

Helpline and Legal Advice Clinics Annual Report 2020



CHILDREN'S
RIGHTS

ALLIANCE

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Introduction

The Children's Rights Alliance unites over 120 member organisations working together to make Ireland one of the best places in the world to be a child. We change the lives of all children in Ireland by making sure that their rights are respected and protected in our laws, policies and services.

Accessing legal advice or getting legal information can be a difficult and daunting task for children, young people and their families, especially those in vulnerable situations. The Children's Rights Alliance Helpline and Legal Advice Clinics were established to provide legal information specifically about children's rights and free one-to-one legal advice appointments with a solicitor for children or their parents.

Now in its third year, this Report examines trends emerging from cases in 2020 and identifies potential areas of legal and policy reform that would make a positive impact on the lives of children and families across the country. In 2020, due to Covid-19 and the effect of the pandemic on children we decided to open our Helpline for an extra day, meaning we are now open three days a week (Monday, Wednesday and Friday) with Gareth Noble of KOD Lyons Solicitors providing (online) legal advice on a case-by-case basis.

The onset of the pandemic and the first lockdown saw an initial reduction in the number of cases presenting to the service, this coupled with a number of newly established helplines that were heavily promoted during this period also had an impact. However, after the initial lockdown we saw calls slowly increase across all areas of law on the impact of the lockdown on the rights of children and young people.

Our Helpline provides children, young people and their families with information about what they can do to address a pressing issue for an individual child or where there has been overall failure to protect children's rights. We identify young people and families who need further support and, where necessary, refer them to our legal advice clinics.

Through our helpline and legal advice clinics, we are able to identify and track the most prevalent and emerging issues for children and families who contact us (and as a result emerging trends across Ireland) and pinpoint potential areas for reform in policy, legislation and services.

In 2020, the Helpline received over 320 cases/490 contacts, which included:

16 direct contacts from children and young people

210 contacts from parents and guardians

60 contacts from other adults

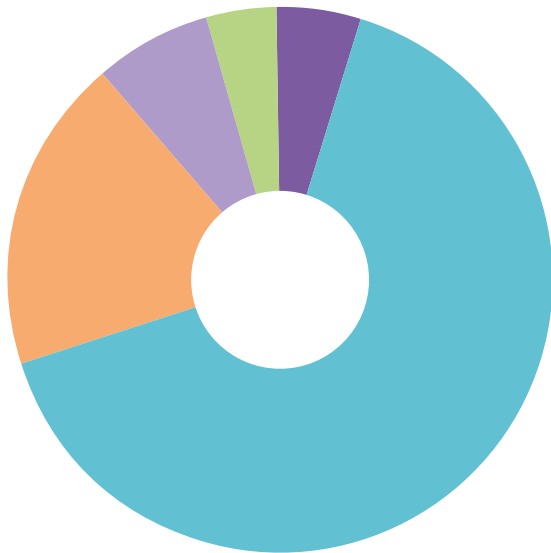
22 contacts from other Non-Governmental Organisations (NGOs)

13 contacts from statutory bodies, including Tusla, the Child and Family Agency, and the Citizens Information Centres

The Year at a Glance

The below pie charts offer a snapshot of the work undertaken throughout 2020, outlining who contacted us and the issues and areas of law causing them concern.

Contact



- Child - **16**
- NGO - **22**
- Parent / Guardian - **210**
- Other - **13**
- Other Adult - **60**

Issues



- Child Protection - **22**
- Family Law - **66**
- Children in Care - **19**
- Health - **10**
- Children's Rights - **48**
- Housing - **12**
- Disability - **23**
- Immigration - **13**
- Education - **77**
- Other - **31**

