, the husband's solicitor said his client was willing to transfer a property to the wife in full settlement of the €365,000 and the property could be vacated within six weeks. The wife's barrister said there could be no question of it being in full settlement as he understood that the house was valued at €350,000 and his client needed full satisfaction of the outstanding amount. Judge Fullam said: "What I had in mind was a cash payment of some sort. You've had an offer in kind. I'm not sure your client has considered it fully."

The judge asked the husband's solicitor about the cash position. She answered that her client had discharged €1,500 in maintenance arrears, had a tax bill of €45,000 and had been made redundant in early December. The property he had inherited consisted of bogland and a derelict cottage and was worth nothing close to what had been suggested. Her client could not afford to probate the will. They were offering the family home which she could have in full and final settlement of the outstanding lump sum and future maintenance.

When the wife's barrister stated the value of the property was not the entirety of the lump sum of €365,000, Judge Fullam said:

'We're now living in December 2008. Life is entirely different from the time the agreement was made. There is no cash'

"We're now living in December 2008. Life is entirely different from the time the agreement was made. There is no cash. He can only realise assets." The barrister pointed out that there had been a pattern of obstruction and the obstructive attitude of the husband had delayed matters.

Judge Fullam directed that the property be valued again "as of today" and the court would then "decide on the adequacy of the offer for final decision". He would leave aside the question of interest for the next hearing. "Some reality has to dawn regardless of whatever obstruction has occurred," he said.

Pay up or go to jail, husband told

Judge John O'Hagan warned a man that he would go to jail in the New Year if he failed to pay the balance of money which he owed to his wife under the terms of his family law settlement. Under the terms of their settlement in 2005 the husband was to pay his wife a lump sum of €100,000-€50,000 within six months and €50,000 within a year.

At a sitting of the Northern Circuit Family Court, Judge O'Hagan was told by the wife's solicitor that €10,000 had been paid in 2006 and a further €10,000 in 2007. The husband lives on a 33-acre farm and he told the judge he had tried to sell some sites and had almost sold two for €46,000 and €42,000 but "it didn't go through". There was no planning permission for the sites and the judge asked him what efforts he had made to get planning permission. The husband said he had no money to apply for planning permission and he had been attempting to sell the sites "subject to planning". The court heard he paid weekly maintenance of €36 for his three children who lived with their mother in a county council house.

Judge O'Hagan told him: "You're sitting on a farm happy as a sand boy. The application today is to send you to jail and I will. I'm granting a final adjournment to next term. If the money isn't forthcoming – or a sizeable amount – you're going to jail."

'You're sitting on a farm happy as a sand boy'

In Brief

Be civil to social workers, father told

In Cork District Court, the HSE agreed to adjourn its application for a supervision order in a case where the mother of the child had not looked for separate legal representation from the father. It did seek certain undertakings in the interim, however, requesting that the father be civil to social workers and that he co-operate with the HSE. The father took an oath that he was willing to abide by these undertakings.

Man wants freezing of assets order lifted

Wife was granted a Section 35 order to ensure financial security and the safety of the family home

A business man and his wife came before Judge Michael White in the Eastern Circuit Court. Previously, the man's wife had brought an application before a court to have a freezing order put on the family's assets as a case was in train and she feared the home and remaining assets would be repossessed or dissipated before any conclusion. The order had been granted.

The husband now wanted it lifted. His counsel explained that it put her client's occupation and livelihood in serious jeopardy since it was preventing him from running his business and earning a living. In recent years he had been successful and had acquired and developed properties both in Ireland and the UK. In the months preceding this application his business had run into problems and his properties had been and were currently the subject of repossession orders.

The order meant that he now found the only remaining properties not the subject of repossession orders were frozen by the court order which meant the banks would not assist him. The man now feared that by the time the family law proceedings came before the court for determination, there would be nothing left to be divided up among the parties.

The wife's counsel said her client's fear was that the family home would be repossessed as a result of her husband's financial difficulties and that she and the children would be left homeless without financial security.

Judge White reminded the man that the assets were now the subject of family law proceedings and that those proceedings should be given priority but that he did understand that he had to make a living and be allowed to help himself.

Judge White would not lift the freezing order as the family home and certain remaining assets had to be protected. He would adjust the order if necessary but he noted that one of the man's companies did not have its assets frozen and said the man should attempt to continue running his business on that basis only until the determination of the family law proceedings.

In Brief

'He's aggressive with or without drink'

A woman, who said her husband was aggressive with or without drink, came before Cork District Court to apply for a barring order. She said her husband was very controlling, that he bossed her around and that sometimes he had been violent. He had recently beaten her around the head, threw her on the stairs and punched her, she said, and their grandchild had been in the house. The wife gave evidence that she was afraid in her own house because of what happened. Judge John O'Neill granted an interim barring order.

Solicitors disagree on taxation of costs

Judge Martin Nolan listens to the arguments for and against the Taxing Master and the County Registrar

At the Dublin Circuit Family Court, Judge Martin Nolan heard an application for taxation of costs. The parties were not present but the applicant's current and previous solicitors were. The court heard that the client had changed solicitor and the previous solicitor had been allowed to come off record. She had costs outstanding which the current solicitor wanted taxed. The method of taxation was the issue. The new solicitor noted that costs would normally be taxed before the Taxing Master of the High Court but he was requesting that the County Registrar be directed to deal with it instead pursuant to Order 18, rule 6 of the Circuit Court Rules.

The previous solicitor disagreed with the basis for the application and submitted a replying affidavit. As this was a bill between solicitor and client she argued that it was normal to go to the Taxing Master. If they had been suing for the money then the County Registrar could have decided it but she said they were now outside the proceedings, having come off record, and their costs accountants were saying that it would have to go before the Taxing Master. She said the client was saying that he could not afford to instruct a cost accountant but this was a "false economy". There would be no difference in paying his solicitor to appear before the County Registrar or the Taxing Master. Her successor was incorrectly interpreting Order 18 of the Circuit Court Rules, she said.

The judge noted that the previous solicitor wanted costs for acting as professional advisers. He asked how their lack of connection to the case at this stage affected his discretion. The previous solicitor replied that Order 99 of the Rules of the Superior Courts said costs had to be taxed by the Taxing Master. The current solicitor said that Order 99 was not prescriptive but rather was permissive.

The judge said his discretion was not fettered and he would accede to the application that the County Registrar tax the matter. He could not see that the result should be any different. He made no order on costs.

Legal Aid Board : Assisting Family Law litigants

The Legal Aid Board provides free legal advice and representation to clients who qualify under their assessment criteria. *Family Law Matters* spoke to **Frank Brady**, Director of Legal Aid, at the Legal Aid Board about how their service helps clients taking family law cases.

The Legal Aid Board covers almost every area of civil litigation, with very few exclusions. Cases in the family law area make up a large proportion of their work.

"Over the years there would be very few people who would have come to us with a civil law problem which would not have come within the remit of legal aid. We take a lot of what might be referred to as test cases," says Frank Brady, the Legal Aid Board's Director of Legal Aid.

The Legal Aid board has 30 offices around the country with solicitors who are directly employed by them. They employ 90 solicitors in their general law centres around the country and another 20 solicitors who deal with cases related to refugee appeals.

How does a person qualify for assistance from the board? There are some initial steps before a person can qualify for legal aid. For example, a financial assessment is carried out – they must earn less than €18,000 per annum, after a certain number of allowances are taken into account. They will also look at whether the case is worthwhile.

"You will get legal advice into the problem you have but if you want to go to court then there is a greater test of the merits of the case, the potential cost of the case against the benefit to the client and what we are trying to do there is put somebody who cannot afford to go to court into the same position as somebody who can," says Mr. Brady.

"We try to apply the same criteria to those who are legally aided and therefore we ensure the taxpayers' interests are protected, the client is put in the same position as anyone else in society and [that] we don't clog up the courts with cases that should not be coming to court. That's the balancing exercise we do when cases come to us."

About 20% of their clients receive a priority service and their objective is to keep waiting times at each law centre below four months.

"If they can get a timely service there [at their area's law centre] they get it there. If not we can refer cases out to solicitors in private practice that are on panels. We would send out about 2, 000 cases a year to solicitors on our District court family law panel and maybe two to three hundred a year to solicitors on our Circuit Court family law panel."

Mr. Brady says that their centres have noticed a significant increase in business over the last 18 months. This has been coupled with a reduction in their resources, posing a challenge to the board. They have noticed that demand is up by around 15 per cent.

Many of their cases settle. Often, though, they settle having gone through much of the court process. He says that they are trying to change the culture of some solicitors and they are investing money in continuing training programmes. There is a movement in terms of collaborative law and they have been receiving good feedback about the cases that are not going to court.

"We have to look in this area at what cases should be going to courts," he says.

The Legal Aid Board has been trying to move people away from seeing the court as

the obvious solution by looking at structured forms of negotiation.

"We have for example an external consultative panel where we have structured interaction with agencies such as the Family Mediation Service and MABS and we would refer people who come to us to those services. And we would see that process as an important part of providing a totality of a service to clients," says Mr. Brady.

"If somebody comes to us with a problem it may be a legal problem but the best solution for them may not be going to law it may be …other kind of advice whether it be mediation or another kind of structured negotiation," he adds.

"The priority is that we want to look at doing things differently and try to direct people away from court. And we also want to look very critically at our own way we do business and not just coming along and criticising the courts. Because we can probably do business better. We have done reports on our law centres and our head office and risk assessments, all with the intention of enabling us to provide a service at less cost."

"We had started all this before the economic situation. If we had not started we would be rushing to catch up with ourselves at this stage whereas we have a lot of our thinking done," says Mr. Brady.

In Brief

Compromise reached on family assets

A couple who married in 1967, had nine children, all now independent, and who had been separated for over 18 years came before Judge James O'Donohue on the South Western Circuit.

There was a valuation discrepancy in the family home, which was in the husband's sole name, but a compromise was reached with an agreed middle valuation of €325,000. It was contended that the wife's mother had paid off the balance of the mortgage on the family home. The husband also had land valued at €25,000 in his own name. Property in the wife's sole name was bought from the proceeds of an inheritance and was valued at €90,000.

The wife said relations were bad and the husband had previously had an alcohol problem. She also alleged he was violent, which was vigorously denied. She agreed under cross examination that she had never sought any type of protection order against the husband and had never called the Garda. She also agreed that he made improvements to the house but that up until last year he had never paid maintenance. There was a District Court order for a weekly payment of €50.

Judge O'Donohoe granted the husband a third share in the family home and the wife was to keep the building which she held in her sole name and the husband was to keep the lands in his sole name. The parties then left to reach a compromise on the matter. This included a declaration that the wife owned the property in her sole name; similarly the husband owned the land in his sole name; and the family home was to be sold with two-thirds of the proceeds going to the wife, the remainder to the husband. The previous District Court maintenance order was discharged.

Judge adjourns case to speak to teenager

On one day in Galway District Court, Judge Mary Fahy fields a range of family law issues including access, maintenance, guardianship and barring orders

'No child wants to see a parent with drink taken'

A child who was refusing supervised access visits with his father spoke to Judge Mary Fahy in chambers. She had adjourned proceedings in order to do so and a social worker accompanied the 13-year-old. Afterwards, Judge Fahy said the boy was bright and had spoken freely. She commended his good manners and said he was delightful to speak to. He had concerns about his father's drinking and had had some bad experiences with him during visits but had agreed to see his father before Christmas. Judge Fahy said no child wanted to see a parent with drink taken. The child's mother thanked the judge for seeing her son, saying he very much appreciated it.