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**Who is
contacting us?**

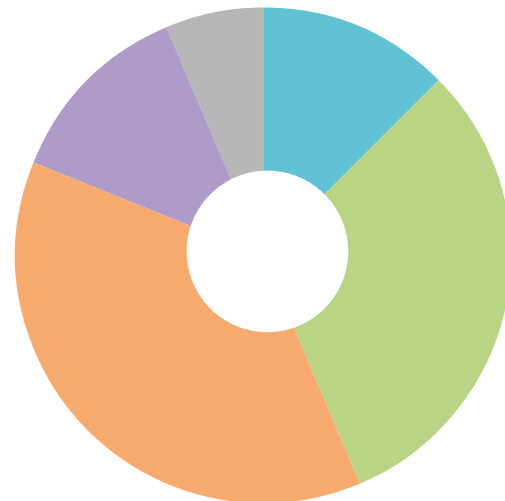
Children and Young People

In 2020, 16 of our cases involved children or young people contacting us directly; most of their queries were about education, with the second highest relating to general queries about their rights, including questions about what legal age they can do certain things at.

Some of the queries we received were around the topic of gendered uniform policies, with young people looking to find out what they could do to challenge policies that do not allow girls to wear trousers or boys to wear earrings. We were able to give them information about how they could engage with school management and raise these issues by seeking to meet the principal or writing to the Board of Management.

Other queries we received were in relation to teachers' unfair treatment of young people themselves and/or their friends, for example wanting to know what they could do in a situation where they felt the teacher was picking on their classmate and criticising them unfairly. We were able to give them information about how to make a complaint to the school and refer them to Childline to support them in how to discuss the matter with their parent. We also heard from a child looking for information about how to have their voice heard in their parents' decision that the child would relocate to another country with one of them.

For queries requiring additional support, such as a young person feeling discriminated against by school staff, our Helpline Team offers an appointment at one of our free legal advice clinics in addition to providing information about their rights and how to vindicate them, or in relevant cases, how to make a complaint. The Alliance empowers the young person or their family to take action by providing them with the necessary information and support to do so. We also refer children and young people to specialist support services, such as Empowering People in Care (EPIC)'s advocacy service for children in care or ISPCC Childline, when they need someone to talk to.



- Child Protection - 2
- Children's Rights - 5
- Education - 6
- Family Law - 2
- Other - 1

► Helpline Case Study 1

Mary*, aged 16, was stopped by an Irish Rail ticket inspector as she had a child's ticket instead of an adult's ticket. The ticket inspector took the young person's details, even though she asked them to wait until her parents got there.

The young person rang the Helpline to find out if they were legally obliged to have an adult ticket. She also wanted to know if the inspector had breached her data protection rights by taking her personal details.

The Helpline was able to provide information on Irish Rail policy, which states that a person aged 16 should have an adult ticket. We also informed her that the inspector could ask for details, but that her parents could contact the Data Protection Commission if they were concerned about the taking of details.

*Names have been changed to protect identities.

Parents and Guardians

Two in three of our calls came from parents seeking information or advice for their child (67 per cent). Notably, for the third year in a row, the same issues are emerging as distinct trends: Family Law, Education, General Queries about Children's Rights, and Disability. However, in 2020, a number of queries also came through to our Helpline that related to Covid-19 (see page 11).

Other Adults

In 2020, adults and carers, other than parents, represented one in five callers to the helpline; these were usually calls from a grandparent, sibling, neighbour or family friend and were across all areas.

Non-Governmental Organisations (NGOs) and Statutory Bodies

Eleven per cent of calls were referrals to our helpline services from other NGOs and statutory bodies. These are often complicated cases that require further legal assistance and advice and include complex and often intersectional issues, such as housing and homelessness, intertwined with other issues like disability. We had a number of queries from

other organisations regarding their obligations on issues such as data protection and consent forms. The level of complex cases referred from other organisations highlights the need for services like our Helpline and Legal Advice Clinics that offer specialist information and advice across a breadth of issues.



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**What are
the issues?**

► Overview

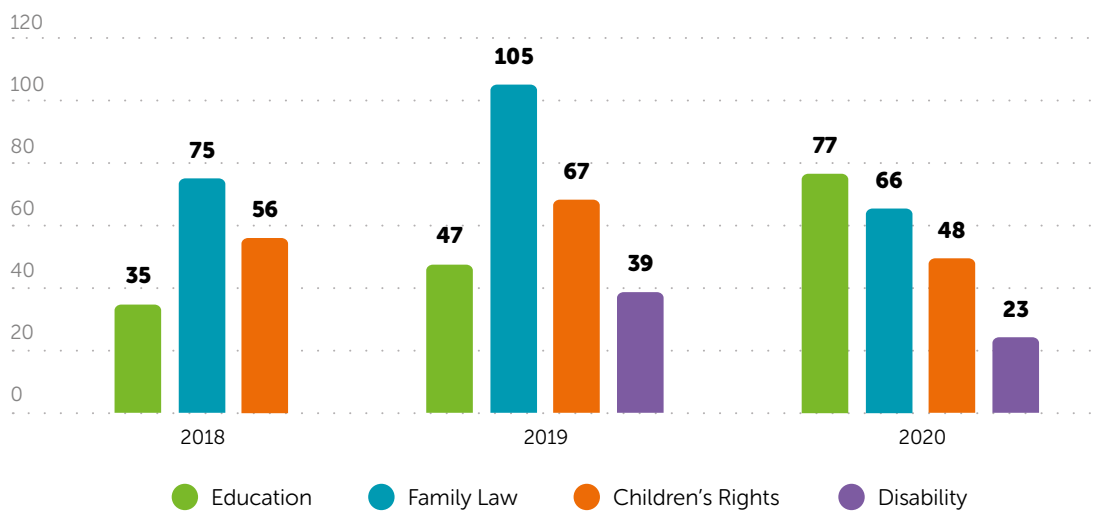
2020 and the onset of the Covid-19 pandemic led to us hearing about new issues from Helpline callers. For the first time in the three-year history of the Helpline, **Education** became the biggest issue that came through the service, with a 26 per cent drop in calls in relation to Family Law. This is as a direct result of the school closures and new restrictions in schools. These queries have raised serious concerns about the efficacy of both the family law and education systems in responding to the rights and needs of children and young people during the Covid-19 pandemic. This has been noted by our team and will inform future Children's Rights Alliance's campaigns.

Aside from queries relating to Covid-19, we received calls from families in relation to housing, particularly around lengthy waiting lists to access social housing. Some of our cases involved families living in private rented accommodation who had been on the social housing waiting list for up to 10 years with children often living in inappropriate or overcrowded housing. This can be a breach of children's rights and can have a long lasting effect on a child including on their development, family relationships and education. In these cases we were able to refer them to a specialist legal service.



The graph below demonstrates the emerging trends we have seen since the establishment of the Helpline in 2018. We can see that, the number of cases relating to **Education** has doubled, which has led to it, for the very first time, overtaking **Family Law** as the main area of concern for callers.

Emerging Trends 2018-2020



What age can a child be left home alone?

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What is the age of consent for dental treatment?

Does a child have a right to have a smart phone?

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How is the Government held to account for implementing the recommendations from the UN Committee on the Rights of the Child?

Spotlight: Family Law and Covid-19

In Family Law cases a judge can order expert reports. As the first lockdown commenced in March 2020, we saw an increase in the number of queries coming to the Helpline about access visits between separated parents and their children. Parents were confused about the potential impact of the restrictions and lockdown, and whether access should remain the same or be amended given that public health advice had told households not to mix. Our cases included concerns relating to parents who would not take their child on access visits and of parents denying child access to the other parent.

As the lockdown continued, the Minister for Justice, the President of the District Court and the Government clarified that access visits were considered to be a valid reason for travelling beyond the restricted area. The Minister for Justice and the President of the District Court also both issued public statements to say that, where possible, access should continue as normal.