Judge Fahy then moved on to a case concerning guardianship of an infant whose parents had been married but whose father had had the marriage annulled on grounds of duress. This meant he was no longer automatically a guardian. To rectify matters, he either had to get the mother to sign a declaration stating he was the father or apply to the court. The mother's solicitor sought an adjournment stating that her client was ill and could not be present. The father's counsel wanted to continue, stating that the mother was a foreign national and could apply for a passport for the child without her client's consent. The mother's country of origin was not a signatory to the Hague Convention, which added to his concerns. If the child were taken, he would not be able to invoke this to have the child returned to Ireland. Counsel further submitted to Galway District Court that the correct test to be applied to guardianship applications was the "fit person" test – was he a fit person to be appointed guardian? Counsel said there was nothing before the court to suggest that he was otherwise. Judge Fahy agreed but in the interests of natural justice had to accede to the request for an adjournment. A previous order of the Circuit Court prohibited the child's removal from the jurisdiction and she had to give the mother an opportunity to be heard.

In another case the Health Service Executive applied for the extension of an interim care order. A social worker involved in the case said they had been unable to serve the mother whose four children had been taken into care under an emergency order a month before. They had contacted the woman's last known address and left messages for her, they had left messages at the post office where she collected her social welfare but to no avail. The children called her mobile phone several times a week but got no answer. They were relatively content in their foster care, she said, and they had contacted an aunt in Dublin who would come to see them. The care order was extended.

In another case a father of four sought a barring order against his 18-year-old son following on from an earlier protection order. The man's wife was dead. Neither party had legal representation but both were present. The father said little had changed since the protection order and he did not want to do what he was doing but had no choice. His son had attacked him again the previous Thursday. He understood if granted the order his son would have to leave the house. Judge Fahy asked the young man what his position was. He said it was all true, but asked the judge to ask him why he had done it. "Did he tell you that he came in drunk and beat my sisters?" he asked the judge. "Did he tell you what he did to my 15-year-old sister?" he continued. His father only came home from his girlfriend's house

when he was drunk. The young man wanted to leave but said his father had begged him to stay to mind his siblings.

Judge Fahy decided to refer the matter to the HSE for inquiry given the allegations made about minors. She extended the protection order and adjourned the case.

Another matter concerned a 63-year-old father applying for a safety order against his 33-year-old married daughter. Neither party had lived in the same house for years. There was a total dispute of evidence and a garda investigation was under way. The daughter's solicitor put it to the father that he had brought the application to "muddy the waters" on criminal proceedings. The evidence centred around an isolated incident which had taken place on a public roadway. Judge Fahy struck out the father's application.

In another case Judge Fahy imposed a custodial sentence of two months on a man who was €3,600 in arrears on his maintenance payments. He had been made redundant a year before and had been unable to get a job. He had paid nothing since the matter had last been in court. She granted him a one-month stay of execution on the prison sentence.

A father, who had been summonsed to court for failure to pay maintenance, applied to have his payments reduced. He was meant to pay €50 a week but had fallen behind in May when he had lost his job. He was on a job seeker's allowance. He had a baby with another partner and was contributing about €25 weekly for food and nappies. He agreed with the mother's solicitor that he had paid nothing since May and that he had been abroad on holiday. He said his mother, with whom he lived, had paid for this. Judge Fahy refused to vary the maintenance order and imposed one month imprisonment for the arrears. She gave him a 14-day stay on the custodial sentence.

Man told to pay arrears or face three weeks in prison

Twenty-three items are listed for hearing at Cork District Court, eight do not proceed and four are routine – 11 substantive matters are handled

A man argued that he owed no maintenance arrears because he was not in court when the order was made and could not pay the amount decided. Judge David Riordan at a sitting of Cork District Court told him that he would have to apply to have the amount varied. The man said he was appealing the original order and that it was still under appeal. The court file, however, showed that the appeal had gone ahead in the Circuit Court some time previously but because the man had not shown up, it had been struck out and the District Court order was affirmed. The judge told him to pay the arrears in one instalment by February 2009 or face 21 days in prison. The man could appeal this order if he wished.

In a similar matter, the respondent said he wanted to vary maintenance because he had been out of the jurisdiction for the original hearing. He had appealed the order but Judge Riordan said there was no record of this and that seeking to vary was not a method of appealing. He added that changed circumstances had to be proven for

a variation. If he was just unhappy he had to issue an appeal in the Circuit Court. On hearing evidence the judge struck out the application because the man's income was greater now and his expenses lower than when the original order was granted. As time for appealing had lapsed he extended it by 10 days but the man had to continue paying maintenance pending the appeal. He was warned he would serve 21 days in prison if he did not pay all arrears, €2,200, in one instalment by April 2009.

Evidence was taken in a protection order application from a woman who had received very serious threats of physical violence from her former partner and father of her child. These included a threat to kill her family the day before the application. The judge was satisfied to issue the order but wondered if resolving access problems would help to settle things down.

'[The parties] did well to compromise the matter rather than having a judge decide'

In a similar case, a father applied for protection from his older adult son because he abused drugs and was a bad influence on his younger son who was now serving a six-month sentence for drugs offences. The older son did not live in the family home. The judge said he had to be satisfied that there were sufficient grounds for granting a protection order. He emphasised that the provision was about domestic violence and that bad behaviour towards the father had to be involved. He found no grounds for granting the order but said they might exist when the barring order hearing was due to proceed shortly.

Guardianship was granted to a man under Section 8(2) of the Guardianship of Infants Act, 1964 where he had married the children's mother in 2007 following the death of their father some years earlier. Before granting the order the court was satisfied that no other guardian had been appointed and that the mother was consenting to the application in addition to the man understanding the role of guardian.

In an application for a safety order and a cross application for access Judge Riordan commented: "Every citizen has a duty to do what is in the undertaking here." In addition, he said the parties "did well to compromise the matter rather than having a judge decide".

In a difficult application for variation of a maintenance order for three teenage children, the judge heard detailed evidence on the applicant's change of circumstances. All the children had learning/behavioural/medical problems. The mother, the full-time carer, was no longer able to work full-time due to a medical condition which had led to considerably increased expenses. The judge found it was impossible to resolve matters between the parties but stated that while the father was not obliged to maintain the applicant since they had never been married, he was obliged to maintain the children. He increased weekly maintenance for each child to €70 and ordered that it be paid through the District Court Office. He stressed that in doing this; any State allowances available to the mother would go some way to cover the excess of expenses over income but would not bridge the gap.

In a contested safety order application the judge referred to the emotional turmoil that ensued from relationship breakdown but questioned whether this would potentially warrant prison where a breach of a safety order would occur should one be granted, as espoused by the Supreme Court in O'B v O'B. He said the standard was a high standard, it was not the balance of probabilities but neither was it the criminal standard. He dismissed the safety order application and made a consent agreement between the parties for maintenance and access a rule of court.

In a difficult application for the discharge of an access order granted in July 2008 in favour of a father and a cross application for access by the child's grandmother the judge heard protracted evidence from both sides on how an access deal had broken down within weeks. The child's grandmother had access while the father was in an addiction treatment centre. She had brought the child to see the father in the centre against the mother's express wishes. After that the arrangement fell apart. The child's mother wanted a discharge of the access order while the grandmother applied for access in her own right. In refusing

to discharge the access order previously granted by Judge Timothy Lucey, Judge Riordan wondered if the existing agreement would have continued had the child not been brought to the centre. The child had bonded with its father, he said. They had lived together as a family for two years. It was not in the child's interest to end access with the father. He therefore varied access times to rule out overnight visits in the short term. The grandmother's application was struck out because the issue was clearly between the child's parents. It would make the situation untenable if third parties became involved.

Another application to vary a maintenance order was struck out because there was no copy of the Circuit Court order on file and it was unclear if the District Court had jurisdiction to deal with it. On the outstanding arrears the judge ordered that they be paid within five months otherwise it was 21 days in prison, bail to continue on own bond of €100 cash. He granted leave to appeal in the matter.

In a maintenance order brought at the behest of social welfare, an order of €10 per week was granted against the respondent in his absence. He was not in gainful employment.

In Brief

Supervised visits unfair, says father

A man came before Cork District Court seeking further access with his two children. His wife, who was also a foreign national but of a different country, had recently limited his time with them. The mother was prepared to permit access with supervision, however. Her counsel explained that his client feared her husband would remove the children from the jurisdiction. Throughout the marriage he had been violent to her, counsel said, and had threatened to take the children away from her. She had concerns about his behaviour. For his part, the man argued that supervision was unfair and that, along with this weekly access, he wanted two weeks for holidays to visit his country.

Judge David Riordan took account of the father's threats and his application for access to take the children out of the country. As a result he granted supervised access which would eventually be unsupervised. He ordered that neither party was to remove the children from Ireland without leave of the court. In addition, the father was not to apply to obtain passports for the children and the authorities of his own country were to be notified of that.

Dealing with the special care needs of children

The Children Acts Advisory Board (CAAB) was formed in July 2007 and replaced the Special Residential Services Board (SRSB). Aidan Kelly talks to CAAB Chief Executive, **Aidan Browne** about the organisation and provision of special care services for children in Ireland:

Special care refers to a place of detention where troubled youths are placed by order of the High Court. There are three special care units around the country - one in Dublin, one in Cork and one in Limerick. All are run and funded by the Health Service Executive and all are uniquely designed to simultaneously ensure the child's protection and protect the staff from allegations.

Research conducted by the SRSB into existing special care units found that the standard of care was very good generally but there was a lot of work to do. CAAB chief executive Aidan Browne says: "The research uncovered a few issues that needed to be resolved - management practice issues, process issues and monitoring issues."

"Much of the research showed a weakness in psychological services in Ireland. When troubled youths go into the special care units, there is a reasonably high level of care - but psychological services before they got there had to be improved."

CAAB are hoping to move away from special care units, focusing instead on early intervention and rehabilitation programmes. "Previously there was an ad-hoc process with applications for entry coming from many different types of cases. Children in special care units spent too long there, relatively speaking", explains Mr. Browne. New criteria brought an end to long spells in the units, capping the placement to six months, with liberty to reapply for a second or even third term.

"We felt that by having criteria, a fixed point was created. As all orders for special care must be made by the High Court, this allows the Court to refer back to the criteria."

The earlier system also had its own set of legal problems; the Health Boards would often contest whether or not the child should be contained. "We would have two arms of the HSE in court fighting over whether the child should be detained, which is not in the best interests of the child."

"The process has been streamlined. Now the HSE use the guidelines to tighten up the procedural issues and to ensure that only those children who require special care, get it", says Mr Browne. The numbers speak for themselves. In 2004 there were 55 children in special care, 21 boys and 34 girls. Last year this dropped to just 29 - 8 boys and 21 girls.

The number of girls in special care has always been a cause for concern for the CAAB. According to Mr. Browne, many females end up in the units after being subjected to sexual crimes. "Girls tend to be more vulnerable. The reason for this is girls tend to 'act in' when they are troubled, while boys tend to 'act out'. They are more likely to be heading off to the psychiatric side of things than boys." However, he is happy with the drop in the number of females in special care units and says a lot of this is a direct result of the actions of the judiciary.

"In 2007, Mr. Justice Sheehan said we should be chasing the perpetrators of sexual crimes, rather than the victims. He said that if you take away the other side of the risk, there will be a reduction in the number of girls seeking help"

"The [judiciary] have helped in other ways too. Mr. Justice MacMenamin concluded that the detention of children would be inappropriate in the absence of a criminal conviction. The criminal proceedings must have priority and must proceed. This was very significant"

"Some believe there is a need to put in a special care statutory scheme because there is a need for further clarification. A bill will be put to the Dáil in the first quarter of the year", says Mr. Browne.

The board also publishes guidelines on the qualifications, criteria for appointment, training and role of any guardian ad litem appointed for children in proceedings under the Child Care Act, 1991. "We've set up a working group between ourselves and the HSE to ensure that the recommendations of our research are put into practice and we would share that with the Office of the Minister for Children."

CAAB hopes to follow a cohort of children for whom an application for special care was made to see what happens those who go through the system and compare the outcome with what happens to those who don't go through the system.

That piece of research will be very useful moving on into the future."

Child asks social worker to be taken into care

The HSE applies for a care order for two teenagers whose parents are in a violent relationship.

The Health Service Executive applied to Judge Mary O'Halloran in the District Court for a care order for two teenage children of married parents. A week previously, the matter had been adjourned because the parents had no legal representation. They were now present but still without legal aid. The father asked for a further adjournment. The judge replied: "This matter has to go on. The children are the main issue. My duty is the welfare of the children and I have to hear what is going to be said." The children were not in court and the mother had left to seek legal representation.

A social worker for the HSE, who had co-authored the report before the court, had been involved with the family for two months but the evidence she gave covered the previous 17 years. Four of the couple's children were already in care, she said, and one of these, who had already been made the subject of a care order, had been admitted to hospital at the age of six with an injury to her genitals which was described as a "non-accidental incident".

The parents had separated but would "consistently be with each other" and then have rows. The social worker believed the children were consistently exposed to verbal aggression. The Garda Síochána had recorded 66 incidents of being called to the house. This situation affected the children's behaviour. One child allegedly assaulted a classmate by pulling her hair and pushing her in front of an oncoming truck. This behaviour was "partly learnt from what she had been observing at home", said the social worker.

She was also concerned that in their home, "no subject matter is taboo". For example, the mother alleged that her husband had burned the foetus of her miscarried child in the fireplace. There was no proof of this but the social worker's concern was that it was spoken about openly within the family and "presented as if normal".

The children had no "appropriate adult supervision", she said. One child alleged that a named family friend had offered to pay her for oral sex. Despite the allegation, the child was left alone with this person which was "particularly concerning". The same child had recently attended hospital with bleeding from her back passage. No explanation was given for the injury. Counsel for the HSE asked the social worker if there could be a "sinister explanation" for this and she replied: "This was a concern, yes."

The children were "unkempt, unwashed," and had "significant head lice". Another child had an illness that needed consistent medication which the parents did not attend to systematically. If the child medicated herself, then she would have access to a lot of tablets. The social worker said: "Given previous threats to harm herself, unless taken into care, made in 2008 this would be of great concern." She said a child had, "contacted social workers asking to be taken into care". The HSE's counsel asked if such a request was unusual. Judge O'Halloran said she knew it was "unusual".

Another issue was school attendance. One child had missed 70 days of the school year and the other 76 days. The education welfare board had instigated court proceedings which were scheduled for the month ahead.

At present, the two children lived with their father and had moved around a lot. In fact that day they had been evicted and the father said he was trying to find another place. The father cross-examined the social worker and asked: "What's the idea of bringing up things that happened years ago?" She answered: "The evidence today is based on neglect.

'The evidence is based on neglect … an omission that happens over a prolonged period of time'

Neglect is an omission that happens over a prolonged period of time." On the child's allegation of sexual abuse the father said the child had "a very funny imagination".

When he took the stand, Judge O'Halloran asked him what his response to the evidence was. He said it was "fairly right" and that he was on his own with the two children. He had asked the social workers for help and "no one came near me". When told that he and his wife had "a very violent relationship", he acknowledged this and said it was why he wanted to move out of the area they were in.

Judge O'Halloran said: "The primary concern of the court is the welfare of children." She had previously adjourned the case to allow the parties get representation but the HSE had advised her that the matter was urgent. The HSE representative was an "experienced practitioner" with "no axe to grind", she said. The application had to be heard immediately. She granted that the two children been taken into care with immediate effect.

Judge seeks solicitor for couple in care order

'I don't hear family law matters unless both sides are represented'

A married couple resisting a care order application for their child by the Health Service Executive appeared before Judge Mary O'Halloran in the District Court saying the legal aid board had yet to take on their case.

The judge responded: "I don't hear family law matters unless both sides are represented. These matters are far too important considering they concern the welfare of children … These parties are entitled to independent advice."

The HSE representative outlined the case in which the parents' four children were already in care and it was she, Judge O'Halloran, who had made those orders. He added: "The HSE can't be responsible for attaining representation … our hands are tied. We have to apply for a care order today." The judge said she had made the other order when the parties were represented and suggested that one of the solicitors in court could represent the parents. "I'm sure we can arrange some solicitor. There's the welfare of a child in issue," she concluded.

The matter was let stand but ultimately the parents did not secure representation. The HSE spokesman stated he had taken further instruction and applied for an adjournment for a week. The judge agreed and gave a direction to the legal aid board that it represent the parties on the adjourned date.

Daughter threatened with stabbing, foster family claim

The HSE applied to Cork District Court to prevent contact between a foster family and the biological parents of a child in their care and asked that the parents be kept away from the foster family outside of scheduled visits. There was an allegation, vehemently denied, that the biological parents had threatened to stab the daughter of the foster parents.

The child had been with the foster parents for six years and no one wanted the placement to end. A representative for the foster parents said that given the threats, they were "mindful of ending the placement" and that "if there are any further threats it will end". They believed they could only seek so many directions from the court. It was stated on their behalf that they believed their first duty was to their own family but they wanted to protect the placement and to keep the child.

Judge Con O'Leary said a foster parent's duty was "done in managing the day-to-day care of the children… they shouldn't have to come to court… [they are] a resource to be protected from cross-examination not to mind other interferences".

He made an order directing that the natural parents should have no contact, either direct or indirect, with any member of the foster family household including their own child. The judge set out a 10-mile radius within which they could not venture.

'[Foster family] shouldn't have to come to court… [they are] a resource to be protected from cross-examination'

In Brief

Mother 'absorbs seriousness of situation'

The HSE asked Cork District Court to review an access order which allowed a mother to have a certain period of unsupervised access to her child. The child had health problems and was experiencing frequent seizures.
The mother outlined to the court what she would do if the child had a seizure when she was the only person present. She emphasised that she would remain calm. It was stated in court that it seemed the mother "has absorbed the seriousness of the situation". The court asked her to "exercise discretion in favour of the child". She said she had already done this by not insisting on unsupervised access the previous week when the child had had a seizure. Judge Con O'Leary left the order in place and unsupervised access was allowed to continue.

Son is happy living with me, says father

A mother who left her child behind three years ago claims she can now give him a stable family life

A child, now four years old who was left in his father's care in September 2005 was the subject of a District Court appeal before Judge James O'Donohoe on the Western Circuit Court. The mother, who now lived elsewhere, said she was in a position to give the child a stable family life.

The mother's solicitor asked her client why the child would be better off with her. She replied that the area he lived in was always in the news and that his favourite pastime was throwing stones at cars. She feared he would be before the courts as a juvenile delinquent. She had never been happy in her previous home as the father's family lived nearby and she did not get on with them. Her son's father "was a great man for drinking" and the child's paternal grandfather was a drug abuser. When asked about the father of her three other children, she said there were three separate fathers along with the four-year-old's father.

She was asked how she would manage four children and she said she managed three quite well. She was participating in retraining course three days a week near her home. Under cross examination she admitted she had run away in 2005 when she met somebody else. She took her other children with her but left her son behind. She had had no choice as her boyfriend wanted to come with her. She had pretended she was going to a refuge and the child had remained with his father since then. In the meantime, she had travelled to see her son or his father brought him to see her.

The relationship between her and the child's father had been physically and mentally very violent. She had not seen her son for some time because the father had said he had car trouble or his partner was having a child or the distance was too long on the bus. The father's partner had had a baby.

She was asked if he was violent against her and she described how he had shaved her head because she had gone to meet a new boyfriend. She was asked if drink was involved on the night in question and she said she did not drink. She had lived in rented accommodation when she met her son's father and started going out with him. That house was sold and she was unable to get a council house. Wasn't it true that she had been happy to move to the father's town which she had visited a few times, the father's solicitor asked her. When asked if the father was from a well-known criminal family, she said he was not.

Her solicitor interrupted: "Has your client previous convictions? Was he in court for drug dealing last year?" The father's solicitor responded: "I'm in cross examination and I take objection to my friend interjecting."

The wife said the father had not been frequently in and out of court but that he had been out drinking and partying every night. She agreed she could complete her course nearer to the father's home. She was asked what would she do with her children after school between 1.30pm and 5pm and she said her boyfriend's sister would mind them. She was asked how she felt her son was getting on and she said the father had driven her out at lunch to see him and they went to McDonald's. He looked well and happy in his school uniform and she agreed he had no complaints. "He's happy because he knows he's coming back with me this evening." The father's solicitor asked her: "If it was a matter of concern to the court would you forgo your course to be a full-time mother?" She agreed she would. The judge said: "You are obviously an ambitious woman for your children. It's very easy to give up a life's ambition just to say you'll win today."

The father admitted that he had been caught with a small quantity of ecstasy drugs and had got a suspended sentence. The drugs belonged to both of them, he said, and had been for their personal use. The mother denied they were all for them. He worked seasonally but was currently unemployed. He always had dinner ready for his son who was happy living with him. He now had accommodation in a better area and he brought the child to his old school every day.

Judge O'Donohoe said the child should remain with the father according to the District Court order and would have all school holidays and every second weekend with his mother. He warned the father: "The child will be taken off you if you engage in any criminal activity." He said the mother had taken it on herself to move away and that the order was not cast in stone. It would be reviewed within a year.

Judge O'Donohoe made an order that the child aged four was to remain with the father as per the District Court Order and would have all school holidays with his mother.

'It's very easy to give up a life's ambition just to say you'll win today'

Woman gets time to secure legal aid

A father who travels from abroad for a court appeal over access to his son is told costs will be dealt with next time.

A women representing herself in a case before Judge Rory MacCabe at a sitting of the Western Circuit Court was granted an adjournment even though her former partner had travelled from abroad for the hearing. The application involved the appeal of a District Court order on the father's access to their son.

The woman wanted to adjourn the matter until she had been granted legal aid and showed the court a letter she had received from the Legal Aid Board. Although the father's solicitor objected saying there had been adequate time to apply for legal aid since May, when the case had been heard in the District Court, the woman explained that her father had had health problems and she was helping her mother.

It had been a very difficult time, she said, explaining that a court case was coming up in England relating to her former partner and his alleged sexual abuse of her daughter whom she had by a previous relationship. Her daughter had been traumatised and required a lot of help but would now be getting in-house care for 12 months.

The former partner's solicitor said: "Whether it is proved that my client is a paedophile or not, he should be able to see his son."

Judge MacCabe concluded that the application was genuine and adjourned the case to January but said a note would be put on the file so that if costs for the unnecessary travel arose it could be dealt with then. He added: "The case will go on then with or without legal aid."