We received other queries during this time about the payment of maintenance, including whether it should continue as it was, and what should happen if a parent who was liable to pay maintenance had no (or a reduced) income. In all cases, we were able to give parents information on their options to have maintenance orders enforced including agreement, mediation and making an application to the courts.

▶ Helpline Case Study 2

Aishling*, a mother with three young children contacted the Helpline at the start of April. She and her ex-partner had court ordered access in place where he would take the children three days a week. From the beginning of March, he refused to take the children due to the Covid-19 pandemic. She was also concerned that he would stop paying maintenance.

We explained that maintenance should remain the same unless they agreed otherwise and if it was not being paid by her ex-partner she could seek to have it enforced in court. We were able to explain to her that both parents could agree to amend the days for access if they wanted to. However, in situations where they could not agree, they should try to maintain access as mandated by the courts. If her ex-partner then refused to take the children, she could try mediation through the legal aid mediation service, which was still open at that time, or go back to court to have the order enforced.

Spotlight: Accessing Shopping Centres

During the early stages of the pandemic, some shops placed a blanket ban on children entering shops regardless of their age. We heard from parents, with children as young as five, who were told categorically to leave their children outside the shop. These measures had a disproportionate impact on people parenting alone and people whose partners were frontline workers.

The Children's Rights Alliance, along with the Free Legal Advice Clinics (FLAC) Ireland, National Women's Council of Ireland, One Family, SPARK Ireland and the Society of St Vincent de Paul, wrote an [open letter](#) on the issue, including an outline of possible solutions. This letter was also sent to the Department of Health and the Chief Medical Officer for further guidance on the issue. Subsequent Government briefings asked shops to adopt a common-sense approach for families with children and to take different circumstances into account when letting them into shops.

This is an excellent example of how a call to the Children's Rights Alliance Helpline can lead to swift change at the highest levels of Government in times of crisis.

▶ Helpline Case Study 3

Mark* visited a local shop in June with his two young children Mary* and Cian* - both under the age of 10. After queuing for 10 minutes, he was told his children were not permitted to access the shop and would have to be left outside.

We were able to give the father information and advice on the advocacy work we were doing on the issue, so that shops and supermarkets would adopt a more common-sense approach.

We explained to him that, while discrimination on the basis of age under the Equal Status Acts does not apply to those under 18, there may be indirect discrimination on the basis of Family Status. We gave him information on how he could make a complaint to the Workplace Relations Commission (WRC) and offered him assistance if he chose to do so.

Spotlight: Mandatory Facemasks in Schools

When schools reopened in September 2020, we received a number of calls to our Helpline about the wearing of masks in schools, particularly from older children in secondary school with medical reasons that would make wearing a mask difficult. This was in spite of clear guidance from the Government that children who had medical reasons for wearing a face mask were exempt from doing so.

We heard from parents of children with asthma who could not get letters of exemptions from doctors, as well as from parents who told us that the school would not accept a letter of this kind, even when they had managed to obtain one. We also heard from these parents that they were concerned about the impact of increased use of cleaning products on children's health. We received several calls demonstrating the negative impact of the facemask policy on children with autism. In many cases families were told their child would not be allowed to access education if they did not wear a facemask.

In these situations, where a child was being denied an education, we were able to give families information on what the public health advice was and how the family could make a complaint to the Ombudsman for Children, and to the Department of Education. We were also able to give them information on how to make a complaint to the Workplace Relations Commission, as it could amount - in some situations - to indirect discrimination on the disability ground under the Equal Status Acts.

Spotlight: Early Years

With the closure of Early Years settings in March 2020, we received calls from parents who were asked by their child's creche to continue to pay full fees, despite their children not attending creche or the fact that a subsidy had been made available by Government for owners to pay their staff during lockdown. In these cases, parents were told that the creche would not keep the child's space open after lockdown unless they paid the fees. We were able to explain to parents who contacted us that the decision to avail of the Government subsidy lies with the owner and that, in essence, the agreement to provide early years services is a private arrangement, meaning parents are not obliged to pay but neither is the operator obliged to keep a child's space in the preschool.