'Whether it is proved my client is a paedophile or not, he should be able to see his son'

High Court considers the right of a child to be heard

In our Winter 2008 issue we considered the Hague Convention and the issues facing the courts when dealing with the difficult issue of child abduction often involving parents. In this article we consider a recent case where the High Court considered its obligation under Art. 11 of Council Regulation(EC) No. 2201/2003 to ensure that a child is given an opportunity to be heard, unless it is inappropriate having regard to his age or degree of maturity, in relation to a six year old child.

The child in question was six years old and was a national of another EU member state. The parents, who were also nationals of the other EU member state, divorced in March 2008. At the time of the divorce the Court in the other member state ordered that the child would reside with his mother and his father would have certain access rights. In June 2008 the mother travelled to Ireland with the child. The mother's parents were living in Ireland. The father claimed that the child was wrongfully removed from the jurisdiction of his habitual residence in the other member state and was being wrongfully retained in Ireland.

The father brought an application for the return of the child to the other member state under the Child Abduction and Enforcement of Custody Orders Act, 1991 which gives effect to the Hague Convention. The mother applied to have the child interviewed by a child care professional to ascertain the views of the child and whether or not he objected to being returned to the other member state.

The child was attending school in Ireland and was in junior infant's class. He also attended a school for children of his own nationality on Saturdays. The mother said the child was "very able, competent and intelligent". A letter from the class teacher of the Saturday school noted that the child carried out his tasks at school "quickly and easily" and had been getting high marks for his schoolwork. The school principal and staff had recently decided to transfer the child to a class for older children aged eight to nine years. A letter from the child's class teacher at his local primary school was also produced. The teacher noted the child "appears to be a very bright boy and displays great enthusiasm in ongoing activities". She also noted the child had an aptitude for learning both English and Irish and that he was "coping very well with all aspects of the junior infant curriculum".

The father opposed the application to have the child interviewed and in his affidavit stated that the child was a normal six year old boy and not especially mature for his age.

Council Regulation(EC) No. 2201/2003 (known as the Brussels II *bis* Regulation) applies in cases concerning child abduction in the EU and is binding on all EU member states except Denmark. Article 11(2) of the Regulation provides that "it shall be ensured that the child is given an opportunity to be heard" unless this is "inappropriate" having regard to the "age or degree of maturity" of the child. Article 12 of the United Nations Convention on the Rights of the Child also recognises the right of the child "who is capable of forming his or her own views" to express his or her views freely in all matters affecting the child. The views of the child are to be given "due weight in accordance with the age and maturity of the child". The Regulation does not refer to the Convention on the Rights of the Child but makes reference to the Charter of Fundamental Rights of the European Union, Article 24 of which recognises the right of children to express their views freely and to have those views "taken into consideration on matters which concern them in accordance with their age and maturity".

The Court held that the right to be heard in Article 24 of the Charter of Fundamental Rights was similar to the right in Article 12 of the Convention on the Rights of the Child. The right to be heard only applied where the child is "capable of forming his or her own views". Ms Justice Finlay Geoghegan explained:

"Such a right assumes that the child has a view which he is to be permitted to express. It is the child's *own* view which Article 24 grants him the right to express and this presupposes that the child is capable of forming his *own* views."

Ms. Justice Finlay Geoghegan held that Art. 11 of the Regulation imposes a "mandatory positive obligation" on the Court to provide the child with an opportunity to be heard. The starting point is that the child should be heard. The Court is only relieved of this obligation where it would

be inappropriate to hear the child because of his age or degree of maturity.

The judge also stated that the child's right to be heard is distinct from the appropriate weight, if any, the Court should give to the child's views. This application was only concerned with the child's right to be heard. It would be for the trial judge to determine what weight, if any, should be attached to the views expressed by the child in the circumstances of the case.

The judge stated that the primary consideration of the Court in determining whether or not a child should be given an opportunity to be heard is whether the child on the evidence appears *prima facie* to be of an age or level of maturity at which he is probably capable of forming his own views. She rejected a submission from Counsel for the father that the appropriate criteria related to the child's ability to form his own views on whether he should continue to live in Ireland or return to live in the other EU Member State as this was the issue to be decided in the proceedings and indicated that, instead, the Court should consider whether the child is capable of forming his own views on everyday matters. The judge explained that "the views expressed by a child on everyday matters … could be taken into account by a Court by seeking appropriate undertakings when making the order for return". The purpose of these undertakings would be to ensure that the return takes place in a manner which is in the best interests of the child.

Further, she held that such determination must be made in a manner consistent with the obligation to deal with the proceedings expeditiously imposed on the Court by Art. 11(3) of the Regulation. In the Irish procedural system there is no independent professional assessment available to the Court. The judge should form what can only be a *prima facie* view of the capability of the child to form his own views having regard to the age of the child and evidence adduced on affidavit by the parties, whilst recognising the latter may not be objective. Also, in determining whether a child is *prima facie* capable of forming his own views it was unavoidable that the judge should use his or her own general experience and common sense. The judge said that "anyone who has had contact with normal six year olds knows that they are capable of forming their own views about many matters of direct relevance to them in their ordinary every day life".

On the facts of this application, Ms. Justice Finlay Geoghegan held that the child was aged six years and appeared from the affidavit evidence of the parents to be of a maturity at least consistent with his chronological age and on those facts *prima facie* capable of forming his own views.

Ms. Justice Finlay Geoghegan granted the mother's application and made an order pursuant to Art. 11(2) of the Regulation that a named child care professional interview the child in relation to certain specified factual matters including the child's wishes for his future living arrangements and circumstances under which a return might take place and in addition directed that s/he assess the child and report to the Court on the following matters: (a) the degree of maturity of the child; (b) whether the child is capable of forming his own views and if so a general description of the type of matters about which he appears capable of forming his own views; (c) whether the child objects to being returned; (d) if the child does object to being returned the grounds of such objection and (e) whether any objections expressed have been independently formed or result from the influence of any other person including a parent or sibling.

In Brief

Drunk man appears in court

A divorce case was adjourned to the following day because the husband, who was an alcoholic, was drunk. When proceedings resumed, Judge James O'Donohoe on the South Western Circuit asked certain questions to ascertain if the man could understand what was going on. There was a family business with attached accommodation worth €600,000. The parties, who had three adult children, had been married for 40 years and had worked together in the family business. They had been living separately and apart under the same roof. Judge O'Donohue granted a divorce, a 50/50 split of the assets and extinguished succession rights and made an order for sale. Both parties were to remain in the property until it was sold and were jointly responsible for all business debts and utilities to be discharged out of the family business.

Maintenance defaulters threatened with jail

Judge Timothy Lucey says the Courts Service should provide enough judges and courts so that people can have their cases heard.

'The game is up. Just get the cash or go to jail … [it's] all about performance here'

The list for Limerick City District Court contained over 30 matters for hearing on a single day in February 2009, one respondent was in custody. An additional five matters arose after several people were arrested and held in custody over the weekend following bench warrants or breaches of existing family law matters. At the morning call-over, 11 cases were removed because they had been compromised, or adjournments were sought on consent or neither party showed.

One case was de-listed as the parties consented to mediation. Another was struck out when the applicant to vary a maintenance order did not turn up and the respondent, who had recently lost his job, could not pay. In an item where a woman seeking a barring order was absent, Judge Timothy Lucey remarked that this always caused him concern.

A further four cases were adjourned when it became clear that the court was too hard-pressed to process them that day. Some of these were estimated to need a couple of hours. Judge Lucey suggested that the Courts Service should provide enough judges and courts so that people could have their cases heard. The lists were very long, he said.

Gardaí objected to a bail application in one of the six matters involving people in custody. The applicant was homeless and could not confirm an alternative address. The matter concerned a breach of a barring order obtained by the applicant's father. Bail was not being refused, stressed the judge, but merely adjourned. In a similar case where criminal matters were involved, bail was not an issue. In the remaining four cases bail was granted on bonds of €250 cash with sureties to be provided. Three maintenance applications were dealt with on consent as was an access issue.

A case over maintenance arrears was struck out when the respondent told Judge Lucey that the sum outstanding was €24. The man was reminded to make sure he paid this as part of the deal to strike it out.

A son agreed to stay away from his mother's home after she applied for a barring order. The judge granted a one-year order but carefully explained to the son that any breach would mean jail.

A nil maintenance order was agreed by consent in another case and the request for a barring order struck out when the respondent swore under oath to stay away from the applicant's home. Judge Lucey said giving an undertaking was easy but he warned that any breach was serious and could result in fines or imprisonment as it was a contempt of court.

In an application for a safety and a barring order the latter was withdrawn and the request for the former adjourned since the respondent husband was waiting for legal aid. The wife would consent to this if the protection order remained. There were serious matters outstanding between the parties, she said. The judge explained that the safety order was a long-term version of the protection order. The husband could consent to the safety order which essentially meant that somebody could not misbehave, threaten or put in fear or molest, in other words do nothing beyond what was right and proper. Otherwise he could wait for legal advice, said Judge Lucey. He added that the order could be valid for up to five years but that the applicant could consent to less, for example one year. The husband preferred to adjourn. The judge acceded and extended the protection order to the next date.

In another maintenance case, the applicant was not present and the father, whose earnings were to be attached, said he had secured finance to meet his arrears and would clear the debt by the end of the week. He paid maintenance for a son who was no longer

dependant and Judge Lucey advised that he could apply to vary the order since the son was over 18 and not in full-time education. The application should be made before his earnings were attached and both applications could be heard simultaneously. The matter was adjourned for two weeks for mention only.

In a barring order application where only the respondent's solicitor turned up, the wife described two violent incidents since June 2008 where she had to be hospitalised. After the first, she applied for a barring order but could not attend court as she was in hospital. She told court that her partner had been violent but they had a child whom she wanted him to see once he sorted out his alcohol problems. Judge Lucey granted a two-year order from the date of the hearing.

A father wanted his maintenance payment altered because the mother claimed the child was not his but the product of an affair she had had when they were married. She was not in court and the judge said that in her absence this claim was at best hearsay and dubious by nature. He would not reduce maintenance to nil and said the child needed a father. The father was unemployed and had not had access for some time. In fact, he had only seen the child, who was now 14, for about seven years. The case was adjourned to the same date as an access application and the judge allowed substituted service of proceedings.

In an uncontested application for a safety order, a woman described an attack on her the previous October by her former partner and father of her child. There had been no problems since but the man wanted access to the child. The judge granted a safety order for two years and advised the woman to apply for maintenance as it was ultimately for the child's benefit.

A mother then was granted a barring order against her son for one year after she told of his various violent acts. She was very afraid of her son and what he might do if there was no other adult male in her house. She had two younger children to protect.

Maintenance arrears in a matter previously before the court in November 2008 and where the respondent had recently been granted bail in order to sort out his debt now exceeded €3,000. The man said he was in the middle of setting up an account to pay €100 a week where previously he had paid €70 a week. He was working and paid fortnightly but he had paid bills with his last wages. The judge told him he had done nothing in the two weeks since he was last in court. "Talk is cheap," said Judge Lucey. "The game is up. Just get the cash or go to jail … [it's] all about performance here." He meant that maintenance defaulters had to show genuine effort to clear the arrears. "You are looking at a jail sentence," he told the man. "The courts have considerable power to enforce arrears as children don't have any choice in the matter – they can't go for a few pints like you can," he added. He made an order to commit the man to 14 days in prison but if all arrears were paid in one instalment by a fixed date, this would not occur.

In Brief

Maintenance increase reduced

A man appealing a District Court maintenance order came before Judge James O'Donohoe on the South Western Circuit. The man was not married to the mother of his child and both parents had children by other partners. The District Court had increased the man's weekly maintenance payment by €40 to €90. The father said he was a full time carer for his elderly mother and received a weekly carer's allowance of €213. In addition, he could work 15 hours a week which brought in an average €140. He said that since the District Court order he had paid €60 a week but could no longer afford that. He added he took the child every weekend overnight.

The mother said she needed at least €90 a week as the child attended crèche five days and she did not want to reduce this since it would disrupt the child's routine. Judge O'Donohoe ordered the father to pay €70 a week on the basis that the child would attend the crèche 3 days a week and that his weekend access would continue. The matter is set for review by the District Court in six months.

Father wants paternity test over three years later

At a sitting of Dublin Circuit Court, 14 matters are listed seven of which are contested, three are consent and four are ex-parte applications. What follows is a snapshot of some proceedings.

'You have a total disregard for the child not to mention the court. There are €2,000 arrears … pay €65 per week from this instant minute'

A woman, representing herself, alleged the father of her child had breached an access order which stated that he should have overnight access every second weekend from Friday at 6pm to Sunday at 10am. If he was not working access was up to 7pm on Sunday. The woman said: "He doesn't work on Sunday. He always drops the kid back at 10am and he's not working. He should take him till 7pm."

The father denied this and produced documents to back up his statement. The woman said: "I wasn't aware of this. This is just another excuse he's come up with." Her application was dismissed. She said to Judge Ann Ryan: "Your honour, it's so unfair that he comes in here and lies. It's not justice it's unfair." The judge advised: "You can't force him to take the child if he doesn't want to take him and you will cause yourself a lot of grief trying to force him if he doesn't want to take the child."

Another woman, again representing herself, sought maintenance arrears from the father of her child. A 2005 order stated that he had to pay €65 a week for his daughter. The mother said he had paid nothing. She could only enforce six months of the arrears and there was €2,000 still to be paid. "What are you going to do?" Judge Ryan asked him. He answered that he was on €197 social welfare: "It's got out of hand," he said. He was asked if he had worked when he should have paid maintenance and he said: "On and off." He had lost his job last year. "Why did you not pay since the order was made?" asked the judge. He said he had given the mother a few postal orders but had no proof of this.

"You're looking to going to prison," said the judge. "Are you serious?" asked the father. "I am," replied the judge. "You have a child. You have a responsibility. If you have got into difficulties you should have brought a variation application. You have a total disregard for the child not to mention the court. There are €2,000 arrears. I need a plan if you don't want to go to prison. Pay €65 per week from this instant minute."

The man said he hoped to start a job shortly and then he could pay €500-€600 a week. The judge committed the father to prison for one month but put a three-month stay on the order to allow him pay up. "I'll get it cleared before then," he promised. The judge warned him that if he did not appear in court in three months a bench warrant would issue for his arrest. "How much is the arrears I owe?" he asked. "€2,000," repeated the judge.

Then a woman appeared seeking to increase child maintenance from €40. The father of the child wanted a DNA test to determine paternity. He had been paying €40 a week for his daughter. Judge Ryan remarked: "The [maintenance] order goes back to 2005. It's a bit rich to look for a DNA test at this stage." His solicitor said: "Some remarks have been made." The mother was on lone parents allowance and the child was in a crèche costing €60 a week. The father earned €345 net a week and paid €100 rent. He said: "There are rumours going around that she was with some fella and the child came and she looked like me and all but I want to be sure … and I'd still love to see the child if she's not mine." He said he would pay for the test with a loan from his brother.

The mother asked him: "Why has it taken three-and-a-half years for this to come out now?" He replied: "I understand what you're saying but it's getting all on top of me." She said she wanted more maintenance saying "I live alone. I have two kids and I need to pay

the crèche and he's working."

"Why does your child need to go to the crèche if you're not working?" asked the judge. The mother said it was good for the child to socialise and she went there five mornings a week. The judge suggested that she consider the crèche for two to three days a week and that she share babysitting with her mother and her child. The father was told to contribute €20 extra for the child's crèche and a DNA test was to be carried out which the father would pay for.

After this, a grandmother who was a guardian of a child was granted an order dispensing with the consent of a parent for an emergency holiday passport application.

Then a man wanted to reduce his maintenance payment of €90 for his three children. He was not working, had two other children and got €254 a week in social welfare. His partner was still earning. He said: "At the moment I'm paying €50 maintenance a week and I'm struggling with that." The mother was willing to accept €50 a week while he was out of work so the judge ordered this with a recommendation that it increase to €90 a week whenever he got a job.

After lengthy submissions concerning a wife who sought to enforce maintenance arrears from her husband who had been made a ward of court, Judge Ryan made no order. She said a variation summons would have to issue from the Office of the Wards of Court before all matters could be dealt with.

The parents of a seven-year-old both wanted a review of access along with a maintenance variation. The pair had lived together until recently. The mother, who worked and paid her own rent and car expenses, said the child had extracurricular activities. When it was put to her that the father was jobless and raising two children on his own and would find it difficult to pay more she replied: "I don't see why a grown up man of 37 years can't get a job. I work full-time." The father's barrister said an order of €20-€30 at a stretch would be appropriate and his client was then ordered to pay €30.

The relationship between the mother and the father and his new partner was very bad, the court heard. The father alleged the mother had frustrated and denied him access over several months while she said he had just not turned up for it. He wanted overnight access as he lived a good distance away. The mother's barrister said he had not attended a recent access review. Overnights were not suitable as the child was not used to it, besides which she hadn't seen the father for months. The father was unsure of how many Tuesdays he had seen his child. "Once when I called over they wouldn't let her come out of the house and when I did call down they wouldn't answer," he said.

If the situation was so bad, why had he not brought a case, asked the mother's barrister, or turned up for the access review to sort things out. He had not known if the review was three or six months after the hearing. The mother denied she had ever frustrated access: "I'm all in agreement for them to stay in contact. I don't want to cut off ties." She did not want her daughter to stay with the father overnight if his partner was there. "She [father's partner] texts me. I was so concerned I had to go to the guards. I was scared. I don't want my girl in the company of somebody that can be that nasty."

The judge said: "There has been a conflict of evidence between both parents. [The father] did not show up on the last occasion at the review of access and has not taken up access. If he had been so upset he would have come back to court. He does need to prove to the child that he can be responsible."

Overnights were refused but access was granted for each Tuesday from 1.30pm to 8pm along with Saturdays or Sundays from 1pm to 6pm.

The parents of a nine-year-old girl then came before Judge Ryan. The father, a long-term heroin user, had not really seen the child her whole life. Now he was applying for access and guardianship while the mother, who had married and had her own family, wanted his permission to change the girl's name by deed poll to her marital name. The mother had obtained a psychological report on the child. She had always allowed the paternal grandmother to see her daughter but not to disclose who she was. The psychologist had met the child and the parents separately

and concluded that it was in her best interests to meet her father through the grandmother. She should not be told who he was initially but this should happen eventually. The father said he was now heroin free: "If I kept doing what I was doing I wouldn't be here. I want to be part of her life." His solicitor asked him: "Are you aware of your responsibility not to discuss that you're the biological father until an appropriate time?" The father said: "Em…I want to be part of her life."

When asked if he had changed he replied: "What I've done in the past is over. I don't want to do drugs any longer." The father wanted his own mother to supervise access.

The mother's solicitor responded: "My client's concern is for the child. She's very concerned. She feels the bad ways will always be there. This child calls her husband dad. This is the family she has known. Here we are nine years later and you want to come back into her life."

The father replied: "I accept that but that was then and this is now. I've been clean since September 2007." The mother objected to him seeing the child: "He hasn't seen her in nine years. I don't want him getting into her life and then disappearing again. I'm worried for her. The last time he saw her he came up to the house to see her and he was off his head on drugs. He never tried to see her until I wanted to change her name by deed poll … His mother rang me to say he got legal advice. He hasn't seen her since she was five months old. I believed in him. I asked my dad if he could get him a bit of work. He only lasted a couple of days. I'm worried sick he will always end up falling back. …I've always agreed I would tell [my daughter], tell her she had a different dad. I don't think now is the right time. It's too difficult for her to deal with it. All I want is to be reasonable."

The father's solicitor said: "The name change plan for the child is all a masquerade. You wanted to change the name and be one happy family."

Judge Ryan said: "The report suggests this is a very difficult case. [The child] is a very balanced nine-year-old and has done very well under the circumstances. Her mother's concern is that her whole life will be disrupted. The father's background is unstable and children often can get very upset by this. [He] is in a difficult situation and is doing very well at the moment. He has the backing of his mother who has kept up contact with the child. That's probably where the stability will continue I'm inclined to believe. Now is the time to introduce the truth. How do you go about it?"

The judge made no order on the day and adjourned the case for six months to give the mother time to deal with the prospect of dealing with the situation.

"I do think the mother needs more time. It would be totally inappropriate to make an order. Both parties need more time."

In Brief

House put into husband's sole name

On the Cork Circuit, Judge James O'Donohoe heard that a couple who married in 1979 had one child together and the wife had one child from a previous relationship which the husband had adopted. They split in 1984 and the wife had numerous affairs. The husband reared the two children and although he had a maintenance order the wife paid him nothing. They jointly owned a council house that was bought in 1982 and the husband wanted a property adjustment order in his favour since he said he alone had paid the mortgage since the outset. He had also made all the necessary repairs and improvements to the house from the breakdown in 1984 until now. The judge granted a divorce and transferred the entire ownership to the husband. He put a stay on the property adjustment order and instructed the husband's solicitor to inform the wife to consult a solicitor.

COSC – putting the victim first

A recent high profile advertising campaign placed a spotlight on the National Office for the Prevention of Domestic, Sexual and Gender-based Violence. Better known as COSC, this State agency is tasked with co-ordinating a national approach towards the issue of domestic and sexual violence. Aidan Kelly spoke to COSC's Executive Director, **Éimear Fisher**:

COSC's remit extends across the justice, health, housing, education, family support and community sectors and includes interaction with non-governmental organisations supported by Government funds.

With 15 per cent of women and 6 per cent of men experiencing severe abusive behaviour of a physical, sexual or emotional nature from a partner at some point in their lives, the office certainly has its work cut out for it. Even more shocking, however, is that less than 25% of those severely abused report to An Garda Síochána.

COSC's initial work included consultations with various parties, including non-state stakeholders, in the preparation of a National Strategy on domestic violence. They also work alongside the Courts Service, to improve co-ordination across the justice sector, and between the justice and other sectors which respond to victims of domestic and sexual violence. This includes the provision of higher quality information to courts staff on the activity of other services to victims of domestic and sexual violence.

According to their executive director, Éimear Fisher, this was no easy task. "The services weren't coordinated really in any way. A lot of the time, if the victim went to the Gardaí, they may or may not have been referred onto other support systems. It just wasn't easily accessible."

"It wasn't enough to just join them up – we had to ensure standards were high, positive actions for perpetrators of domestic violence were put in place, and community awareness of the issue was improved."

The awareness building role of the office proved particularly difficult. A report on a nationwide survey conducted by COSC found that, while most people were aware of domestic and sexual violence, they wouldn't know where to report it.