► Helpline Case Study 4

Helena* contacted the Helpline because the school was refusing her son John* access to education if he did not wear a facemask. She already had a letter from John's doctor to explain that he had a medical reason for not wearing it.

The school accepted this letter initially but then reversed its position, stating John had to wear a facemask. She made a complaint to the Principal and the Board of Management without success.

We were able to give her information on how to make a complaint to the Department of Education and the Ombudsman for Children.

Education

Education Queries Breakdown



- Access to School Places - **17**
- Disputes with School - **18**
- Detention / Suspension / Expulsion - **9**
- Other - **33**

Our Helpline has been running for three years and, for the first time, Education queries top the list of issues, accounting for 25 per cent of all cases. This means that one in four Helpline callers are getting in touch with us to query a concern they have at school.

The majority of queries we received in 2020 were about the impact of Covid-19 on children's school lives (as outlined in the overview). Parents often contact us when they feel their child's rights are being denied in the education system. When we take a deeper look at the cases coming through under Education, a large majority relate to disputes with schools, and with parents seeking information about how to make a complaint to school.

This year a number of these queries related to the wearing of facemasks in school (see page 12). Another common query came from parents and guardians seeking advice on how to engage with their child's



school on matters of detention or expulsions; often parents are seeking information on how to find a new school after an expulsion, and we are able to link them in with their local educational welfare service. Other common queries include questions on how to make a complaint so their child's rights can be vindicated in situations where children's access to bathrooms is being restricted by schools during certain times of the day, and where there have been difficulties in accessing the appropriate supports in school for children with disabilities. An example of this is where a child has had their Special Needs Assistant's (SNA) hours reduced or cannot access services such as Speech and Language Therapy. Often these families

have been able to access an assessment of need for their child, but they are then placed on long waiting lists to access the services. In these situations, we give them information about how to make a complaint about the delays to the service provider, though we often have to refer them to our legal clinic for advice.

A recurring Helpline query in 2020 was advice on how to engage with a school's Board of Management, when there are concerns relating to a school's own policy. For example, we received calls asking for information and advice on how to raise concerns or dissatisfaction with the school policy on uniforms and suspensions.

Did you know?

Can your school bag be searched by a teacher without informing your parent or guardian?

Privacy in school means attending school without any interference by the school in:

- your private life
- your personal space
- your body
- your belongings.



There are some situations where a school can interfere with your privacy. For example, a teacher can search your bag if they believe that you are carrying illegal substances or alcohol. However, both you and your parent or guardian must agree to this. Your parent or guardian must also be present if a teacher wants to search you, for example, to check what is in your pockets. Your locker is school property, but you are entitled to privacy while the locker is assigned to you during the school year. A teacher may search your locker, but only if they have a good reason for searching it.

Reduced Timetables

One of the most concerning issues emerging from calls to the Helpline is the use of reduced school days or reduced timetables. We have heard from families with children as young as six who have been placed on a reduced school day, sometimes for most of the school year. In all of our cases in 2020, there was no plan in place about how to reintegrate the child back into a full school day and, in the vast majority of cases, children were only in school for an hour or two a day.

This is one of the most serious human rights issues impacting children, as it restricts their constitutional rights to access education. It can also have a longer-lasting impact on a child's life as it reduces their opportunities to fulfil their full potential. Being placed on a reduced timetable may result in a child not only missing out from an educational perspective but also on other important aspects of the school day, such as making friends at breaktimes, going on school trips or getting involved in other activities with their peers.

For most families who contacted us, the child had special educational needs and the school was not providing adequate support to help maintain the child in full-time education. In these cases, we were able to offer parents information on how to make a complaint and we also referred them to our legal advice clinics, where they received advice from a solicitor.

What is a reduced timetable?