As a result, they developed a nationwide media campaign featuring stark images of abuse in the home. The tagline 'Your Silence feeds the Violence' sat at the bottom of pictures of smashed lampshades, messy rooms and broken banisters with statements such as "He hit her. Again." highlighting the horrors of the perpetrators' actions.

"Reaction to the campaign has been strong so far", says Éimear. "Feedback from people especially victims has been very positive- it gives us a great sense of where we're going. The first thing is to know that there is set advice out there. However bleak they think the situation is for them- there are people to help." One of the most important aspects of the office's work is developing strategic actions which work with the perpetrators themselves. It involves working with experts to study the current intervention programmes and monitor their effectiveness. The funding of such programmes also falls under their remit. As a result it, and other services like it in Ireland, was compared to those in other countries in Europe and the USA.

"There's a lot of good work being done in Ireland - it's very hard to compare. In other countries there are a lot of very good projects that wrap around and assist the victim. There are great services, certainly in London and Germany and it's hard to say that Ireland isn't up there with them, but there are improvements to be made. The best way is to just evaluate them and see what can be applied here", says Éimear.

At present, the office is consulting with State stakeholders on specific actions in preparation for the launch of the first draft of the National Strategy. Work with these stakeholders identifies research projects that will help support the development of evidence-based policies and strategies. The National Strategy will be a cornerstone of the group's work, with a mind to start implementation before the end of the year. Éimear is certain that it will help services a lot. "We hope there'll be less domestic and sexual violence, that people will know where to go and that existing services will know amongst themselves what the best option is for the victim."

"Recovery is extremely difficult and that's why the services are there. Victims need time and people who understand their situation and not judge them at all."

"It's one of the key points. That level of support that keeps the victims at heart is vital."

COSC has developed a new website *www.cosc.ie* where you can find information on the wide range of services available to victims of the crimes of domestic and sexual violence in Ireland. The information on the website allows victims, their family and friends to quickly identify the services available to them in their area and it assists with the sharing of information across the state and NGO sectors. If you are interested in finding out more about COSC's work and developments you can visit *www.cosc.ie* where you can subscribe to the regular COSC newsletter. Any comments or suggestions as to how www.cosc.ie could be developed to further assist you in your work would be welcome by e-mail to *cosc@justice.ie*

Medication didn't agree with son, says mother

Mother is fearful of son but opts for safety rather than barring order.

'He's still depressed but he's not a monster'

A mother had issued a summons for both a safety order and a barring order against her adult son who had psychiatric problems. The son and mother appeared before Judge Anne Ryan in Dublin District Court and represented themselves.

The mother said: "[My son is] better in himself. He's trying to get a new doctor. His medication wasn't agreeing with him." Judge Ryan, who had granted the woman a protection order some weeks previously, recalled that the mother had been very fearful and had said in her sworn statement that her son had threatened her very seriously. "He'd a knife by the side of his bed and I was very fearful," she agreed.

The judge asked how the son had been since she had given the mother a protection order. "He's still depressed but he's not a monster," said the mother. She was not proceeding with her application for a barring order but wanted a safety order as she was in fear of her son and he had threatened her.

The son told Judge Ryan that he was seeing no doctor at present and hoped to transfer his medical card to a new doctor shortly. "It's in your own interests that you get to see somebody as soon as possible," said the judge. The son was trying to get a handle on his medication and had given up marijuana.

The judge granted the mother a safety order for two years. "I will give your mother a safety order for two years to give her the protection of the court if necessary. If threatened or abused she can get the help of the Garda if she needs it," said the judge and explained to him how a safety order worked.

Judge grants woman five-year safety order

'[Serious assault charge] is not any business of this court'

A man convicted of assaulting his partner who had been fined €150 came before Judge Anne Ryan in Dublin District Court. Both he and the woman were represented. The man admitted he was due to be sentenced soon for a serious assault charge saying: "I don't think that's any business of this court." The judge replied: "That's not for you to decide."

The father had eight hours access to his children a week and wanted overnights. Given that he would shortly be sentenced Judge Ryan said she would order no overnights until "such time as all other matters are finished". She sent the parties outside to see if they could agree matters but they could not. The judge kept the access hours as they were but varied the days. On week one the father would have access on a Wednesday and a Thursday from 2pm to 6pm and on week two on a Saturday and a Sunday from 2pm to 6 pm. The judge granted the mother a safety order for five years. A breach of access summons was struck out on consent.

Evidence fails to sustain bid for barring order

A father at the centre of a case before Judge William Early is more interested in his former wife's private life than his daughter's life, it is claimed.

In an application for a safety and barring order, Judge William Early explained the procedure and rights of the parties to the two foreign nationals concerned. The couple had been divorced abroad and had one child. An interpreter was in the District Court for the benefit of the husband who represented himself and who was asked if he wanted a solicitor.

In evidence, the woman explained the background. She said she was returning home with her then partner and had found her former husband outside the house with his friend. He looked as if he was waiting for them so she went back to the car and she and her partner drove away. She did some shopping, returned to the car and then saw her husband and his friend who reversed the vehicle in their direction and blocked them in. They finally managed to get away, she did not know how, but she was afraid and that was the reason she was before the court. She had received texts and calls from her ex-husband, she said, and he had shouted at her, saying: "Your happiness will be in jeopardy." "He is dangerous," she said, "and he always asks my daughter about my private life and that upsets her."

In cross examination, the man asked: "Why are you afraid of me? Why did you make my child afraid of me?" The wife rejected that she had said anything bad but added that their daughter had been upset after her last meeting with her father because he asked only about her mother's private life and not school and her feelings. The girl said her father drove too fast and she did not want to get into the car with him.

The husband said he had been with a friend, his former wife's neighbour, when he saw her approach. He was curious to see what the new partner looked like. His former wife saw him and said nothing and left. By coincidence he had met his former wife at the shopping centre. It was dark and he wanted to see the new partner so he reversed the car so he could flash the light on them and see his face. As they drove away, he got out of the car and looked at them. He drove away calmly because he had a small child in the back seat. He texted the woman later to tell her not to be afraid. He was going to leave the country shortly and had wanted to see the man who would become his child's father. If the former wife did not want to see him that was fine, but he wanted to see his child and he was entitled to do so. He had his own life and a girlfriend. When asked if it was out of curiosity he wanted to see the partner, he said he wanted to see him because his former wife had said she was pregnant which meant this man would be the father of his child also. After she revealed she was not pregnant he no longer wanted to meet him and understood she wanted her own life.

When asked if he was on any medication, he said: "No, I used to smoke hash … but not here. It is too expensive. I buy smoke. You can buy it in some shops. It's legal. I smoke in the evening and at the weekend. I have problem with sleeping. In [my home country] I used to take drugs with that lady [points to former wife] if you want to talk about our life [there]."

When the husband had finished his evidence, Judge Early said: "Having heard all the evidence, I am not satisfied that there is sufficient evidence … and accordingly I am dismissing the application for a barring order. You should note that she is the sole tenant of the premises and that you cannot enter without her permission."

Judge Early was satisfied that the evidence could be objectively construed as a threat and so granted a safety order. It was open to him to grant one for five years, he said, but having heard the evidence he would grant it for six months.

'I used to smoke hash … but not here. It is too expensive. I buy smoke. You can buy it in some shops. It's legal'

Violent son gets credit for not disputing evidence

'[My son] threatens to put nails into my head. He breaks furniture … He defecates in the flower pots'

In an application where a mother applied for a safety order against her son, Judge William Early explained the procedure to both parties who were representing themselves. The mother said she was divorced with two children, one aged 19 the other 25. Her son suffered from depression, she told the District Court, along with major alcohol and self-prescribed drugs abuse. When he was drunk, she said, he went "into a different state and doesn't remember anything of the incident". She added: "[He] threatens to put nails into my head. He breaks furniture and kitchen cupboards. He defecates in the flower pots and other places." Once, he pulled a carving knife and so she called the Garda Síochána and obtained a protection order as a result. On that particular night, her son left the house and stayed with her husband. He returned the next day and apologised, promising to quit alcohol. He did for a bit but had a major slip-up and admitted himself to the psychiatric department of a hospital. She understood he was diagnosed with depression and that this underpinned the outbreaks but insufficient attention was paid to the alcohol abuse and drugs. When he was off alcohol and drugs, she was proud to be his mother. She was afraid that he would slip up again and become that totally different person, aggressive and threatening and then not remember anything of what he had done. She was also concerned for her daughter.

Judge Early asked the son if he would like to ask his mother any questions. He answered no and declined to give evidence. The judge accepted the mother's uncontested evidence and said it was to the son's credit that he had not disputed it. On the evidence provided, he said he would have granted a barring order had it been sought. He granted a safety order for five years.

'End of the line' for unreformed drinker

'My wife is a good person but she's a little bit disillusioned. She's under fierce pressure'

A woman, who told Cork District Court that her marriage was "a lot of trouble for years and it's getting worse", wanted a barring order for her husband who came in drunk every evening and had disrupted a Christmas family gathering.

The man, who was present and seemed to have been drinking, said: "My wife is a good person but she's a little bit disillusioned. She's under fierce pressure. The house can be overcrowded."

Judge David Riordan responded: "Her complaint is that you drink." He replied: "I drink your honour." He had gone to the pub that morning, he said, because, "with all due respect to the court, I didn't want to come into the family law court". In a previous hearing, the judge had adjourned the matter, saying the husband had to show success in mending his ways.

Judge Riordan then said: "I'm growing old with the file myself." The case had first come before the court seven years previously and had reappeared many times since, he said. He recalled that five years ago the husband had given a solemn promise to give up alcohol. The husband interjected: "I wasn't able to do that." The judge stated that what he was hearing was the "end of the line" of the case. He referred to the wife's claims that things had not changed and that it had nothing to do with an overcrowded house. She was granted an eight-month barring order.

My husband goes to gay bars, woman says

A woman, who claimed her husband was gay, applied to Cork District Court for an interim barring order. Representing herself, she told court that her husband "goes to gay bars and hangs around". They no longer had a sex life but she found condoms and Viagra in his car. When she tried to talk to him about this he told her "not to push it or [you] will be sorry".

She claimed he was mentally abusing her and that she had ended up in hospital. Sometimes he gave her "a dig" or pushed her around the place.

Judge John O'Neill put it to the wife that her concern was that her husband was gay. "If your son was gay would you ask him to leave?" he asked her. She said, no, she was not, "anti-gay". The judge repeatedly asked her why she was afraid and she was unable to give a direct answer other than to state that her husband did not want anyone to know his true sexuality. Have you considered a judicial separation, the judge asked. The husband would not talk about that, she said.

Judge O'Neill was not satisfied there was immediate risk of significant harm to the wife or to any of their dependants and the application for a barring order was refused. He granted the wife a protection order.

'If your son was gay would you ask him to leave?'

Son kept brother's jail term from father, court told

A man, who sought to bar his son from the family home, told Cork District Court that the son did not live there but came to visit his mother. Difficulties arose when the father found another son in prison for a drugs offence and his brother, against whom the application was made, had known but never told the father. He also claimed that this son had asked him for a urine sample so that he could pretend to his employer, who required the sample, that it was his. As a result the father suspected he was taking drugs and a friend confirmed this. The son then figured out who the whistleblower was and threatened him. The father had the phone with the texts with him. When Judge David Riordan asked for an example, the father said one text ran "keep your nose out". He also alleged that once, the son had entered the family home and pushed him.

The son did not contest the father's evidence, saying that he had smoked cannabis in Amsterdam where it was legal. He took the drug recreationally, saying: "I'm not a violent person. I've employment … I don't appreciate my father bringing me in here."

The judge stated to the son that the "trigger" for the father was that he knew his brother was in difficulty with the law and hid this from him. He replied: "We all knew." Even the mother knew but that they could not tell his father.

Judge Riordan dismissed the application, saying it had been made under the Domestic Violence Act 1996 and that, "it was not without significance that the Act is named the Domestic Violence Act". The court would make such an order where the safety, health and welfare of the applicant require an order to be made. That threshold had not been met here, he said.

'I'm not a violent person. I've employment … I don't appreciate my father bringing me in here'

Violence in the home data shows 15 per cent rise

In the District Court, those subjected to aggressive behaviour formed a longer queue in 2007 to seek a variety of orders that might give them and their dependants some protection. The figures that follow were first published in the Courts Service Annual Report 2007.

Most relief applications for domestic violence in Ireland, made under the Domestic Violence Act, 1996 are dealt with by the District Court. What follows is a synopsis of trends and figures published in the Courts Service Annual Report 2007 along with a definition of domestic violence, a description of who is eligible to apply, what specific orders the court can make and what happens when there is a breach.

Domestic violence is defined as a pattern of coercive or forceful behaviour by one member of a family or household or relationship towards another to establish and maintain power and control. Those affected can be women or men, married, people who are living together (co-habitees), same-sex partners, parents being abused by children, or children being physically or sexually abused by a parent or step-parent. It affects all types of people, from all walks of life, all occupations and all levels of income.

Such applications to the District Court rose by almost 15 per cent to 11,394 in 2007 from 9,924 the previous year.

Several categories of persons may seek an order under the relevant legislation:

- One spouse may seek protection from a violent partner
- Parents can look for protection from a violent adult child
- Parents may move to protect dependent children from the other parent
- The Health Service Executive man apply for individual and/or their dependent children in special circumstances
- Relatives who live together (brothers, sisters)
- Unmarried couples, including same-sex couples can apply for a safety order if they have been living together for six of the previous 12 months. To obtain a barring order they must have been living together for six of the previous nine months. An order will not be made against a person who has greater ownership rights to the home than the applicant.

Figure 1: Domestic Violence Applications 2007

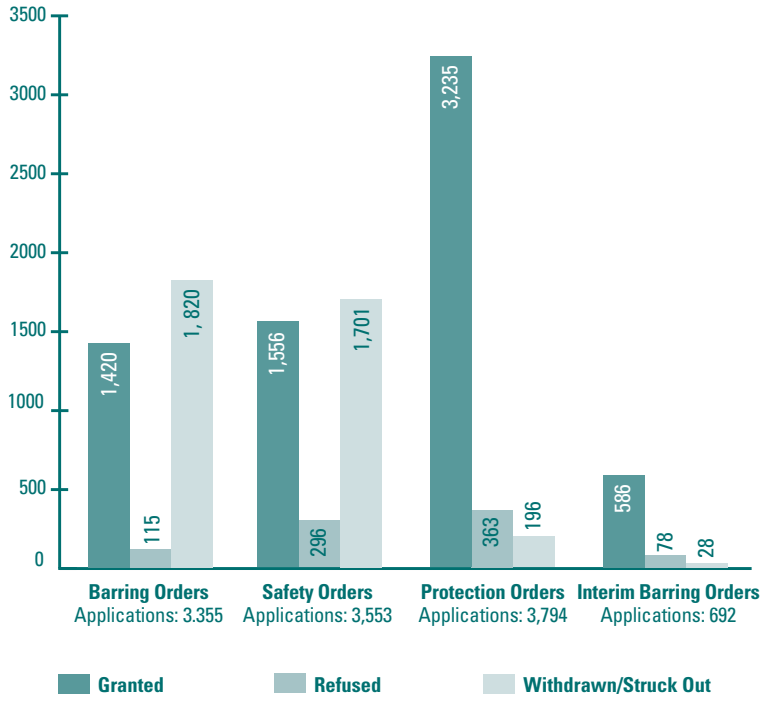
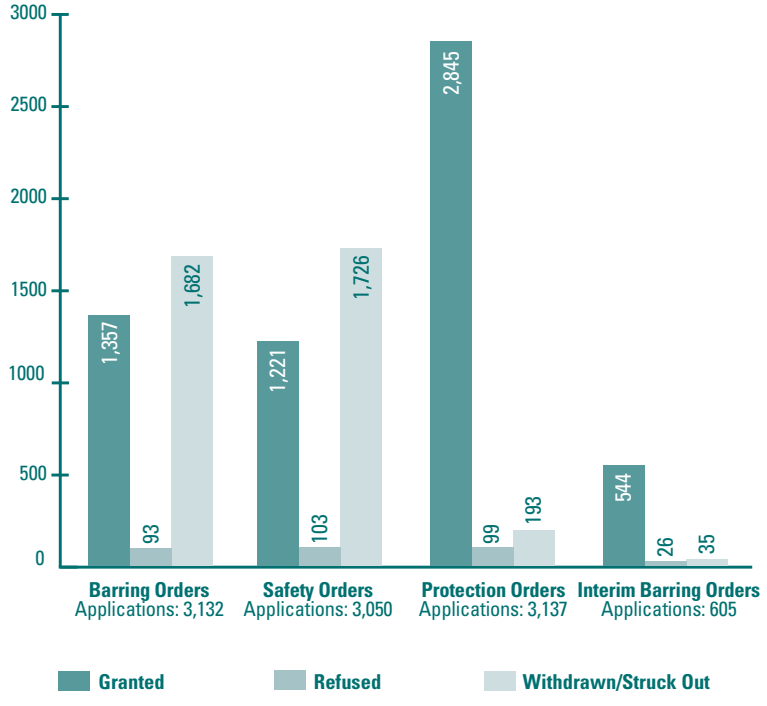


Figure 2: Domestic Violence Applications 2006



Barring orders

A barring order requires the person it targets (the 'respondent') to leave the family home. It can include terms prohibiting the respondent from using or threatening violence and prohibits the respondent from visiting or being near the residence and/or putting the applicant and/or children in fear of violence.

When a court considers making an order, it must be satisfied that the safety of the individual or dependants applying is truly at stake. The District Court can make a barring order for a maximum of three years at which time it can be renewed.

For the first time in seven years, applications for barring orders rose in 2007. They had fallen gradually to 3,132 in 2006 from 4,908 in 2000. In 2007, 3,355 applications for barring orders were made in the District Court. The number granted also increased for the first time in seven years, to 1,420 from 1,357. Over half of those granted were to applicants seeking protection from their spouse. Some 198 parents were granted barring orders against their children.

Figure 3: Barring Orders 2007

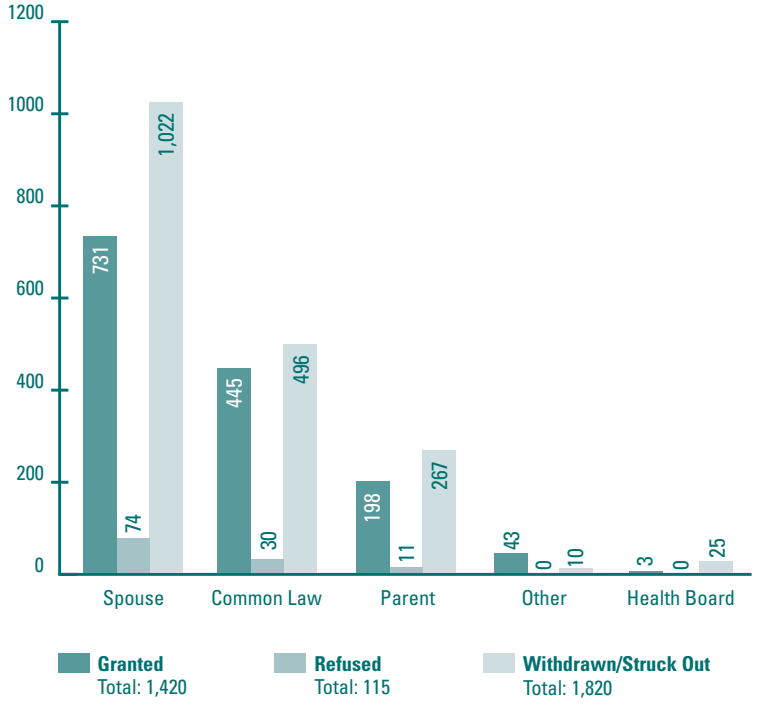
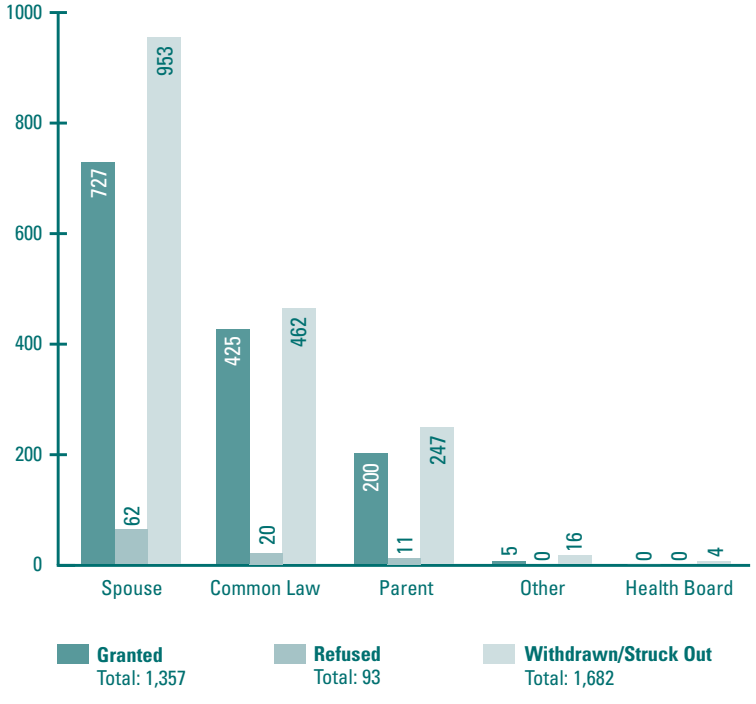


Figure 4: Barring Orders 2006



Interim Barring Orders

An interim barring order, as its name suggests, is temporary and valid for no more than eight working days. When a person applies, a court may make an ex-parte order – which means without notice to the targeted party.

Interim barring orders are made only in circumstances where there is an immediate risk of significant harm to the applicant and/or dependent children.

In 2007, 692 interim barring orders were applied for, some of which were granted on foot of applications for protection orders and vice-versa.