Children in both primary and secondary schools are being put on 'reduced timetables', which means that they are required to either start school late, finish school early or are only allowed to come to school for certain days of the week. The practice is distinct from a formal suspension and is not subject to any safeguards. We understand that there are complex reasons for placing a child on a reduced timetable but it appears that, on occasion, this is wrongly used in response to a child having learning difficulties or behavioural, social or emotional issues. Sometimes, depending on need, it can also be used to help with the integration or reintegration of children into school life when they have been absent.

What are the issues?

There is currently no formal system for recording reduced hours in the education system despite the fact that it is an interference with a child's right to access education.

We have had families contact our Helpline about children as young as six being put on a reduced

► Helpline Case Study 5

Abigail* contacted us in relation to her son Cian*, aged six, who was put on a reduced day, while in senior infants. His reduced timetable meant that he was only in school for one hour a day.

When she contacted the Principal he said that he could not provide Cian with a Special Needs Assistant (SNA). But she also got in touch with the Special Educational Needs Officer (SENO) from the National Council for Special Education, who in fact confirmed that the school had been given extra resources to support her son.

We were able to provide her with steps that she could take herself to try to resolve the matter. As a first step, we gave her information on how to make a complaint to the Board of Management of the school and explained her son's right to an education. We also gave her information on how to contact the Ombudsman for Children and explained that she had an option to make an appeal to the Department of Education.

We told Abigail to contact us if the issue was not resolved, as we could offer her a legal advice appointment.

day due to behaviour difficulties. We have been able to advise families on how they can appeal this decision to the school's Board of Management and also through an appeal under section 29 of the Education Act 1998 to the Secretary General of the Department of Education. This section covers a decision by a Board of Management or a person acting on behalf of a Board of Management to:

- permanently exclude a student from the school
- suspend a student from the school for a cumulative period of 20 school days in any one school year
- refuse to enrol a student in the school.

In 2019, draft guidelines were developed by the relevant government departments to underpin the practice and to require schools to notify Tusla, the Child and Family Agency, when it has been employed. However, these guidelines have not yet been published. The Helpline calls we have received in 2020 demonstrate the very urgent need for their publication.

Family Law

With an increase of queries in the area of Education, we saw **Family Law**, for the first time ever, become the second most common issue dealt by the Helpline (21 per cent of all cases in 2020). Often family law callers are ineligible for civil legal aid, and may have engaged a solicitor previously but can no longer afford the fees.

One of the most common issues that surfaced throughout the year was in relation to hearing the child's voice around **access visits**. Parents who contact us in this situation are often in crisis, as many are faced with the dilemma of breaching a court order or sending their child on a visit they do not wish to go on. One of the most common questions coming from parents ringing the Helpline is at what age a child is considered old enough to make these decisions on their own. We often hear from lay litigants (people who plan to represent themselves) as they are looking for some information on children's rights in family law. They often tell us they do not qualify for legal aid and cannot afford a solicitor.

We receive a lot of calls around the processes involved in family law proceedings. For example, calls from parents, in the early stages of family breakdown, who are looking for general information on their options. Also queries from families who already have legal representation, and who want to get more information, but feel like they cannot ask their solicitor or do not understand what they have been told previously by their solicitor.

My child refuses to go on access visits and I don't know what I can do.

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I need more information on children's rights in proceedings.



► Helpline Case Study 6

Melissa* contacted the Helpline because she felt that the views of her children were not being heard in respect of custody and access visits. The judge listened to the views of the two children but increased access despite the children not wanting to go.