Figure 5: Interim Barring Orders 2007

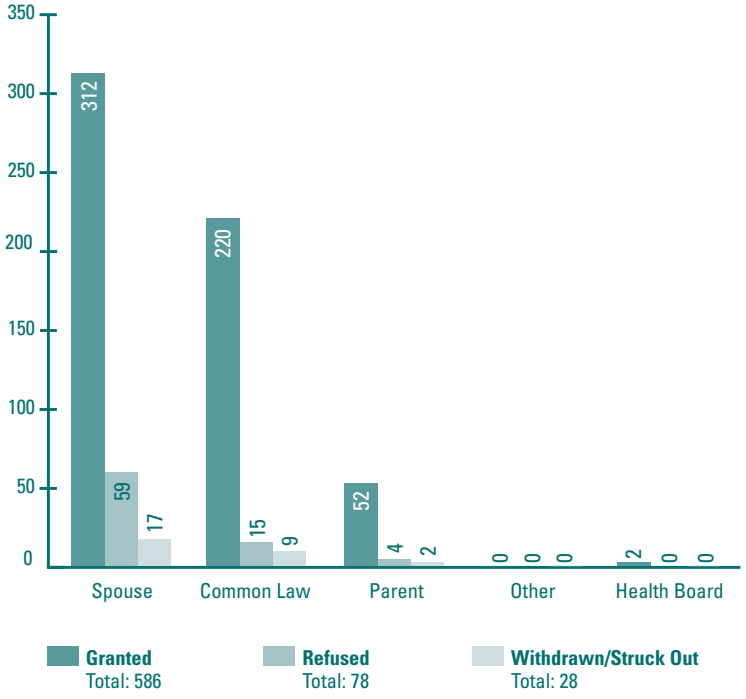
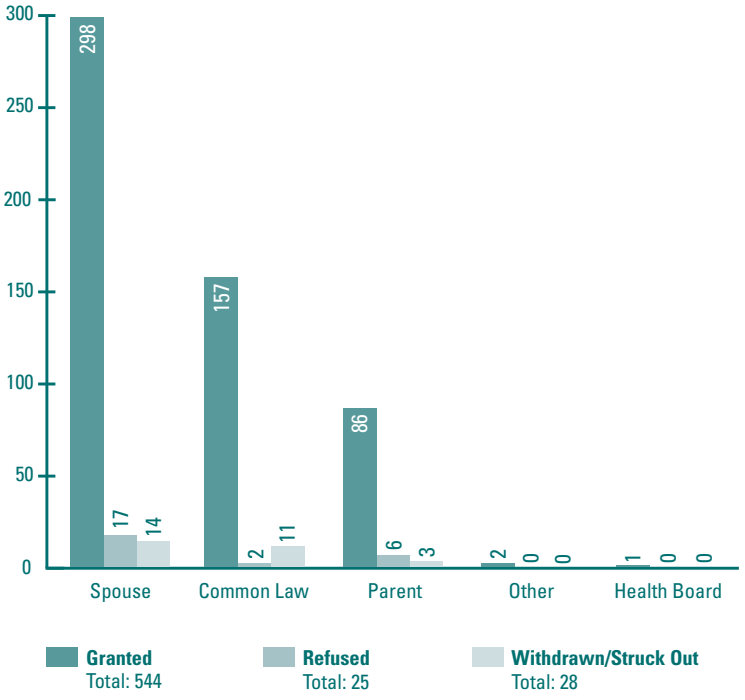


Figure 6: Interim Barring Orders 2006



Safety Orders

A safety order prohibits a person from using or threatening violence towards the applicant and/or dependent children. It does not oblige the person to leave the family home. If the parties live apart the order prohibits the respondent from watching or being in the vicinity of the applicant's home.

The District Court can make a safety order for a maximum period of five years. The order can be renewed. In 2007, 3,553 applications for safety orders resulted in 1,556 being granted – of these 751 were to spouses and 523 to co-habitees. There was a 115 per cent increase in the number granted to a parent seeking protection from their child, to 219 in 2007 from 102 in 2006.

Figure 7: Safety Orders 2007

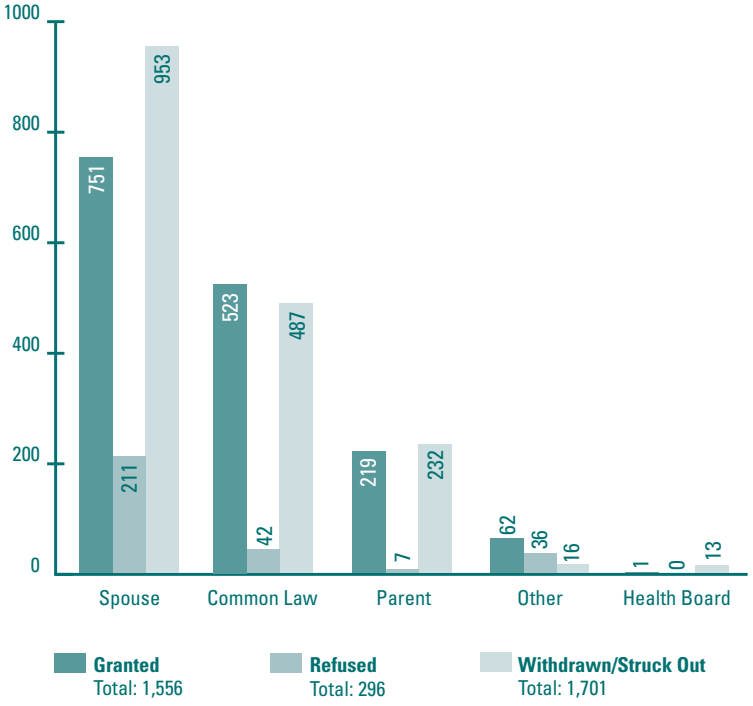
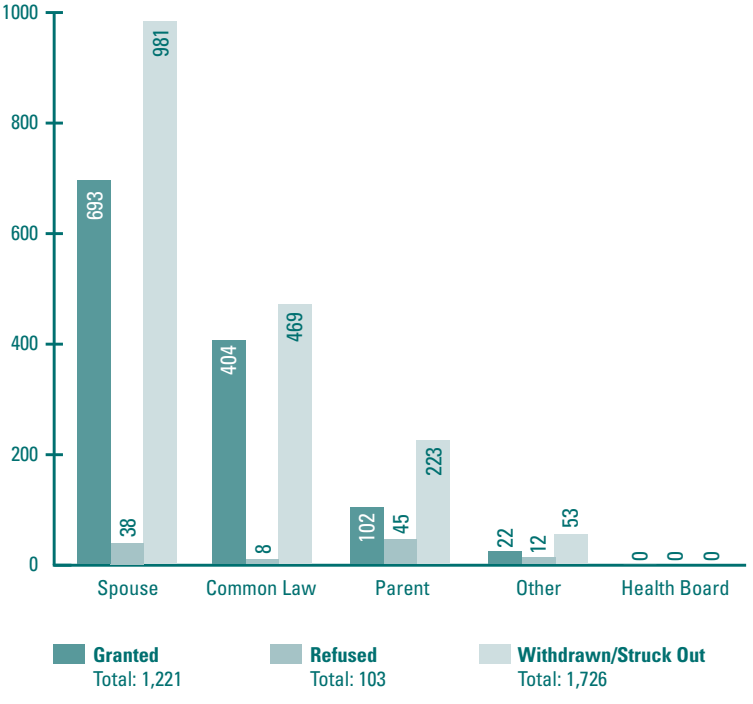


Figure 8: Safety Orders 2006



Protection Orders

A protection order is a temporary safety order which a court may make ex-parte when a person applies for a safety and/or barring order. It lasts only until the full court hearing of the application for the latter. While the number of protection orders applied for fell during 2000-2005, in 2007 they rose for the second consecutive year, to 3,794 from 3,137 in 2006.

Figure 9: Protection Orders 2007

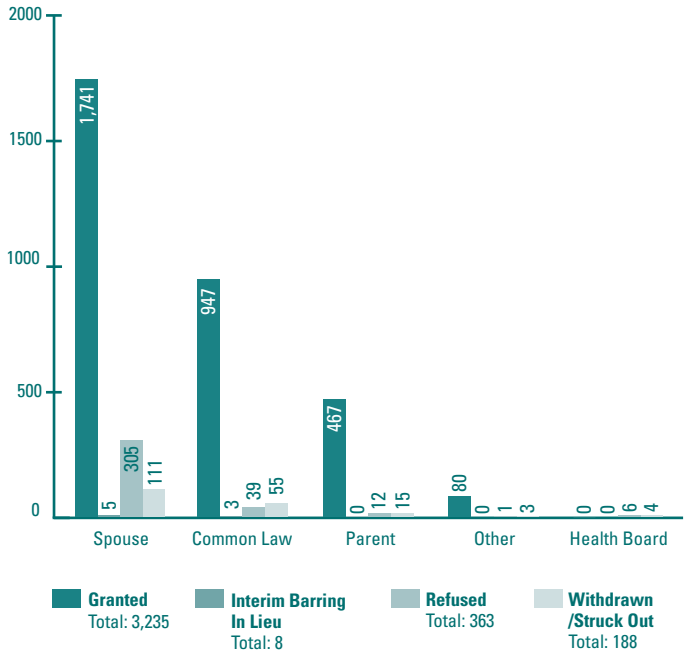
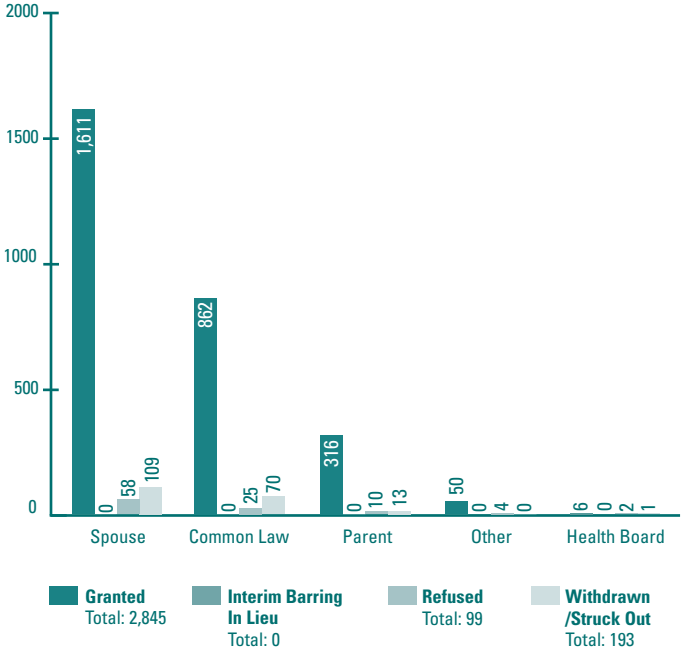


Figure 10: Protection Orders 2006



A breach of any order under the domestic violence legislation is a criminal offence. The Garda Síochána can arrest and charge a person in breach of such an order and, even where there is no order, s/he can arrest and charge a person who has been violent.

**Some interim barring orders were granted on foot of applications for protection orders. Likewise some protection orders were granted on foot of interim barring orders*

Figure 11: Changing trends in domestic violence applications

CHANGING TRENDS IN DOMESTIC VIOLENCE APPLICATIONS								
	2000	2001	2002	2003	2004	2005	2006	2007
Barring order applications	4,908	4,470	4,067	3,586	3,210	3,183	3,132	3,355
Barring orders granted	2,319	2,067	1,740	1,575	1,295	1,265	1,357	1,420
Protection order applications	4,381	4,263	3,677	3,109	3,054	2,850	3,137	3,794
Protection orders granted	3,467	3,711	3,248	2,814	2,810	2,622	2,845	3,235
Safety order applications	2,336	2,903	2,814	2,557	2,611	2,866	3,050	3,553
Safety orders granted	988	1,232	1,187	1,108	987	1,037	1,221	1,556
Interim barring order applications	506	1,159	852	629	698	622	605	692
Interim barring orders granted	415	1,007	706	531	604	550	544	586

Courts Service
Phoenix House
15-24 Phoenix Street North
Smithfield
Dublin 7
www.courts.ie