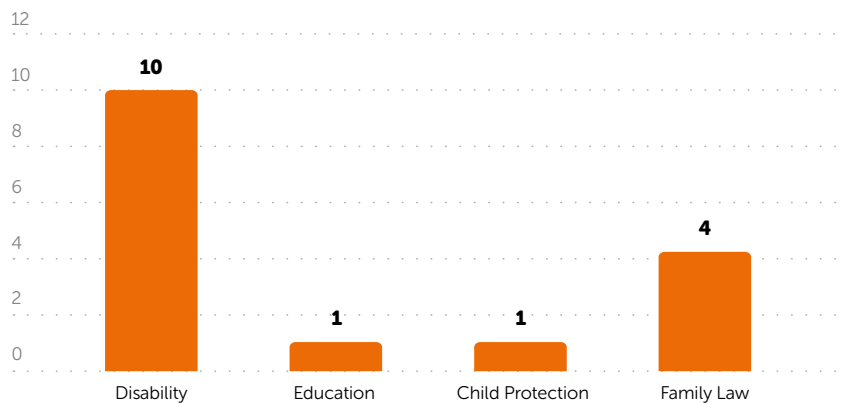
Through our Helpline service, we were able to explain that children have a right to have their opinion heard. There are many ways a judge can hear this. Sometimes a judge might decide to talk to the child/children directly. In other cases, a judge might decide to have an expert talk to the child who will then write a report to the court that will include the opinion of the child on what should happen. It is important to note that, while a judge or expert will listen to the child's views, they may not ultimately make a decision that falls in line with them. This is because the views of the child are only one part of what the judge has to look at when deciding what is best for the child overall.

In this particular case, we suggested that the parent talk to her solicitor and ask about a judicial review or a right of appeal, which would mean that she could challenge the decision of the judge in the case.



Legal Advice Clinics

Areas of Concern



Accessing legal advice specifically on children’s rights and issues can be almost impossible for most families. Children and young people under 18 have no enforceable right to legal aid or legal advice. They cannot take cases on their own. Our legal advice outreach clinics offer one-to-one advice from a solicitor for free.

The above graph illustrates the breadth of issues heard by our solicitors in 2020, with most queries on the rights of children with disabilities.

In 2020, with the onset of the Covid-19 pandemic and the public health restrictions, we could not provide face-to-face legal advice appointments in the same way. Instead we provided legal advice on a case-by-case basis, but online only, with thanks to Gareth Noble, a practising solicitor and partner with KOD Lyons. We provided legal appointments in 14 cases in 2020, down from 67 in 2019. This reduction in cases demonstrates the importance of resuming face-to-face legal advice clinics once it is safe to do so.

In 2021, we will be rolling out our legal advice clinics in partnership with Eversheds Sutherland, and hope to be in a position to provide a greater number of legal advice clinics to children, young people and their families.

What happens at a legal advice clinic?

Our clinics offer free, one-to-one advice with a solicitor. Appointments are typically 45 minutes long and involve the individual explaining their problem, the solicitor outlining the options available to them and guidance on how to take action.

Our clinics are designed to be as accessible as possible. They are held in child-friendly, community spaces across the country. We try to offer a large enough space so that parents can bring their children along. Pre-Covid, clinics were often held in hotels and meeting rooms to provide as much anonymity as possible. Since the pandemic, we have held clinics online.

A Big Thank You

A big thank you to our funder, the One Foundation. Its continuous support is invaluable. Special thanks to Gareth Noble of KOD Lyons and his team for their work on the legal advice clinics and Lewis Mooney BL for his work on the phonenumber.

The **One** Foundation



Rialtas na hÉireann
Government of Ireland



THE BAR
OF IRELAND
The Law Library

Every child has rights. But to protect those rights you need to know what they are.

If you are experiencing any of the issues mentioned in this document, or have concerns about a child's rights, we are here to help.

Contact our Helpline 01 902 0494

Or email us at help@childrensrights.ie

Monday 10am–2pm

Wednesday 2pm–7pm

Friday 10am–12pm



CHILDREN'S RIGHTS ALLIANCE

Uniting Voices for Children

Founded in 1995, the Children's Rights Alliance unites over 100 members working together to make Ireland one of the best places in the world to be a child. We change the lives of all children in Ireland by making sure that their rights are respected and protected in our laws, policies and services.

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